

MONDAY, OCTOBER 16, 1978



highlights

SUNSHINE ACT MEETINGS 47649

FAMILY MEDICINE PROGRAMS

- HEW/PHS issues rules establishing requirements for grants to schools of medicine for predoctoral, graduate and faculty development educational programs; comments by 12-15-78 (Part IV of this issue) 47694
- HEW/HRA issues notice to establish guidelines for grants for predoctoral, graduate, and faculty development educational programs; comments by 12-15-78 (Part IV of this issue) 47694
- HEW/HRA announces hearings on 11-16 and 11-17-78 on guidelines and regulations on grants for predoctoral, graduate and faculty development educational programs (Part IV of this issue) 47699

RURAL RENTING HOUSING LOANS

- USDA/FmHA amends its regulations to retire temporary financing to a State or local public agency; effective 10-16-78; comments by 12-15-78 47487

SMALL PARTS IN TOYS

- CPSC proposes to ban toys and other articles for children under 3 which could present a choking, aspiration or ingestion hazards; comments by 12-15-78 (Part II of this issue) 47624

TREASURY TAX AND LOAN ACCOUNTS

- Treasury/FS announces effective date of final rules and amendments to certain provisions concerning collateral pledged; effective 11-2-78 47505

FARM CREDIT SYSTEM

- Farm Credit Administration amends regulations pertaining to organization, personnel administration and funding operations; effective 10-4-78 47488

AUTOMOTIVE FUEL ECONOMY

- DOT/NHTSA adopts standards for the enforcement of provisions of the Motor Vehicle Information and Cost Savings Act; effective 11-15-78; comments by 11-20-78 47507

INCOME TAXES

- Treasury/IRS adds Federal Home Loan Mortgage Corporation to list of entities and obligation of which may qualify as an "other security of United States" for purposes of the regulatory definition of "book-entry security" 47504

RESIDUAL FUEL OIL

- Commerce/ITA announces hearing on 10-16-78 and requests comments by 10-31-78 on exports of residual fuel oil from the West Coast and related issues 47600

BUDGET DEFERRALS

- OMB issues report for October, 1978 (Part V of this issue) 47704

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

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

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

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

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

federal register

Phone 523-5240

Area Code 202



Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended, 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for \$5.00 per month or \$50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

FEDERAL REGISTER, Daily Issue:

Subscription orders (GPO)	202-783-3238
Subscription problems (GPO)	202-275-3050
"Dial-a-Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202-523-5022
Scheduling of documents for publication.	523-3187
Copies of documents appearing in the Federal Register.	523-5240
Corrections	523-5237
Public Inspection Desk	523-5215
Finding Aids	523-5227
Public Briefings: "How To Use the Federal Register."	523-5235
Code of Federal Regulations (CFR)	523-3419
	523-3517
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents	523-5235
Index	523-5235
PUBLIC LAWS:	
Public Law dates and numbers	523-5266
	523-5282
Slip Laws	523-5266
	523-5282
U.S. Statutes at Large	523-5266
	523-5282
Index	523-5266
	523-5282
U.S. Government Manual	523-5230
Automation	523-3408
Special Projects	523-4534

HIGHLIGHTS—Continued

PESTICIDES

EPA issues notice of establishment of temporary tolerances for Cyano(3-phenoxyphenyl)methyl 4-chloro- <i>alpha</i> -(1-methylethyl) benzeneacetate	47606
EPA issues notice of establishment of temporary tolerances for Glyphosate	47606
EPA proposes establishment of tolerances for Aldicarb; comments by 11-15-78	47575

SECURITIES

SEC adopts rule to permit notice of certain special offerings to mutual fund shareholders; effective 10-4-78; comments by 11-30-78	47492
SEC withdraws proposed rule on sales load variation with respect to purchases of additional shares by mutual fund shareholders; effective 10-4-78	47542
SEC proposes and adopts rules on disclosure requirements (2 documents); comments by 12-1-78; effective 12-18-78	47495 47548

COMMODITY OPTION TRANSACTIONS

CFTC amends regulations to provide an exemption from suspension; effective 10-6-78	47492
--	-------

MAN-MADE TEXTILE PRODUCTS FROM CHINA

CITA issues notice to adjust import restraint levels; effective 10-11-78	47603
--	-------

MARITIME AND BUSINESS RADIO SERVICES

FCC proposes to aid pollution prevention and to broaden permissible communications aboard vessels involved in large oil transfer operations; comments by 11-15-78	47578
---	-------

LOCOMOTIVES, PASSENGER CARS, AND CABOSES

DOT/FRA proposes establishment of minimum safety requirements for glazing materials installed in windows; comments by 12-15-78	47579
--	-------

DISTRESS SALES OF BROADCAST FACILITIES

FCC issues clarification of policy	47612
------------------------------------	-------

AGRICULTURAL CREDIT ACT OF 1978

USDA/FmHA alters its rules by increasing the authority of State Director's approval of debt settlement; effective 10-16-78	47487
--	-------

IMPORTATION OF CERTAIN STEEL ARTICLES

Treasury/Customs proposes regulations modifying the "Special Summary Steel Invoice"; comments by 11-15-78	47543
---	-------

MEETINGS—

Administrative Conference of the United States: Committee on Agency Decisional Processes, 10-31-78	47586
Committee on Agency Organization and Personnel, 11-1-78	47586
Commerce/NOAA: Coastal Migratory Pelagics Advisory Subpanel, 10-25-78	47601
Gulf of Mexico Fishery Management Council, Scientific and Statistical Committee, 11-2 and 11-3-78	47601
Mid-Atlantic Fishery Management Council, 1-15 through 11-17-78	47602
Pacific Fishery Management Council, Billfish Advisory Subpanel, 11-3-78	47602
Pacific Fishery Management Council, Dungeness Crab Advisory Subpanel, 11-15 and 11-16-78	47602
Secy: Advisory Committee on Federal Policy on Industrial Innovation, 10-19-78	47602
DOD/Navy: Chief of Naval Operations Executive Panel Advisory Committee, Technology Sub-Panel, 10-31 through 11-1-78	47605
Secy: Defense Science Board Task Force on Strategic Planning Experiment in the Maritime Balance Area, 11-6-78	47605
DOE: National Petroleum Council Subcommittee on Refinery Flexibility, 11-2-78	47606

EPA: Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel, 10-26 and 10-27-78	47609
Justice/Bureau of Prisons: Advisory Corrections Council, 11-3-78	47617
USDA/SEA: Animal Health Science Research Advisory Board, 10-26 and 10-27-78	47586
VA: Central Office Education and Training Review Panel, 11-14-78	47633

CHANGED MEETING—

HEW/PHS: Safety and Occupational Health Study Section, 10-26 through 10-28-78	47613
---	-------

SEPARATE PARTS OF THIS ISSUE

Part II, CPSC	47684
Part III, EPA	47690
Part IV, HEW/PHS, HRA	47694
Part V, OMB	47703

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect October 15, 1978

CAB—Increase in air taxi all-cargo aircraft size in Alaska and Hawaii	41187; 9-15-78
DOT/CG—Small passenger vessels; expiration date stickers	30771; 7-17-78

Rules Going Into Effect Today

DOT/CG—Drawbridge operation regulations; Wading River, N.J.	41032; 9-14-78
EPA—Air quality implementation plans: California Plan; Ventura County Air Pollution Control District	41033; 9-14-78

California Plan; Merced County Air Pollution Control District	41033; 9-14-78
California Plan; Kern County Air Pollution Control District	41034; 9-14-78
California Plan; Sierra County Air Pollution Control District	41034; 9-14-78
California Plan; Glenn County Air Pollution Control District	41036; 9-14-78
California Plan; Plumas County Air Pollution Control District	41037; 9-14-78
California Plan; Nevada County Air Pollution Control District	41039; 9-14-78
FCC—Policies governing interconnection of private and mobile radio systems with the public, switched, telephone network; correction	41987; 9-19-78
Private land mobile radio stations; interconnection with the public, switched, telephone network	38396; 8-28-78
FRS—Necessity of separate disclosure of certain finance charges described under Ohio law	41015; 9-14-78

GSA—Major system acquisitions for Automatic Data Processing and Telecommunications	41045; 9-14-78
USDA/APHIS—Authorization of use of serum-neutralization tests instead of vaccination-challenge tests in evaluation of certain vaccines	41185; 9-15-78

List of Public Laws

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

[Last Listing: October 13, 1978]

H.R. 8588	Pub. L. 95-452
Inspector General Act of 1978. (10-12-78; 92 Stat. 1101). Price: \$.80.	

contents

ADMINISTRATIVE CONFERENCE OF UNITED STATES

Notices

Meetings:

- Agency Organization and Personnel Committee..... 47586
- Committee on Agency Decisional Processes 47586

AGRICULTURAL MARKETING SERVICE

Rules

- Lemons grown in Ariz. and Calif..... 47485
- Peaches (fresh) grown in Ga..... 47485
- Tomatoes grown in Tex 47486
- Walnuts grown in Calif 47486

Proposed Rules

- Milk marketing orders:
 - Texas..... 47534
- Oranges, grapefruit, tangerines, and tangelos grown in Fla 47533

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Farmers Home Administration; Science and Education Administration; Soil Conservation Service.

ARMY DEPARTMENT

Notices

- Privacy Act; systems of records..... 47604

CENTER FOR DISEASE CONTROL

See Disease Control Center.

CIVIL AERONAUTICS BOARD

Rules

- Consumer Protection Bureau, establishment 47490
- Delegations and review:
 - Consumer Protection Bureau, establishment 47491
- Organization and functions:
 - Consumer Protection Bureau, establishment 47491
- Practice and procedure, economic proceedings:
 - Consumer Protection Bureau, establishment 47490

Notices

- Hearings, etc.:
 - Allegheny Airlines, Inc 47587
 - Chicago-Albany/Syracuse-Boston competitive service investigation 47592
 - Chicago-Midway expanded service proceeding 47594
 - Frontier Airlines, Inc 47592
 - Houston-Phoenix/Tucson case..... 47593
 - Louisville-Kansas City non-stop route investigation..... 47589
 - Midland and Odessa, Tex., air service 47590
 - New Orleans-West service investigation 47589
 - Popular Latin Travel Agency, Inc 47598

COMMERCE DEPARTMENT

See also Industry and Trade Administration; Maritime Administration; National Oceanic and Atmospheric Administration.

Notices

Meetings:

- Federal Policy on Industrial Innovation Advisory Committee and Environment, Health, and Safety Regulation Advisory Subcommittee 47602

COMMODITY FUTURES TRADING COMMISSION

Rules

- Commodity option transactions; exemption from suspension 47492

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Rules

- Hazardous substances and articles; administration and enforcement, etc.:
 - Toys; choking, aspiration or ingestion hazards for children under three years of age 47684

CUSTOMS SERVICE

Proposed Rules

- Entry of merchandise:
 - Steel; invoice, producer and price information..... 47543

DEFENSE DEPARTMENT

See also Army Department; Navy Department.

Notices

Meetings:

- Science Board task force 47605

DISEASE CONTROL CENTER

Notices

Meetings:

- National Institute for Occupational Safety and Health; study section; location change 47613

DRUG ENFORCEMENT ADMINISTRATION

Notices

- Registration applications, etc.; controlled substances:
 - Eli Lilly & Co 47617
 - Endo Laboratories, Inc 47617

ENERGY DEPARTMENT

See also Federal Energy Regulatory Commission.

Notices

Meetings:

- National Petroleum Council ... 47606

ENVIRONMENTAL PROTECTION AGENCY

Rules

- Air pollutants, hazardous; National emission standards:
 - Rhode Island, authority delegation 47692
- Air pollution; standards of performance for new stationary sources:
 - Rhode Island, authority delegation 47692

Proposed Rules

- Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
 - Aldicarb 47575

Notices

- Air pollutants, hazardous; National emission standards:
 - Rhode Island; authority delegation 47690
- Environmental statements; availability, etc.:
 - Agency statements, weekly receipts 47607
- Meetings:
 - Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel 47609
- Pesticides; tolerances, registration, etc.:
 - Cyano (3-phenoxyphenyl) methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate 47606
 - Glyphosate..... 47606

FARM CREDIT ADMINISTRATION

Rules

- Funding and fiscal affairs:
 - Bonds; authority to issue and purchase eligibility requirement 47488

FARMERS HOME ADMINISTRATION

Rules

- Account servicing:
 - Debt settlement; increase of approval authority 47487
- Rural housing loans and grants:
 - State or local public agencies; temporary financing 47487

FEDERAL AVIATION ADMINISTRATION

Rules

- Control zones 47489
- Noise standards:
 - Subsonic transport and turbo-jet airplanes; noise level limits and acoustical change requirements; correction 47489

FEDERAL COMMUNICATIONS COMMISSION

Rules

- Radio broadcast services:
 - Reregulation of television and radio broadcasting; correction 47507

CONTENTS

Proposed Rules		FEDERAL RAILROAD ADMINISTRATION		Hearing assignments 47633
FM broadcast stations; table of assignments:		Proposed Rules		Motor carriers:
Michigan..... 47577		Window glazing material in locomotives, passenger cars and cabooses, safety requirements..... 47579		Permanent authority applications; correction 47633
Texas..... 47576				Temporary authority applications (2 documents) ... 47635, 47642
Maritime services, land and shipboard stations, and industrial radio services:		FISCAL SERVICE		Transfer proceedings 47634
Oil transfer operations, permissible communications to aid pollution prevention..... 47578		Rules		Railroad services abandonment: Grand Trunk Western Railroad Co 47634
Telephone companies:		Treasury tax and loan accounts; effective date 47505		
Cross ownership rules, telephone company—cable television; processing policies for waivers; extension of time 47576				JUSTICE DEPARTMENT
Notices		FISH AND WILDLIFE SERVICE		See Drug Enforcement Administration; Prisons Bureau.
Mexican standard broadcast stations; notification list 47610		Rules		LAND MANAGEMENT BUREAU
Minority ownership, of broadcasting facilities, distress sale policy clarification 47612		Hunting:		Notices
		Pinckney Island National Wildlife Refuge, S.C 47528		Applications, etc.:
FEDERAL ENERGY REGULATORY COMMISSION				New Mexico (8 documents) 47615-47617
Proposed Rules		HEALTH, EDUCATION, AND WELFARE DEPARTMENT		Environmental statements; availability, etc.:
Pipeline companies:		See Disease Control Center; Health Resources Administration; Public Health Service; Social Security Administration.		Desolation-Gray River Management Plan 47615
Valuation; hearing change 47542				LEGAL SERVICES CORPORATION
Practice and procedure:		HEALTH RESOURCES ADMINISTRATION		Notices
Proceedings before the Commission; extension of time ... 47542		Proposed Rules		Grants and contracts; applications..... 47617
Notices		Grants:		MANAGEMENT AND BUDGET OFFICE
Committees; establishment, renewals, terminations, etc.:		Predoctoral, graduate and faculty development educational programs in family medicine; hearings..... 47698		Notices
Pipeline Valuation Advisory Committee 47605				Budget rescissions and deferments 47704
FEDERAL INSURANCE ADMINISTRATION		Notices		MARITIME ADMINISTRATION
Proposed Rules		Grants; applications:		Notices
Flood elevation determinations:		Predoctoral, graduate, and faculty development educational programs in family medicine 47699		Applications, etc.:
Arizona (4 documents) .. 47564-47566				Cove Carriers, Inc 47601
Arkansas 47567		HOUSING AND URBAN DEVELOPMENT DEPARTMENT		MATERIALS TRANSPORTATION BUREAU
California (3 documents) 47567, 47568		See Federal Insurance Administration.		Notices
Colorado 47569		INDUSTRY AND TRADE ADMINISTRATION		Applications; exemptions, renewals, etc. (2 documents) 47629, 47630
Idaho 47569		Notices		NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Illinois (3 documents) ... 47570, 47571		Exports of residual fuel oil from the West Coast and related issues; hearings and request for comments 47600		Rules
Indiana 47572		Scientific articles; duty free entry:		Fuel economy standards, average; passenger automobiles and light trucks, enforcement 47507
Kansas 47572		International Fertility Research Program et al.; correction 47600		Notices
Kentucky 47573				Motor vehicle safety standards; exemption petitions, etc.:
Louisiana 47573		INTERIOR DEPARTMENT		General Motors Corp 47631
Massachusetts 47574		See Fish and Wildlife Service; Land Management Bureau; National Park Service.		Modular Ambulance Corp 47632
Minnesota (3 documents) 47546, 47547		INTERNAL REVENUE SERVICE		Travel Equipment Corp 47632
Missouri (5 documents) 47548-47550		Rules		NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
New Jersey (2 documents)..... 47550, 47551		Income taxes:		Rules
New York (2 documents) 47551, 47552		Book-entry security; "other security of the United States," definition 47504		Whaling Commission, International; schedule amendments..... 47528
North Dakota 47552				Notices
Pennsylvania (13 documents) .. 47553-47560		INTERSTATE COMMERCE COMMISSION		Meetings:
Virginia (2 documents) 47561		Notices		Gulf of Mexico Fishery Management Council 47602
Washington..... 47562		Fourth section applications for relief 47633		Gulf of Mexico Fishery Management Council et al 47601
West Virginia 47562				
Wyoming 47563				
FEDERAL MARITIME COMMISSION				
Notices				
Agreements filed, etc..... 47613				

CONTENTS

Meetings:		PUBLIC HEALTH SERVICE		SOCIAL SECURITY ADMINISTRATION	
Mid-Atlantic Fishery Management Council	47602	Rules		Notices	
Pacific Fishery Management Council (2 documents)	47602	Grants:		Authority delegations:	
		Predoctoral, graduate, and faculty development educational programs in family medicine	47694	Deputy Commissioner et al., supplemental security income benefit overpayments	47614
NATIONAL PARK SERVICE		SCIENCE AND EDUCATION ADMINISTRATION		SOIL CONSERVATION SERVICE	
Notices		Notices		Notices	
Authority delegations:		Meetings:		Environmental statements; availability, etc.:	
Fort McHenry National Monument, Md., Administrative Technician	47617	Animal Health Science Research Advisory Board	47586	Hurricane Road Critical Area Treatment RC&D Measure, N.Y.	47586
NAVY DEPARTMENT		SECURITIES AND EXCHANGE COMMISSION		River Road Park Water-Based Recreation RC&D Measure, Ala.	47587
Notices		Rules		South Natchitoches Flood Prevention and Agricultural Land Drainage RC&D Measure, La.	47587
Meetings:		Interpretative releases:		TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE	
CNO Executive Panel Advisory Committee	47605	Mutual funds; advertising, prospectus requirements and sales load variations, inquiry	47492	Notices	
NUCLEAR REGULATORY COMMISSION		Securities Exchange Act:		Man-made textiles:	
Notices		Broker-dealers, securities confirmations	47495	China, Republic of	47603
Applications, etc.:		Proposed Rules		TRANSPORTATION DEPARTMENT	
Northeast Nuclear Energy Co. et al.	47618	Securities Act:		See Federal Aviation Administration; Federal Railroad Administration; Materials Transportation Bureau; National Highway Traffic Safety Administration.	
Union Electric Co.	47620	Sales load variations during periodic open seasons; withdrawal	47542	TREASURY DEPARTMENT	
Virginia Electric and Power Co.	47620	Securities Exchange Act:		See Customs Service; Fiscal Service; Internal Revenue Service.	
International Atomic Energy Agency codes of practice and safety guides; availability of drafts	47618	Securities confirmations; disclosure requirements	47538	VETERANS ADMINISTRATION	
Regulatory guides; issuance and availability (2 documents)	47619	Notices		Notices	
Standard review plan; issuance and availability	47619	Hearings, etc.:		Meetings:	
PRISONS BUREAU		Indiana & Michigan Power Co. et al.	47628	Central Office Education and Training Review Panel	47633
Notices		Self-regulatory organizations; proposed rule changes:			
Meetings:		National Securities Clearing Corp.	47620		
Corrections Advisory Council	47617	New York Stock Exchange, Inc.	47629		

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR		17 CFR		40 CFR	
910.....	47485	32.....	47492	60.....	47692
918.....	47485	230.....	47492	61.....	47692
965.....	47486	240.....	47495	PROPOSED RULES:	
984.....	47486	PROPOSED RULES:		180.....	47575
1822.....	47487	240.....	47538	42 CFR	
1864.....	47487	270.....	47542	57.....	47694
PROPOSED RULES:		18 CFR		PROPOSED RULES:	
905.....	47533	PROPOSED RULES:		57.....	47698
1126.....	47534	Ch. I.....	47542	47 CFR	
12 CFR		1.....	47542	73.....	47507
611.....	47488	19 CFR		PROPOSED RULES:	
612.....	47488	PROPOSED RULES:		63.....	47576
615.....	47489	141.....	47543	64.....	47576
14 CFR		24 CFR		73 (2 documents).....	47576, 47577
Ch. II.....	47490	PROPOSED RULES:		83.....	47578
36.....	47489	1917 (49 documents)...	47546-47574	91.....	47578
71.....	47489	26 CFR		49 CFR	
302.....	47490	1.....	47504	511.....	47507
384.....	47491	31 CFR		PROPOSED RULES:	
385.....	47491	203.....	47506	229.....	47579
16 CFR		214.....	47506	50 CFR	
PROPOSED RULES:		226.....	47506	32.....	47528
1500.....	47684	317.....	47506	351.....	47528
1501.....	47684	321.....	47507		

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING OCTOBER

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

1 CFR		9 CFR		14 CFR—Continued	
Ch. I.....	45339	78.....	47168	39.....	45343, 45981-45983, 46523, 46960
3 CFR		94.....	46516	71.....	45343, 45344, 45983-45985, 46524-46526, 46961, 47490
EXECUTIVE ORDERS:		203.....	46494, 46955		
11246 (Amended by EO 12086....)	46501	10 CFR		73.....	46961
12010 (Superseded by EO 12087)...	46823	2.....	46292	75.....	45345
12085.....	45337	73.....	45981	91.....	46233
12086.....	46501	205.....	46517	95.....	45985
12087.....	46823	430.....	47118	97.....	46526
MEMORANDUMS:		465.....	45536	121.....	46234, 46782
September 26, 1978.....	46821	PROPOSED RULES:		127.....	46783
September 26, 1978 (Correc- tion).....	46953	72.....	46309	135.....	46783
October 2, 1978.....	45547	430.....	45375	241.....	46294
PROCLAMATIONS:		12 CFR		302.....	47490
4125 (Revoked in part by Proc. 4604).....	45977	5.....	47156	384.....	47491
4436 (Revoked in part by Proc. 4604).....	45977	25.....	47144	385.....	47491
4604.....	45977	201.....	45821	1210.....	45823
5 CFR		207.....	45821, 46956	PROPOSED RULES:	
180.....	47163	220.....	45821, 46956	1.....	46734
213 ... 45549, 45550, 46287, 47167, 47168		221.....	45821, 46956	21.....	46734
297.....	46505	224.....	45821, 46956	23.....	46734
539.....	46287	228.....	47144	25.....	46034
550.....	46288	262.....	47157	39.....	5375-45380, 46037
7 CFR		303.....	47157	71.....	45381, 45382, 46038, 46549, 46978, 46979
2.....	45339	345.....	47144	121.....	46034
29.....	45340	521.....	46836	135.....	46734
53.....	45979	522.....	46836	291.....	45383
910.....	46288, 47485	523.....	46839	296.....	45383
918.....	47485	524.....	46841	399.....	46080
927.....	45341	525.....	46842	15 CFR	
928.....	46955	526.....	46844	372.....	47171
929.....	46831	527.....	46846	377.....	47172
948.....	45979	531.....	46847	386.....	46962
965.....	47486	532.....	46848	16 CFR	
966.....	45342, 46831	543.....	47160	13.....	47173
984.....	47486	545.....	47161	456.....	46296
1201.....	46289	546.....	47162	1500.....	47174
1464.....	46833	562.....	47162	1505.....	45551
1488.....	45551	563.....	47162	PROPOSED RULES:	
1822.....	45980, 47487	563e.....	47144	13.....	45593, 46856
1864.....	47487	584.....	47163	306.....	46550
1904.....	46290	611.....	47488	444.....	47194
1980.....	46290, 46505	612.....	47488	1307.....	47194
2852.....	46291	615.....	47489	1500.....	47684
PROPOSED RULES:		PROPOSED RULES:		1501.....	47684
905.....	47533	303.....	46976	17 CFR	
906.....	46305	304.....	46976	15.....	45825
946.....	45375	328.....	46976	19.....	45825
967.....	46549	13 CFR		32.....	47492
1001.....	45520	120.....	46960	200.....	45991
1002.....	46853	122.....	46960	230.....	47492
1064.....	45881, 48305	PROPOSED RULES:		240.....	47495
1065.....	45881	121.....	45591	249.....	46299
1126.....	47534	14 CFR		275.....	47176
1207.....	45884	Ch. II.....	47490	PROPOSED RULES:	
1464.....	47194	23.....	46233	170.....	46039
1701.....	45591	25.....	46233, 46238	240.....	47538
1924.....	46306	27.....	46233	270.....	47542
		29.....	46233		
		36.....	47489		

FEDERAL REGISTER

18 CFR

1..... 46528
154..... 45553

PROPOSED RULES:

Ch. I..... 45595, 47542
1..... 47542
803..... 46980

19 CFR

4..... 46962

PROPOSED RULES:

6..... 46981
141..... 47543
146..... 45885

20 CFR

404..... 45345
416..... 45554

21 CFR

5..... 46299
14..... 45555
136..... 47177
146..... 45556
176..... 45556
229..... 46528
310..... 47178
522..... 46300
540..... 46529
558..... 46300
610..... 47182
1220..... 46301

PROPOSED RULES:

16..... 46321, 46322
20..... 46321
54..... 46322
71..... 46322
74..... 45611
81..... 45613
101..... 45613
170..... 46322
171..... 46322
180..... 46322
182..... 46550
201..... 45614
207..... 45614
310..... 46322, 47198
312..... 46322
314..... 45614, 46322
320..... 46322
330..... 46322
350..... 46694
361..... 46322
430..... 46322
431..... 46322
510..... 46322
511..... 46322
514..... 46322
558..... 46322
570..... 46322
571..... 46322
601..... 46322
630..... 46322
812..... 46321
1003..... 46322
1010..... 46322

22 CFR

1100..... 47182

PROPOSED RULES:

6a..... 46046

23 CFR

630..... 47138
640..... 46963
772..... 45838

24 CFR

260..... 45557
888..... 46529
1914..... 46848, 46966
1916..... 46970
1917..... 45558-45580

PROPOSED RULES:

803..... 46552
888..... 46552
1917 (49 documents)..... 45383-
45398, 47201-47211, 47546-47574

25 CFR

258..... 46971

PROPOSED RULES:

700..... 46047

26 CFR

1..... 45582, 47504

PROPOSED RULES:

1..... 46859, 47211

28 CFR

0..... 45992
16..... 45992, 45993
50..... 45992

PROPOSED RULES:

2..... 46859

29 CFR

1910..... 45762, 46322, 47182
1926..... 47182
2700..... 46531

PROPOSED RULES:

2200..... 46047
2201..... 46047
2610..... 46868

30 CFR

48..... 47454

PROPOSED RULES:

Ch. VII..... 45886
11..... 47212
55..... 47213
56..... 47213
57..... 47213
715..... 46048

31 CFR

203..... 47506
214..... 47506
226..... 47506
317..... 47506
321..... 47507

32 CFR

Ch. XX..... 46280
242b..... 46531
552..... 46971

PROPOSED RULES:

Ch. I..... 47480

33 CFR

165..... 46532
208..... 47184
239..... 47470

PROPOSED RULES:

175..... 45399

36 CFR

7..... 46849

PROPOSED RULES:

223..... 46323

38 CFR

3..... 45347
4..... 45348
14..... 46530

PROPOSED RULES:

21..... 45399
36..... 45400

39 CFR

111..... 45838, 45839

40 CFR

35..... 47130
50..... 46246
51..... 46264
60..... 47692
61..... 47692
81..... 45993
86..... 45583
180..... 45362, 45583, 46537
422..... 46020

PROPOSED RULES:

6..... 47213
51..... 46272, 46275
52..... 45401,
46553, 46554, 46869, 46870
53..... 46272
65..... 45402-45410, 47214
87..... 45411
122..... 47213
123..... 47213
124..... 47213
125..... 47213
151..... 47213
162..... 46555, 47215
180..... 45412, 47575

41 CFR

Ch. 101..... 45842
1-3..... 46302
8-12..... 45363
14-1..... 45584
14-55..... 45584

PROPOSED RULES:

Ch. I..... 47480
3-7..... 47217
3-57..... 47217
51-1..... 45413
101-20..... 46555

42 CFR

57..... 47694

PROPOSED RULES:

50..... 46871
57..... 47698
455..... 47474
474..... 47474

FEDERAL REGISTER

43 CFR

422	46538
PUBLIC LAND ORDER:	
5648	46850

45 CFR

100a	46020
104	46020
105	46020
180	46020, 46021
232	45747
233	45585
302	45751
1201	46021
1705	47195

PROPOSED RULES:

Ch. XIII	46871
100b	46871
206	45887
233	45887, 45888
1370	47218

46 CFR

50	46545
56	46545
71	46546
91	46546
111	46546
189	46546
528	46972

PROPOSED RULES:

25	45399
----------	-------

47 CFR

0	46326
---------	-------

47 CFR—Continued

1	45842
2	46326
18	46326
73	45842, 46972, 47507
83	45364

PROPOSED RULES:

1	46658, 46982
2	47218
21	46983
42	45892
43	45892
63	47576
64	47576
73 (2 documents)	45620
45895, 45899, 46048, 46049, 46871-46876, 47221, 47222, 47576, 47577	
76	47222
83	45901, 47578
87	47218
91	47578

49 CFR

106	45366
107	45366
511	47507
533	46546
571	45366, 46547
1033	45586, 45587, 45863, 45865, 45866, 45868, 46850
1056	46548
1121	45588
1207	46974

49 CFR—Continued

1249	46974
1252	46851

PROPOSED RULES:

Ch. II	45903, 45905, 46052
Ch. X	46877
172	46050
195	46051
215	45414
218	45416, 46555
229	47579
393	46555
1062	46053

50 CFR

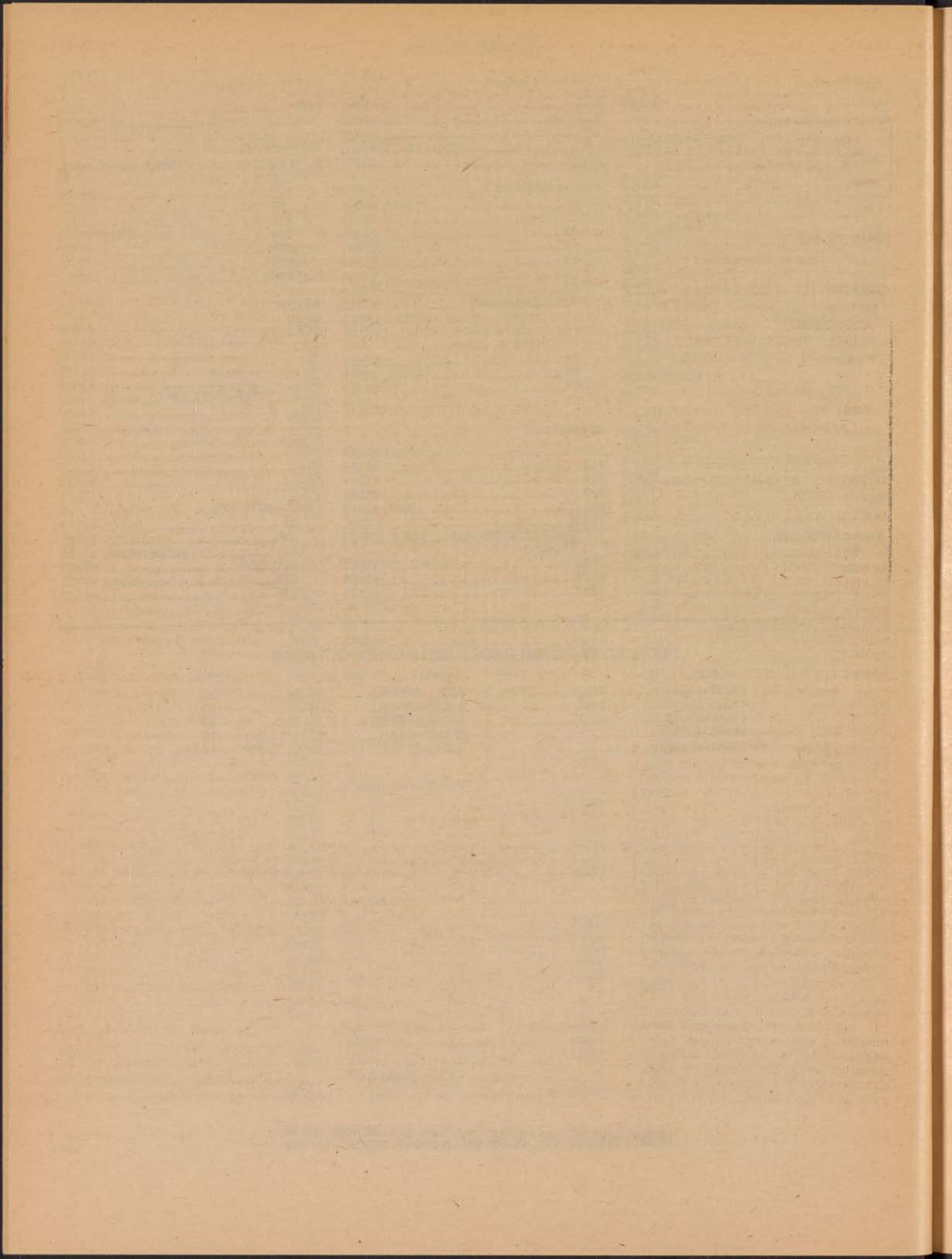
10	45370
17	45759
18	45370
20	45588
26	45374
32	46029-46032, 46548, 47196, 47528
33	45869
216	46975
258	45869
351	47528
651	45872
652	46033

PROPOSED RULES:

17	45512, 45513
226	45905
611	46054, 46349, 47222
652	46880
672	46349, 47222
675	45909

FEDERAL REGISTER PAGES AND DATES—OCTOBER

Pages	Date	Pages	Date
45337-45545	Oct. 2	46501-46820	10
45547-45819	3	46821-46951	11
45820-45975	4	46953-47162	12
45977-46285	5	47163-47484	13
46287-46499	6	47485-47706	16



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.

[3419-02-M]

Title 7—Agriculture

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

[Lemon Reg. 168]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period October 15-21, 1978. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: October 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to the marketing agreement, as amended, and order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, 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 Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on October 10, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good for sizes 140's and larger, slight improve-

ment on size 165's, but easier on sizes 200's and 235's.

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.

§ 910.468 Lemon Regulation 168.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period October 15, 1978, through October 21, 1978, is established at 225,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: October, 12, 1978.

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

[FR Doc. 78-29222 Filed 10-12-78; 11:48 am]

[3410-02-M]

PART 918—FRESH PEACHES GROWN IN GEORGIA

Qualification Requirements and Nomination Procedure for Public Members of the Industry Committee; and Deletion of Obsolete Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes qualification requirements and nomination procedure for public members of the Industry Committee, which locally administers the Federal marketing order covering Georgia peaches, and it deletes obsolete rules now in effect.

EFFECTIVE DATE: November 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on this matter was published in the FEDERAL REGISTER on September 8, 1978 (43 FR 40027). The notice invited interested persons to submit comments in connection with the proposal through September 25, 1978. No such material was received.

The proposal was submitted by the Industry Committee which is established under Marketing Order No. 918, as amended (7 CFR Part 918; 42 FR 40883). The order regulates the handling of fresh peaches grown in Georgia and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

A recent amendment of the marketing order provided that the committee could be increased by one public member. Such public member (and alternate) should be nominated by the "grower members" of the Industry Committee and selected by the Secretary. Consistent with order provisions, the committee recommended establishment of the qualification requirements and nomination procedure, hereafter set forth, applicable to the public member (and alternate) of the committee.

Said amendment of the order also updated certain sections of the basic order rendering the sections of the Industry Committee Regulations, hereafter set forth, obsolete.

After consideration of all relevant matter presented, including the proposal in the notice, the recommendation of the committee, and other available information, it is hereby found that the amendment, hereinafter set forth, of said rules and regulations is in accordance with said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

1. In Subpart—Industry Committee Regulations (7 CFR 918.100-918.131) a new § 918.112 is added reading as follows:

§ 918.112 Qualification requirements and nomination procedure for public members of the Industry Committee.

(a) Public members shall not have a financial interest in or be associated with the production, processing, financing, or marketing (except as consumers) of Georgia peaches.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly, and become familiar with the background and economics of the industry.

(c) Public members must be residents of Georgia.

(d) Public members should be nominated by the committee prior to December 31 of each year, and should serve a 1-year term which coincides with the term of office of other members of the committee.

§§ 918.110 and 918.131 [Deleted]

2. In Subpart—Industry Committee Regulations (7 CFR 918.100-918.131), § 918.110 *Change in representation by districts on the Industry Committee*, and § 918.111 *Redefinition of districts*, are deleted.

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

Effective date: November 15, 1978.

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

[FR Doc. 78-29116 Filed 10-13-78; 8:45 am]

[3410-02-M]

PART 965—TOMATOES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

Subpart—Rules and Regulations

REESTABLISHMENT OF DISTRICTS

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule authorizes the reestablishment of districts within the production area of Marketing Order 965 covering Texas Valley tomatoes. The changes in districts reflect changes in number of producers and volume of production and provide equitable representation on the committee.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Marketing Order 965 regulates the handling of tomatoes grown in the Lower Rio Grande Valley of Texas (the counties of Cameron, Hidalgo, Starr and Willacy in the State of Texas). It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Texas Valley Tomato Committee, established under the order, is responsible for its local administration.

Notice of rulemaking was published in the September 8, 1978, FEDERAL REGISTER (43 FR 40028) inviting comments by September 23, 1978. None was received.

This rule is based upon recommendations made by the committee at its public meeting held May 2, 1978.

There has been a significant shift in tomato acreage and in number of producers since the inception of Order 965, and there are now fewer producers and less acreage in all districts. The order provides that upon the recommendation of the committee the Secretary may reestablish districts within the production area. After carefully considering the criteria in § 965.25 the committee at a meeting on May 2, 1978, unanimously recommended the reestablishment of districts described in the rule which follows. It recommended preserving an equitable distribution of membership and combining the districts with similar growing conditions. Thus District No. 1, Cameron County, and District No. 4, Willacy County, would be combined to form a new District No. 1. Also District

No. 2, Hidalgo County, and District No. 3, Starr County, would form a new District No. 2. After consideration, the committee recommended that the membership to represent the redistricted production area should be unchanged and that the new districts should each have the same committee membership as the two current districts that form each new district.

Findings: After consideration of all relevant matters, including the proposal recommended by the Texas Valley Tomato Committee set forth in the notice, it is hereby found and determined that §§ 965.150 and 965.151 should be added to the rules and regulations to read as follows:

§ 965.150 Reestablishment of districts.

Effective August 1, 1979, districts within the production area are reestablished, pursuant to § 965.25 *Redistricting*, as follows: District No. 1, the County of Cameron, and District No. 4, the County of Willacy, and their respective membership are combined to form a new District No. 1; and District No. 2, the County of Hidalgo, and District No. 3, the County of Starr, and their respective membership are combined to form a new District No. 2.

§ 965.151 Selection.

Effective August 1, 1979, the Secretary shall select four members and their respective alternates to represent District No. 1, and five members and their respective alternates to represent District No. 2.

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

Dated: October 10, 1978, to become effective August 1, 1979.

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

[FR Doc. 78-29115 Filed 10-13-78; 8:45 am]

[3410-02-M]

PART 984—WALNUTS GROWN IN CALIFORNIA

Expenses of Walnut Marketing Board, and Rate of Assessment for 1978-79 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1978-79 marketing year, to be collected from handlers to support activities of the Board which locally administers the Federal marketing order covering walnuts grown in California.

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

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION:
Findings. Pursuant to Marketing Order No. 984, as amended (7 CFR Part 984), regulating the handling of walnuts grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Board, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

§ 984.330 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Board during the 1978-79 marketing year, will amount to \$286,930.

(b) The rate of assessment for said year payable by each handler in accordance with § 984.69 is fixed at 0.25 cent per kernelweight pound for certified merchantable walnuts.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking, and that good cause exists for not postponing the effective time 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 marketing year shall apply to all assessable walnuts handled from the beginning of such year which began August 1, 1978. To enable the Board to meet marketing year obligations, approval of the expenses and assessment rate is 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: October 10, 1978.

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

[FR Doc. 78-29117 Filed 10-13-78; 8:45 am]

[3410-07-M]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.5]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart D—Rural Rental Housing Loan Policies, Procedures, and Au- thorizations

OBLIGATIONS INCURRED BEFORE LOAN CLOSING

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration amends its regulations regarding rural rental housing (RRH). This action is taken to permit RRH loan funds to be used to retire temporary financing to a State or local public agency. The action is being taken as a result of an administrative decision to finance certain needed housing projects.

EFFECTIVE DATE: October 16, 1978. Comments must be received on or before December 15, 1978.

ADDRESSES: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul Conn, Director, Multiple Family Housing Loan Division, 202-447-7207.

SUPPLEMENTARY INFORMATION: Paragraph (c)(1) of § 1822.86, Subpart D, Part 1822, Chapter XVIII, Title 7 in the Code of Federal Regulations is amended to clarify that RRH loan funds may be used to retire a development loan made to a State or local public agency specifically intended as temporary financing.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This amendment, however, is published effective on an interim basis. This action is being taken to make the program immediately available to

State or local public agencies that have interim financing on rental housing projects. The result of this action will permit affordable rental rates for low- to moderate-income families, some of whom presently live in substandard housing because adequate housing is not within their repayment ability. Therefore, any delay in implementing this amendment would be contrary to the public interest. Comments made pursuant to this publication will be considered in the development of the final rule.

Accordingly, § 1822.86, paragraph (c)(1) is amended to read as follows:

§ 1822.86 Limitations.

(c) *Obligations incurred before loan closing.* * * *

(1) The debts were incurred: (i) After the applicant filed a written application for a loan with FmHA; or (ii) after the submission of a preliminary proposal to the Department of Housing and Urban Development (HUD) in the case of a project involving the Section 8 Housing Assistance Payments Program with a loan made in compliance with this Instruction; or (iii) prior to the date of application as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or (iv) prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(42 U.S.C. 1480; Delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70).

Dated: October 4, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-29111 Filed 10-13-78; 8:45 am]

[3410-07-M]

SUBCHAPTER E—ACCOUNT SERVICING

[FmHA Instruction 456.1]

PART 1864—DEBT SETTLEMENT

Approval of Settlement and Submission to National Office

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations regarding debt settlement. This action is taken as a result of passage of a public law. The effect of this action is to increase the approval authority of Farmers Home Administration State Directors regarding debt settlement actions.

EFFECTIVE DATE: October 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas Baden, phone 202-447-2331.

SUPPLEMENTARY INFORMATION: Section 1864.14, paragraphs (a) (1) and (2) of Part 1864, Chapter XVIII, Title 7, Code of Federal Regulations amended. The amendment increases the authority for State Director approval of debt settlement actions in accordance with the Agricultural Credit Act of 1978 from up to \$15,000 to up to \$25,000, resulting in fewer cases being submitted to the National Office and faster service on such actions. The State Director's authority for redelegating approval authority to subordinate officials has been deleted.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This amendment, however, is not published for proposed rulemaking since the purpose of the change is to conform FmHA regulations with the provisions of the Agricultural Credit Act of 1978 and publication is therefore unnecessary.

Accordingly, § 1864.14 paragraphs (a) (1) and (2) as amended, read as follows:

§ 1864.14 Approval of settlement and submission to National Office.

(a) * * *

(1) By the State Director where the indebtedness involved in the settlement is less than \$25,000 (including principal, interest and other charges).

(2) By the Administrator when the indebtedness involved in the settlement is \$25,000 or more (including principal, interest, and other charges).

* * * * *

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director, OEO, 29 FR 14764, 33 FR 9850).

Dated: October 4, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.
[FR Doc. 78-29110 Filed 10-13-78; 8:45 am]

[6705-01-M]

Title 12—Banks and Banking

CHAPTER VI—FARM CREDIT ADMINISTRATION

ORGANIZATION, PERSONNEL ADMINISTRATION, AND FUNDING OPERATIONS

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration, by its Federal Farm Credit Board, took final action to amend its regulations pertaining to the organization, personnel administration, and funding operations of the Farm Credit System. The amendment to the regulations covering organization clarifies the existing policy of requiring Farm Credit Administration approval prior to the establishment of a branch or other office by a Farm Credit bank. The amendment to the regulations covering personnel administration deletes a section requiring reports of certain conflict-of-interest situations because of its limited applicability. The amendments to the regulations covering funding operations authorize the issuance of Farm Credit Investment Bonds in denominations of \$100,000 or more, make all employees of the Farm Credit Administration ineligible to purchase Farm Credit Investment Bonds, and clarify that such bonds may be issued either in book-entry or definitive form.

EFFECTIVE DATE: October 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Lee R. Brobst, Acting Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza SW., Washington, D.C. 20578, 202-755-2181.

SUPPLEMENTARY INFORMATION: By notices published in the FEDERAL REGISTER on July 5, 1978, and August 15, 1978, interested persons were afforded the opportunity to file written comments or suggestions on these proposed amendments. Two comments were received on the proposed revision of the regulation dealing with establishment of branch offices. One favored the amendment as drafted. The

other suggested that the present regulation sufficiently met the requirements of the Farm Credit Act of 1971 regarding the establishment of branch offices. The Farm Credit Administration does not believe that the present regulation fully reflects its policy of requiring approval. Therefore, no changes were made in the regulation as proposed. Three comments were received on the revision dealing with personnel administration and all favored deletion of the reporting requirement. No comments were received on the proposed revision of the regulations governing the funding operation of the Farm Credit System. The proposed amendments were adopted by the Federal Farm Credit Board as written.

FCA's regulations on personnel administration have required a Farm Credit institution to report to FCA any credit based on an obligation of a director, officer, or employee which it extends to another financing institution. Experience has demonstrated that there is no substantial need for this reporting requirement. Therefore, it has been deleted.

The regulations on funding have limited investment bonds issued by the Farm Credit banks to denominations under \$100,000. In order to better meet the requirements of member-borrowers of the Farm Credit System and to provide the banks for cooperatives with a viable addition to their funding program, the regulations have been amended to provide for the issuance of the investment bonds in denominations of \$100,000 or more. These bonds are subject to the limitations in the Federal Reserve Board's Regulation Q which currently prescribes interest rate ceilings on consumer-type deposits under \$100,000.

Chapter VI of title 12 of the Code of Federal Regulations is amended by revising §§ 611.1070, 615.5110, and 615.5120 as follows and by deleting § 612.2260:

PART 611—ORGANIZATION

§ 611.1070 Branches.

A bank may establish branches or other offices necessary for the effective operation of its business if authorized by its board and approved by the Farm Credit Administration. An association may establish such branches or other offices necessary for the effective service to borrowers when approved by the supervising bank.

PART 612—PERSONNEL ADMINISTRATION

§ 612.2260 [Deleted]

PART 615—FUNDING AND FISCAL AFFAIRS LOAN POLICIES AND OPERATIONS AND FUNDING OPERATIONS

§ 615.5110 Authority to issue (other funding).

Any Farm Credit bank may issue Farm Credit Investment Bonds directly to those eligible as set forth in § 615.5120(a). The bonds are subject to the limitations contained in the Federal Reserve Board's regulation Q.

§ 615.5120 Purchase eligibility requirement.

(a) *Limitations.* Eligibility to purchase Farm Credit Investment Bonds shall be limited to members and employees of the Farm Credit banks and associations, except any bank officers, directors, and employees who are involved in setting the term or rate, to retired employees who are beneficiaries of a pension or retirement program of the Farm Credit banks or associations, and to retired employees of the Farm Credit Administration. A member of a Farm Credit association or a bank for cooperatives need not be an active borrower to be eligible. A member of any Farm Credit institution may purchase investment bonds from any of the institutions in the district which offer the purchase program. Patrons, members, employees, or stockholder of other financing institutions discounting loans with the Federal intermediate credit bank or of any legal entity which is a borrower from any Farm Credit institution as such are ineligible as they are not members of a Farm Credit institution. Stock or participation certificates shall not be sold merely to qualify a party for the purchase of Farm Credit Investment Bonds. For purposes of this section "member" means a stockholder or participation certificate holder who acquired stock or participation certificates to obtain a loan, to purchase stock for investment or to qualify for other services of the association or bank. A person who assumes a loan is not a member unless he becomes a stockholder or participation certificate holder in connection with that loan. Employee means a regular full-time employee of a Farm Credit bank or association. Retired employee means a retiree who is a direct beneficiary of a pension or retirement program of a Farm Credit bank or association or the Farm Credit Administration under civil service retirement.

(b) *Form and ownership.* Farm Credit Investment Bonds are registered bonds issued in definitive or book-entry form depending on investor preference. The registration used must express the actual ownership of an interest in the bond and will be

considered by the issuing institution as conclusive of such ownership and interest. No designation of an attorney, agent, or other representative to request or receive payment on behalf of the owner or coowner, nor any restriction on the right of the owner or coowner to receive payment of the bond or interest, except as provided in this section, may be made in the registration or otherwise. Registrations requested in applications for the purchase shall be clear, accurate, complete, and conform with one of the registration provisions set forth in this section, and include the appropriate taxpayer identifying number. Registrations requested will be inscribed on the face of the bond if in definitive form or on the confirmation of investment if in book-entry form. The following provisions shall apply for registration of Farm Credit Investment Bonds:

(1) In all cases the member's name (whether a natural person, fiduciary, or legal entity) or employee's name must appear as owner of the bond.

(2) A bond may be registered in the name of a fiduciary only if the fiduciary is in fact the member.

(3) A member or employee may not use a form of registration (such as a gift to a minor, irrevocable trust, etc.) which would divest himself of ownership. However, a minor may be named as coowner or beneficiary.

(4) If a member is a natural person, a second natural person, member or nonmember, may be named as coowner or beneficiary. Coownership may not involve a fiduciary or private organization.

(5) In the coownership form the connective "or" shall serve the same purpose as "joint tenants with right of survivorship."

C. K. CARDWELL,
Acting Governor,
Farm Credit Administration.

[FR Doc. 78-29135 Filed 10-13-78; 8:45 am]

[1505-01-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 15131; Amdt. No. 36-8]

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

Noise Limits and Acoustical Change Requirements for Subsonic Transport Category Large Airplanes and Turbojet Powered Airplanes: Correction to Minimum Thrust Cutback Altitudes

Correction

In FR Doc. 78-27112 appearing at page 44474 in the issue for Thursday, September 28, 1978, on page 44475, in the middle column, in the amendment to Section C36.7, paragraphs (b) (1) and (2) should be corrected to read as follows:

Section C36.7 Takeoff test conditions.

* * *

(b) ***

(1) For Stage 1 airplanes and for Stage 2 airplanes that do not have turbojet engines with a bypass ratio of 2 or more, the following apply: ***

(2) For Stage 2 airplanes that have turbojet engines with a bypass ratio of 2 or more and for Stage 3 airplanes, the following apply:

* * *

[4910-13-M]

[Airspace Docket No. 78-WE-21]

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

Alteration of Control Zone; Winslow, Ariz.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the effective hours of the control zone so as to coincide with the hours of operation for weather observations conducted at Winslow, Ariz.

EFFECTIVE DATE: October 16, 1978.

ADDRESSES: Federal Aviation Administration, Air Traffic Division Chief, Airspace and Procedures Branch, AWE-530 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: In Subpart F, § 71.171 (43 FR 355) of FAR Part 71, the Winslow, Ariz. Control Zone is designated as full time. The National Weather Service at Winslow, Ariz., will reduce its hours of the hourly and special weather observations from full time to part time effective November 2, 1978. Since the effective hours of the control zone are dependent upon weather observations, it will be necessary to reduce the time of designation of the control zone to coincide with weather reporting capabilities.

This alteration will allow for control zone designation to exist when hourly and special weather observations are made. To make this possible, a change is required in the designation of the control zone to allow for part-time operation.

Since this alteration is mandated by regulation, we have determined that notice and public procedures provisions of the Administrative Procedures Act is unnecessary.

DRAFTING INFORMATION

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

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 355) is amended, effective upon publication of this amendment in the FEDERAL REGISTER as follows:

§ 71.171 [Amended]

In § 71.171 under Winslow, Ariz., following *** "to the Winslow 292° radial." Add: "This control zone shall be effective during the specific dates and times established in advance by a notice to airmen which thereafter will be continuously published in the Airport/Facility Directory."

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 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 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Los Angeles, Calif., on October 3, 1978.

LEON C. DAUGHERTY,
Acting Director, Western Region.
[FR Doc. 78-28881 Filed 10-13-78; 8:45 am]

[6320-01-M]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1077; Amdt. No. Ch. II]

ORGANIZATIONAL CHANGE

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., October 5, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule reflects the consolidation of the Office of the Consumer Advocate and the Bureau of Enforcement into a new Bureau of Consumer Protection.

DATES: Adopted: October 5, 1978. Effective: October 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Office of the General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. 202-673-5442.

SUPPLEMENTARY INFORMATION: For the reasons discussed in OR-133, the Board has consolidated its Office of the Consumer Advocate and Bureau of Enforcement into a new Bureau of Consumer Protection. The consolidation is reflected in specific amendments to parts 384, 385, and 302, which are made in OR-133, OR-134, and PR-179, respectively. Those amendments are also being issued today.

This rule substitutes the new Bureau's name for the Bureau of Enforcement in all other Board regulations. Since the name "Office of the Consumer Advocate" does not appear outside parts 302 and 384, no substitution for it is necessary here.

Since these amendments are administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends all its regulations (14 CFR Chapter II), except parts 302, 384, and 385, as follows:

"Bureau of Enforcement" is replaced by "Bureau of Consumer Protection" wherever it appears.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324); Re-

organization 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. 78-29194 Filed 10-13-78; 8:45 am]

[6320-01-M]

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-179; Amdt. No. 42]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Bureau of Consumer Protection;
Conforming Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., October 5, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This amendment to the Board's rules of practice reflects the consolidation of the Office of the Consumer Advocate and the Bureau of Enforcement into a new Bureau of Consumer Protection.

DATES: Adopted: October 5, 1978. Effective: October 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: For the reasons discussed in OR-133, also adopted today, the Board has consolidated its Office of the Consumer Advocate and Bureau of Enforcement into a new Bureau of Consumer Protection. This rule substitutes the new Bureau's name for the Bureau of Enforcement. The name "Office of the Consumer Advocate" appears only in § 302.9, which currently states that the term "party" shall include the Bureau of the Board and that Office. The latter reference has become obsolete, so this amendment deletes it.

Since this amendment is administrative in nature, affecting a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends part 302 of its procedural regulations, Rules of Practice in Economic Proceedings (14 CFR Part 302), as follows:

1. "Bureau of Enforcement" is replaced by "Bureau of Consumer Protection" wherever it appears.

2. Section 302.9 is amended by deleting "and the Office of the Consumer Advocate."

3. Section 302.210 is amended by replacing "enforcement attorney" with "attorney from the Bureau of Consumer Protection."

(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. 78-29195 Filed 10-13-78; 8:45 am]

[6320-01-M]

SUBCHAPTER E—ORGANIZATION
REGULATIONS

[Reg. OR-133; Amdt. No. 11]

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

Creation of the Bureau of Consumer Protection

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., October 5, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board amends its statement of organization to reflect the consolidation of the Office of the Consumer Advocate and the Bureau of Enforcement into a new Bureau of Consumer Protection.

DATES: Adopted: October 5, 1978. Effective: October 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: The Board recently consolidated its Office of the Consumer Advocate and Bureau of Enforcement into a new Bureau of Consumer Protection. The new Bureau has assumed the responsibilities and staff of the previous office and bureau, except for the Board's audit functions, which were transferred to the Bureau of Accounts and Statistics.¹

This reorganization is intended to insure that consumers receive the

¹This change does not preclude special agents of the Bureau of Consumer Protection (BCP) from examining accounting records and supporting documentation in connection with a BCP investigation.

benefits of a competitive air transportation system, to increase the Board's capability in the area of antitrust enforcement, and to underscore its commitment to have the consumer interest adequately represented in matters that come before it. The Board intends by this merger to increase its ability to inform, assist, and protect consumers in dealings with the air transportation industry and to resolve more satisfactorily the consumer complaints that it receives.

This amendment reflects the creation of the new bureau in the Board's statement of organization. OR-134 amends part 385, which sets out the Board's specific delegations of authority. PR-179 and ER-1077 make conforming amendments to part 302 and the rest of the Board's regulations, respectively. Those amendments are also being issued today. A separate amendment to part 385, reflecting the transfer of the audit functions to the Bureau of Accounts and Statistics, will be issued in the near future.

Since this amendment is administrative in nature, affecting a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends part 384 of its organization regulations, Statement of Organization, Delegation of Authority, and Availability of Records and Information (14 CFR Part 384) as follows:

Section 384.7 is amended by revoking and reserving paragraph (a)(7) and revising paragraph (f), to read:

§ 384.7 Organization and delegation of authority.

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

(a) ***

(7) [Reserved]

(f) The Bureau of Consumer Protection, which is responsible for insuring that the consumer perspective is represented in all matters considered by the Board; which seeks to deter anti-competitive tendencies in air transportation through the enforcement of antitrust laws; which operates programs and provides services to inform and educate consumers in their contacts with the air transportation industry; which handles consumer complaints and mediates their resolution where possible; and which protects consumers by insuring their rights under the law through the investigation of suspected violations of the Federal Aviation Act and the Board's reg-

ulations and through the enforcement of the Act and regulations.

(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. 78-29197 Filed 10-13-78; 8:45 am]

[6320-01-M]

[Reg. OR-134; Amdt. No. 72]

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

Creation of the Bureau of Consumer Protection

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., October 5, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board amends its delegations of authority to reflect the consolidation of the Office of the Consumer Advocate and the Bureau of Enforcement into a new Bureau of Consumer Protection.

DATES: Adopted: October 5, 1978. Effective: October 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Office of the General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: For the reasons discussed in OR-133, also adopted today, the Board recently consolidated its Office of the Consumer Advocate (OCA) and Bureau of Enforcement into a new Bureau of Consumer Protection. This amendment updates the delegations of authority to reflect that consolidation. Since the OCA Director has not had any delegated authority, the amendment merely substitutes the new Bureau name for the Bureau of Enforcement. The Board also takes this occasion to confirm that the Director-Designate and the Deputy Director-Designate of the new Bureau have had the authority, since July 10, 1978 (the effective date of the consolidation) to exercise the functions set forth in § 385.22, which until now was titled "Delegation to the Director, Bureau of Enforcement." A separate amendment of part 385, reflecting the transfer of audit functions to the Bureau of Ac-

counts and Statistics, will be issued in the near future.

Since this amendment is administrative in nature, affecting a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends part 385 of its Organization Regulations, Delegations and Review of Action under Delegation; Nonhearing Matters (14 CFR Part 385) as follows:

"Bureau of Enforcement" is replaced by "Bureau of Consumer Protection" 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. 78-29196 Filed 10-13-78; 8:45 am]

[6351-01-M]

Title 17—Commodities and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

Amendment to Rule Providing an Exemption From Suspension of Commodity Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The CFTC is amending its regulations to reduce the net worth requirement from \$10 million to \$5 million for grantors of options on physical commodities as a condition for exemption from the general commodity option suspension. This action is based on a petition for rulemaking to reduce the net worth requirement.

EFFECTIVE DATE: October 6, 1978.

CONTACT:

Fred M. Santo, Assistant General Counsel, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone 202-254-5543.

SUPPLEMENTARY INFORMATION: Rule 32.11 of the interim commodity option regulations generally makes unlawful the solicitation or acceptance of orders for, or the acceptance of pay-

ment for, the purchase or sale of commodity options on and after June 1, 1978 (43 FR 16153 et seq. (April 17, 1978)). Rule 32.12 provides an exemption from the general suspension of the offer or sale of commodity options on physical commodities ("dealer options") where the grantor and the seller of an option satisfy certain conditions set forth in the rule. (43 FR 23704 et seq. (June 1, 1978)). One of these conditions, set forth in § 32.12(a)(1), requires a grantor to have a net worth of at least \$10 million. On September 7, 1978, the Commission received a petition for interim rulemaking, filed pursuant to 17 CFR 13.2 (1977), to amend § 32.12(a)(1) to reduce the net worth requirement from \$10 million to \$5 million. The Commission has determined to grant the petition by amending § 32.12(a)(1).

Section 32.12 was adopted by the Commission in anticipation of possible congressional action designed to allow certain persons to continue to offer and sell dealer options notwithstanding any general ban that may be in effect. This was done in order to assure that these dealers would not be required unnecessarily to cease operations during the relatively brief period before a congressional exemption judgment could be made whether to exempt a class of option dealers from any general ban on option sales that Congress might enact.¹ To make certain that the Commission exemption would not be broader than the exemption Congress seemed likely to adopt, § 32.12 incorporated the most stringent provisions of the bills reported out of the Senate Committee on Agriculture, Nutrition, and Forestry,² and the House Committee on Agriculture,³ and added additional protections the Commission believed essential for customer protection.

Section 32.12(a)(1) incorporated the \$10 million net worth requirement set forth in the Senate Committee proposal. However, the final congressional action on the minimum net worth requirement as contained in Pub. L. 95-405, 92 Stat. 865 (September 30, 1978), establishes a minimum net worth requirement of \$5 million. This law further requires that the Commission issue regulations concerning the granting and offering of dealer options which shall include certain statutorily

¹The option suspension was scheduled to (and in fact did) go into effect June 1, 1978. The effective date of any amendments to the Commodity Exchange Act would be subsequent to that date, but prior to October 1, 1978. Accordingly, the Commission adopted § 32.12 effective June 1, 1978.

²S. 2391, 95th Cong., 2d Sess. § 2(3) (1978). See S. Rep. No. 95-850, 95th Cong. 2d Sess. (1978).

³H.R. 10385, 95th Cong., 2d Sess. § 2(3) (1978). See H.R. Rep. No. 95-1181, 95th Cong., 2d Sess. (1978).

prescribed criteria. While the Commission is making its determinations concerning dealer options, § 32.12 will continue in effect. Since it is clear, however, that any net worth provision adopted by the Commission would have to establish "a net worth of at least \$5 million" the Commission has decided to amend § 32.12(a)(1) at this time to reflect that figure.

Inasmuch as this amendment to § 32.12(a)(1) is a substitute rule which relieves a restriction, good cause exists to find that the notice and public participation requirements of 5 U.S.C. 553 (1976) are impracticable, unnecessary, or contrary to the public interest. On that basis, it may also be made effective on less than 30 days' notice. See 5 U.S.C. 553(d)(1) (1976).

In consideration of the foregoing, the Commission, pursuant to the authority contained in sections 2(a)(1), 4c(b) and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6c(b), and 12a (1976), hereby amends Part 32 of Title 17 of the Code of Federal Regulations by revising § 32.12(a)(1) to read as follows:

§ 32.12 Exemption from suspension of commodity option transaction.

(a) ***

(1) The grantor has a net worth of at least \$5 million.

* * *

Issued in Washington, D.C., on October 6, 1978, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity
Futures Trading Commission.

[FR Doc. 78-29118 Filed 10-13-78; 8:45 am]

[8010-01-M]

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5985, IC-10419, File No. S7-5781]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Certain Special Offerings to Mutual Fund Shareholders; Interpretation of Statutes

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; interpretation of statutes.

SUMMARY: The Commission announces that it is interpreting statuto-

ry provisions governing the pricing of publicly offered mutual fund shares to permit any fund to sell its shares to its existing shareholders at no sales load or at sales loads which are lower than those being charged to new shareholders. The Commission is soliciting the comments of interested persons on this interpretation. In a separate release the Commission is withdrawing a proposed rule governing certain offerings similar to the types of offerings which are the subject of this interpretation. (The offerings covered by the proposed rule were called "open seasons." For convenience the offerings covered by the interpretation issued in this release will also be referred to as open seasons.) In a related matter the Commission is amending the rules governing advertising by investment companies to permit the sending of notices of open seasons to shareholders and interpreting the statutory definition of a prospectus not to include a notice of such an offering which is sent to a shareholder who has previously been sent a current statutory prospectus. These actions taken together conclude proceedings which ensued from a recommendation contained in a Commission staff report on the mutual fund distribution system. These actions will make it clear that the requirement that fund shares be sold at a public offering price set forth in the prospectus does not prohibit offerings consistent with pertinent statutory conditions to existing shareholders at prices which reflect sales loads different from those imposed on purchases by new shareholders.

DATES: Effective October 4, 1978; comments by November 30, 1978.

ADDRESSES: Interested persons should submit their views and comments about the Commission's interpretive position that mutual funds may sell shares to existing shareholders at sales loads which differ from those imposed on sales to new shareholders in triplicate to George A. Fitzsimmons, Secretary, Washington, D.C. 20549. All submissions should refer to File No. S7-578 and will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Richard W. Grant, Esq., 202-755-0242, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 19, 1975, the Commission published a proposal to: (1) Adopt Rule 22d-4 under the Investment Company Act of 1940 (15 U.S.C. 80a-1

et seq.) (the "Act"); and (2) amend Rule 134 (17 CFR 230.134) under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (the "Securities Act"). Proposed Rule 22d-4 would have provided a limited exemption from Section 22(d) of the Act to permit an investment company issuing redeemable securities and underwriters and dealers in such securities to offer such securities to shareholders of that company, or of another company whose shares were underwritten by the same underwriter, at no sales load or at a sales load lower than that being charged new shareholders, subject to certain conditions. The amendment of Rule 134 was necessary to permit the sending of notices of such offerings to shareholders.

As more fully discussed below, the Commission has determined not to adopt Rule 22d-4² but has decided to interpret the Act to permit similar offerings to existing shareholders. The proposed amendment to Rule 134 continues to be necessary and appropriate and is being adopted in this release.

BACKGROUND

On November 4, 1974, the Commission transmitted to the United States Senate a report of its staff entitled "Mutual Fund Distribution and Section 22(d) of the Investment Company Act of 1940."³ The Report contained a number of administrative and legislative recommendations pertaining to Section 22(d) which were designed to eliminate certain inequities and inefficiencies in the existing mutual fund distribution system. A number of these recommendations reflected a

degree of change from the staff's traditional view that Section 22(d) required that, in general, any sales load on the sale of mutual fund shares follow a single schedule of charges with respect to all sales to the public.

One such recommendation related to what the report termed "open seasons." The report concluded that it would be appropriate to permit mutual funds to charge no sales load to repeat investors or to charge them a sales load which was lower than that being imposed on purchases by new shareholders on the theory that repeat investors may not need or receive significant selling services when they purchase additional shares of the same fund. To implement this recommendation, the Commission proposed Rule 22d-4, which would have allowed shares to be offered to existing shareholders of a particular fund or any other fund in the same complex at a reduced load or no load, subject to the following limitations: (1) Shareholders to whom such an offer was directed would have had to have owned shares for at least six months; (2) shareholders would have had to be notified of the offer at least 30 days before it became effective; and (3) the offer would have had to remain in effect for at least 30 days. As stated earlier, the Commission proposed at the same time to amend Rule 134 to permit notices to shareholders of "open seasons."

DISCUSSION

COMMENTS ON PROPOSED RULE 22D-4

Of the 30 comments received, 20 were opposed to adoption of Rule 22d-4, including 9 of the 11 comments received from dealers and 8 of the 10 comments from fund managers and distributors. Most of the comments in opposition expressed concern about the effects open sessions could have on dealers. One argument was that open seasons would deprive dealers of opportunities to earn commissions on repeat sales thereby reducing dealers' incentives to make initial sales and provide follow-up services after sales. Another major argument advanced in opposition to the proposal was that dealers would face difficult ethical problems in making sales, especially repeat sales, at the full sales load if they knew that a fund offered open seasons.

The Commission has considered these objections and concluded that they do not establish any grounds of law or policy which would justify imposing restrictions on open seasons. It appears to the Commission that the question of whether offerings to existing shareholders at no-load or at a reduced load would reduce dealers' incentives and, if so, whether such offerings should be made is a matter of

¹ Securities Act Release No. 5607, Investment Company Act Release No. 8394, (40 FR 40555, Sept. 3, 1975).

² The Commission is withdrawing proposed Rule 22d-4 in a separate release (Investment Company Act Release No. 10420).

³ Section 22(d) of the Act provides:

(d) No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Nothing in this subsection shall prevent a sale made (i) pursuant to an offer of exchange permitted by section 11 including any offer made pursuant to section 11(b); (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash distribution made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 12.

business judgment for individual funds. Concerning ethical problems which might be faced by dealers selling shares of funds which offer open seasons, the Commission recognizes that compliance with Commission rules and NASD requirements may require dealers to make difficult decisions in dealing with their customers. However, the Commission does not believe that the existence of open seasons would alter the nature of those obligations or make them impossible to fulfill in the absence of restrictive regulations.

**DECISION TO ISSUE INTERPRETATION
RATHER THAN ADOPT PROPOSED RULE
22D-4**

After reconsideration of this matter, the Commission is now of the view that Section 22(d) of the Act, and Section 22(d)(ii) specifically, already permits funds to offer shares to existing shareholders at prices which reflect reduction or elimination of the sales loads being imposed on sales to new shareholders. The Commission has also concluded that the conditions on open seasons set forth in proposed Rule 22d-4 are not necessary or appropriate. Accordingly, the Commission has decided to withdraw proposed Rule 22d-4 and issue this interpretation in order to make clear its view of the meaning of Section 22(d)(ii). In issuing this interpretation, the Commission wishes to stress that it is not expressing favor or disfavor of open seasons. As indicated above, the Commission believes that whether or not funds offer open seasons is a matter of business judgment.

Section 22(d) generally prohibits sales of mutual fund shares at other than a public offering price disclosed in the prospectus. This section has traditionally been interpreted as requiring that, in general, any sales loads follow a single schedule of charges with respect to all sales to the public. However, Section 22(d) also provides that: "Nothing in this subsection shall prevent a sale made . . . (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings . . ." The Commission has concluded that the plain meaning of Section 22(d)(ii) compels the conclusion that special offerings by mutual funds to existing shareholders in the nature of open seasons are permissible, provided only that such offerings be made to all shareholders and that they be "proportionate."⁴

⁴The statute appears to contemplate that open seasons could exist simultaneously with normal public offerings. Any staff interpretations which could be construed as suggesting the contrary are hereby superseded.

The Commission has also concluded that the conditions on open seasons contained in proposed Rule 22d-4 are neither necessary nor appropriate. Rule 22d-4 would have required that offers be made only to shareholders who had owned shares for at least 6 months. This condition was designed to prevent investors from treating dealers unfairly by purchasing small amounts of shares at the full sales load and then purchasing more shares at a reduced load or at no-load. Other conditions designed to insure fair treatment of shareholders required 30 days' notice of an open season and a 30-day term for an open season. Upon reconsideration, the Commission has concluded that conditions of these types would make open seasons unduly complicated and inflexible and would not necessarily achieve their objectives. The Commission now believes that reliance on the terms of Section 22(d)(ii) should be sufficient to insure fairness to all parties.

Funds could deal with the problem of investors making small initial purchases and larger subsequent purchases during open seasons by limiting the number of shares existing shareholders could purchase in open seasons. Section 22(d)(ii) requires offerings to existing shareholders to be proportionate to their holdings. Nothing would prevent funds from permitting shareholders to purchase only a small number of shares relative to their holdings.

On the other hand, it does not appear to be necessary to set arbitrary notice and duration requirements in order to prevent unfair discrimination against certain classes of existing shareholders. Compliance with the requirement in Section 22(d)(ii) that offerings be made to "all" shareholders should insure that open seasons offerings give sufficient notice to investors and have sufficient duration to insure that the terms of the offering do not, in effect, favor some shareholders over others.

REQUEST FOR COMMENT

The Commission believes that the foregoing interpretation of Section 22(d)(ii) comports with the plain meaning of the statute; however, because proposed Rule 22d-4 was controversial and because of the passage of time since comment was received on the proposed rule, the Commission believes it is appropriate to give interested persons another opportunity to present their views; therefore, the Commission is requesting comments on this matter. The interpretation is effective, however, as of October 4, 1978.

**COMMUNICATIONS TO SHAREHOLDERS
ABOUT OPEN SEASONS**

Communications to shareholders about open seasons may vary depending on such factors as whether open seasons are continuous, periodic, or occasional, or whether shareholders have received current prospectuses. The following discussion is intended to explain the applicability of Securities Act prospectus requirements to open seasons and to explain certain administrative actions taken to facilitate sending notices of open seasons to shareholders.

PROSPECTUS DISCLOSURE

Information about open seasons could be very material to persons contemplating purchases of mutual fund shares. Accordingly, the prospectus of any mutual fund which offers, or plans to offer, shares to existing shareholders at reduced sales loads or no-load pursuant to section 22(d)(ii) should make appropriate disclosure. What is appropriate will depend on the nature of the offering. For example, a fund which has a continuous open season should be able to make quite specific disclosure of the terms of the offering, including the sales load, if any. On the other hand, a fund which contemplates having open seasons only occasionally may not be able to provide very detailed information about such offerings. If a fund does not make a continuous offer and the precise dates of any offer are not set forth in the regular prospectus, shareholders should be given specific notice of each such offering, and at the same time a sticker should be added to the prospectus giving the dates of the offering.⁵

NOTICES OF OPEN SEASONS

A fund which has an open season may wish to send a notice to shareholders, regardless of whether the open season is continuous, periodic, or occasional. Such a notice might be considered a prospectus within the meaning of section 2(10) of the Securities Act⁶ and be required to meet the requirements of section 10 of the Securities Act unless one of the exceptions in section 2(10)(a) or 2(10)(b) was available. The Commission has taken certain actions as discussed below to facilitate the sending of notices which are not full statutory prospectuses.

**INTERPRETATION OF SECTION 2(10) OF
THE SECURITIES ACT**

Many mutual funds send their shareholders current effective pro-

⁵As indicated below, the notice to shareholders can be given merely by sending them a copy of the sticker if an otherwise current effective prospectus already has been sent.

⁶Section 2(10) defines the term "prospectus" to include "any communication . . . which offers any security for sale . . ."

spectuses. Section 2(10)(a) of the Securities Act excepts from the definition of a prospectus a communication which is preceded or accompanied by a statutory prospectus. Accordingly, notices of open seasons need not be accompanied by statutory prospectuses if shareholders have already been sent current effective prospectuses. If the current prospectus does not describe precisely the terms of the open season, as might be the case if a fund has open seasons periodically or occasionally, the notice should take the form of, or be accompanied by, a sticker describing the precise terms of the offering.

AMENDMENT OF RULE 134

In order to permit funds which have not sent current effective prospectuses to shareholders to send notices of open seasons, the Commission is adopting an amendment to rule 134 under the Securities Act.⁷ The amendment simply includes a notice of open seasons among communications not deemed to be a prospectus. Such a notice must include the legend required by rule 134, and a current effective prospectus (including any applicable stickers) should be sent to shareholders expressing their interest in the offer.⁸ Of course, even if shareholders are notified of the offer by means of a rule 134 communication, the terms of the offer must be set forth in a sticker to the prospectus, if this information is not otherwise contained in the prospectus.

COMMISSION ACTION

The Commission hereby amends rule 134 under the Securities Act, effective October 4, 1978, pursuant to the authority set forth in Section 2(10) (15 U.S.C. 77b(10)(b)), and Section 19(a) (15 U.S.C. 77s(a)) of the Securities Act of 1933 as follows. Paragraph (a)(3)(iii) of § 230.134 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended to add new paragraph (a)(3)(iii)(H), to follow paragraph (a)(3)(iii)(G). The word "and" preceding paragraph (a)(3)(iii)(G) is deleted, and paragraph

⁷Rule 134 was adopted pursuant to section 2(10)(b) of the Securities Act which excepts from the definition of a prospectus communications which contain only certain limited specified information and such other information as the Commission permits by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors. Communications which comply with rule 134 are deemed not to be prospectuses. This amendment to rule 134 was proposed along with rule 22d-4.

⁸An order for shares pursuant to section 22(d)(ii) can be filled without sending a prospectus to the shareholder placing the order if he has already been sent a current effective prospectus and any stickers which have been added.

(a)(3)(iii) is amended to read as follows:

§ 230.134 Communications not deemed a prospectus.

(a) * * *

(3) * * *

(iii) * * * and (H) written notice of the terms of an offer made solely to all registered holders of the securities, or of a particular class or series of securities, issued by the company proportionate to their holdings, offering to sell additional shares to such holders of securities at prices reflecting a reduction in, or elimination of, the regular sales load charged: *Provided*, That, (1) if any printed material permitted by paragraphs (a)(3)(iii) (A) through (H) of this section is included, such communication shall also contain the following legend set in a size type at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisements:

For more complete information about [Name of Company] including charges and expenses [get] [obtain] [send for] a prospectus [from (Name and Address)] [by sending this coupon]. Read it carefully before you invest or [pay] [forward funds] [send money].

Or, (2) * * *

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 4, 1978.

[FR Doc. 78-29098 Filed 10-13-78; 8:45 am]

[8010-01-M]

[Release Nos. 34-15219; IC-10428; File No. S7-6541]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Securities Confirmations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; rule rescission.

SUMMARY: The Commission is adopting several new delivery and disclosure requirements for confirmations sent to customers by brokers and dealers when they buy for or from their customers or sell for or to those customers any security (other than U.S. Savings Bonds or municipal securities). Under the new requirements, brokers and dealers must make disclosures relating to odd-lot differentials, remuneration received in certain prin-

cipal transactions, and market making activities. The rule also revises current requirements pertaining to the use of quarterly statements in lieu of immediate confirmations for transactions effected pursuant to "investment company plans." In addition, the Commission is rescinding an existing rule that sets forth confirmation delivery and disclosure requirements that are superseded by the new requirements.

EFFECTIVE DATE: December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Steele, Esq., Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-7587.

SUPPLEMENTARY INFORMATION:

The Commission today announced the adoption of amendments to rule 10b-10 (17 CFR 240.10b-10) under the Securities Exchange Act of 1934 (the "Act"), and the rescission of rule 15c1-4 (17 CFR 240.15c1-4) under the Act. The amendments to rule 10b-10 prescribe certain disclosures to be made by a broker or dealer when effecting transactions in securities (other than U.S. Savings Bonds or municipal securities) for or with a customer, and revise existing requirements for the use of quarterly statements in connection with "investment company plans." Together with the amendments adopted today, rule 10b-10, which was adopted by the Commission on May 5, 1977, becomes effective on December 18, 1978 (with the exception of certain paragraphs of the rule which became effective on June 1, 1977).¹ Rule 15c1-4, which sets forth existing confirmation delivery and disclosure requirements, is rescinded, effective December 18, 1978.

Pursuant to its authority under the Act, the Commission is taking the actions summarized below:

(1) *Disclosure of odd-lot differentials.* As amended, rule 10b-10 will require brokers and dealers to disclose, in confirming an odd-lot transaction in which an odd-lot differential has been charged, that an odd-lot differential has been charged and that the amount of the differential is available upon oral or written request.²

(2) *Disclosure of mark-ups and mark-downs in "riskless" principal transactions.* As amended, rule 10b-10 will require a dealer trading for its own account to disclose the mark-up

¹See Securities Exchange Act Release Nos. 13508 (May 5, 1977), 42 FR 25318 (May 17, 1977); and 14942 (July 7, 1978), 43 FR 30270 (July 14, 1978).

²Paragraph (c) of rule 10b-10 prescribes the time periods within which information requested by a customer must be given or sent to the customer.

or mark-down in a "riskless" principal transaction in an equity security unless the dealer is acting as a market maker in the security being purchased or sold. In a separate release, issued today, the Commission is soliciting further comment on whether to require such disclosure in the case of transactions in nonmunicipal debt securities and municipal securities.³

(3) *Disclosure of market maker status.* As amended, rule 10b-10 will also require a dealer trading for its own account in an equity security to disclose whether it is a market maker in the security being purchased or sold (otherwise than by reason of its acting as a block positioner in that security).

(4) *Investment company plans.* The Commission has adopted revised procedures permitting the use of quarterly statements in lieu of immediate confirmations for certain transactions in securities issued by investment companies.

(5) *Disclosure of best bid and offer prices.* The Commission has withdrawn at this time its proposal to require confirmation disclosure by brokers and dealers of the best bid and offer prices displayed in NASDAQ or an equivalent interdealer quotation system at the time of a transaction in a security that is not listed on an exchange.

(6) *Disclosure of remuneration paid by third parties to dealers.* The Commission has withdrawn at this time its proposal to require disclosure of remuneration paid by third parties to dealers.

(7) *Rescission of rule 15c1-4.* The Commission has rescinded Rule 15c1-4 under the Act. That rescission takes effect on December 18, 1978, the date on which Rule 10b-10, as amended, becomes generally effective.

I. BACKGROUND AND PURPOSE OF RULE 10b-10

On September 16, 1976, the Commission announced a proposal (1) to adopt Rule 10b-10 to establish revised confirmation delivery and disclosure requirements for broker-dealers effecting transactions for or with the account of a customer and (2) to rescind Rule 15c1-4, which sets forth the Commission's basic confirmation requirements.⁴ After receiving and considering the comments of interested persons, the Commission adopted Rule 10b-10 with certain revisions on May 5, 1977, and reiterated its intention to rescind Rule 15c1-4.⁵ The rule's effective date, however, was subsequently

postponed until December 18, 1978.⁶ When it adopted Rule 10b-10, the Commission also decided not to adopt at that time certain of the provisions contained in Rule 10b-10 as originally proposed, such as the proposal to require disclosure of markups and mark-downs in "riskless" principal transactions. It stated, however, that it would republish those proposals in revised form for further comment, and did so on June 23, 1977.⁷ The Commission has now concluded, after considering the views of commentators, to adopt certain of those proposed requirements.

The Commission believes that the confirmation is an important disclosure document. By requiring brokers and dealers to disclose facts to a customer at or before the completion of a transaction, as defined in the rule, the confirmation rule is intended to deter and prevent deceptive and fraudulent acts and practices. At the same time, confirmations can have important informational value to customers beyond whatever value they may have as an investor protection measure. Among other things, confirmations should assist customers in evaluating the costs and quality of services provided by brokers and dealers in connection with the execution of securities transactions.

Numerous factors may be pertinent to the making of an investment decision. In addition to various factors pertaining to the suitability of a security for the customer's investment needs, customers may wish to take into account, as information material to their investment decisions, variations in transaction costs incurred in trading different types of securities and variations in the transaction charges of competing broker-dealers. While confirmations provide investors with only an after-the-fact record of transaction costs, they nevertheless can serve to make investors aware of those costs in making future investment decisions.

II. COMMISSION ACTION ON THE PROPOSED DISCLOSURE REQUIREMENTS

A. ODD-LOT DIFFERENTIALS

Paragraph (a)(3) of Rule 10b-10, as amended requires the disclosure of whether any odd-lot differential has been charged and that the amount of the differential is available upon oral or written request. Where an odd-lot differential is charged in connection with an odd-lot transaction, the practice within the securities industry has been for dealers to add that differen-

tial to the round lot price of the security. The Commission has concluded that disclosure of whether any odd-lot differential has been charged by a dealer should be made so long as that charge remains an amount added to or subtracted from the price of a security.⁸ If the odd-lot differential were instead reflected in the Commission charge disclosed or exempted from disclosure pursuant to paragraph (a)(4)(ii) of the rule,⁹ it would not have to be separately identified.

The Commission understands that some dealers do not charge any differential, that some charge either 12½ cents per share or 25 cents per share and that some charge a differential only under certain circumstances. Perhaps in part because of these disparities in practices, questions have been raised concerning the economic rationale for the odd-lot differential. One commentator asserted, "From all indications, it would seem that an odd-lot charge is a carryover concept from the days of fixed rates that will not survive in the marketplace of tomorrow."¹⁰ Another commentator expressed the view that it would be preferable to eliminate the odd-lot differential altogether rather than to require its disclosure.¹¹ The Commission is not now prepared to conclude that it is improper to charge an odd-lot differential, but it does believe customers should be made aware of whether an odd-lot differential has been charged and that the amount is available on oral or written request.

The proposed amendment to Rule 10b-10 would have required that the amount of the odd-lot differential, if any, be disclosed on each confirmation. Of the seven commentators that addressed the proposed disclosure requirement, most pointed out that there were practical difficulties in determining whether an odd-lot differential has been charged, identifying the amount of any odd-lot differential charged, and recording that information on the confirmation.¹² Commenta-

⁸The Commission understands that odd-lot differentials per se are generally not charged on transactions in debt securities although the prices for small orders in debt securities vary from prices negotiated on large orders. The odd-lot differential requirement is not intended to reach those differences in pricing. See comment letter of Sullivan & Cromwell.

⁹Paragraph (a)(4)(ii) prescribes the remuneration disclosures (including brokerage commissions) to be made by a customer's broker.

¹⁰Comment letter of the National Association of Securities Dealers, Inc. (the "NASD"). The NASD pointed out, however, that the price to be paid for 100 shares of a security could be different than the price which may be negotiated for orders involving either more or less than 100 shares.

¹¹See comment letter of J. & W. Seliman & Co.

¹²See, e.g., comment letters of Sullivan & Cromwell; Merrill Lynch, Pierce, Fenner & Footnotes continued on next page

³See Securities Exchange Act Release No. 15220 (Oct. 6, 1978).

⁴Securities Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (Sept. 22, 1976).

⁵Securities Exchange Act Release No. 13508 (May 5, 1977), 42 FR 25318 (May 17, 1977).

⁶Securities Exchange Act Release Nos. 14942 (July 7, 1978), 43 FR 30270 (July 14, 1978); 14573 (Mar. 16, 1978), 42 FR 11931 (Mar. 23, 1978); and 14184 (Nov. 17, 1977), 42 FR 60734 (Nov. 29, 1977).

⁷Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 (June 30, 1977).

tors pointed out that differentials are not charged on all odd-lot orders. Furthermore, it was stated that when odd-lot orders have been placed with, and executed by, a specialist, the specialist typically does not indicate whether an odd-lot differential has been charged, or the amount of such differential, when it reports the execution to the customer's broker.¹³ It was asserted that even if the amount of an odd-lot differential could be determined, the absence of uniform practices by specialists in charging odd-lot differentials would make it difficult and expensive to design a computer system to capture each charge.¹⁴ On the other hand, it was asserted that manual recalculation of the amount of odd-lot differentials could lead to increased chances for error.¹⁵ Commentators who perceived such difficulties generally believed that it would be sufficient to indicate on the confirmation that an odd-lot differential may have been charged and that the amount, if any, would be available on request.¹⁶

The Commission, nevertheless, believes that it is important that customers at least be made aware of whether an odd-lot differential has in fact been charged so that they may understand the nature of the costs associated with the execution of securities transactions on their behalf. Accordingly, as amended, Rule 10b-10 will require brokers and dealers to disclose on a customer's confirmation whether an odd-lot differential has been charged to the customer and, if so, that the amount is available upon oral or written request. As noted above, an exception to this disclosure requirement is provided if the differential or fee is included in the remuneration disclosed, or exempted from disclosure, pursuant to paragraph (a)(4)(ii) of the rule.

The Commission recognizes that requiring broker-dealers to disclose whether an odd-lot differential has in fact been charged on an odd-lot transaction is more burdensome than requiring that broker-dealers disclose that such a differential may have been charged. The former requires broker-dealers to make a specific entry in confirming an odd-lot transaction on which a differential has in fact been charged, whereas the latter could be satisfied by a standard legend without any specific notation on each odd-lot confirmation. At the same time, requiring disclosure of whether an odd-

lot differential has been charged may be somewhat less burdensome than the odd-lot provision as originally proposed, which would have required disclosure in each case of the specific amount of any differential charged. While broker-dealers may have to incur reprogramming and other costs in preparing for either requirement, the requirement adopted by the Commission may involve less risk of error and appears to the Commission to represent, at this time, an appropriate balancing of the need to provide adequately for disclosure to investors and the need to be cautious in imposing regulatory burdens on brokers and dealers.¹⁷

B. MARKUPS OR MARKDOWNS BY DEALERS EFFECTING "RISKLESS" PRINCIPAL TRANSACTIONS

Paragraph (a)(5)(i) of Rule 10b-10, as adopted, requires a dealer (other than a market maker)¹⁸ acting as a principal for his own account to disclose the amount of any markup, markdown, or similar remuneration received in a transaction in an equity security when, after receiving an order to buy or sell a security from a customer, the dealer purchases the security from another person to offset a contemporaneous sale to such customer or sells the security to another person to offset a contemporaneous purchase from such customer.

The Commission has concluded that it is necessary and appropriate for the protection of investors to require disclosure of the amount of markups or markdowns in "riskless" principal transactions in equity securities. Disclosure of markups and markdowns will enable customers to make their own assessments of the reasonableness of transaction costs in relations to the services offered by broker-dealers. The level of transaction costs for a particular transaction may vary among broker-dealers and may also vary in accordance with the nature of the security being purchased or sold. The Commission believes that it can be important for customers to be aware of such variations in transaction costs to the extent practicable and believes disclosure of markups and markdowns in "riskless" principal transactions in equity securities will help accomplish that goal.

¹⁷As proposed, the odd-lot differential disclosure requirement was phrased in terms of any odd-lot differential paid "directly or indirectly" by the customer. The Commission has deleted those words and refrained from adding them to other parts of the confirmation rule since the rule by its terms would reach any direct or indirect payment of the various types covered even without the addition of the words "directly or indirectly." See also section 20 of the Act.

¹⁸The term "market maker" is defined in section 3(a)(38) of the Act (15 U.S.C. 78c(a)(38)).

In addition, as is discussed further below, the Commission believes that competition among broker-dealers may well be an effective supplement to existing regulatory controls on markups and markdowns in limiting the opportunity for unreasonable charges. In the absence of disclosure of markups and markdowns in such transactions, the possibility of real competition with respect to the level of such charges appears remote. "Riskless" principal transactions, as defined in the rule, are in many respects equivalent to transactions effected on an agency basis,¹⁹ and customers should be made aware of the costs incurred regardless of technical variations employed by broker-dealers in structuring such transactions.²⁰

A substantial portion of the transactions in equity securities effected by broker-dealers for retail customers are effected on exchanges and in the over-the-counter markets on an agency basis and the commissions charged are disclosed to the customer. Consequently, the absence of such disclosure of compensation in "riskless" principal transactions may mislead unsophisti-

¹⁹The Commission does not mean to suggest, however, that all disclosures pertaining to "riskless" principal transactions should be identical to those required for agency transactions. For example, the Commission has not proposed any general requirement that broker-dealers effecting "riskless" principal transactions disclose the identity of the "other side."

²⁰The language of the markup disclosure requirement has been revised to eliminate certain ambiguities. As adopted, it applies whenever a broker-dealer not acting as a market maker, after having received an order to buy from a customer, purchases the security from another person to offset a contemporaneous sale to the customer or, after having received an order to sell from such customer, sells the security to another person to offset a contemporaneous purchase from the customer. That requirement would apply regardless of variations in mechanical techniques for structuring and sequencing transactions that are designed to offset one another. For example, a broker-dealer filling a customer's purchase order would not avoid the requirement by effecting a sale to his customer immediately before purchasing the security from another person instead of first purchasing the security from the other person for resale to the customer and then selling it to the customer. Similarly, a broker-dealer would not avoid the requirement in filling a customer's sale order by first purchasing the security from the customer for resale to another person and then selling it to that other person instead of first selling it to the other person and then purchasing it from his customer. In addition, the provision adopted makes clear that disclosure of the markup or markdown would be required regardless of whether the same share certificates were delivered to the other side of the "riskless" principal transaction in circumstances where the broker-dealer's principal transactions were structured as offsetting transactions.

Footnotes continued from last page

Smith Inc.; First Manhattan Co.; and White, Weld & Co., Inc.

¹³See comment letters of Sullivan & Cromwell; and First Manhattan Co.

¹⁴See, e.g., comment letter of Merrill Lynch, Pierce, Fenner & Smith Inc.

¹⁵See comment letter of J. & W. Seligman & Co.

¹⁶See comment letters of the NYSE; and Merrill Lynch, Pierce, Fenner & Smith Inc.

cated customers into believing that no such compensation is being paid. Even if the investor is not so misled, he is left with uncertainty as to how the broker-dealer is being compensated as well as the amount of such compensation. This uncertainty can have an adverse effect on investor confidence in the over-the-counter market.

Commentators, however, asserted that for several reasons this requirement is both unnecessary and inappropriate. First, commentators urged that the markup disclosure requirement is not necessary to protect investors. It was suggested that the Rules of Fair Practice of the NASD already provide sufficient protection against overreaching by dealers.²¹ In that connection, commentators referred particularly to the NASD's rule requiring a broker-dealer, when acting for his own account, to "buy or sell at a price which is fair" and the "markup rule" or "five percent policy," embodied in an interpretation thereunder. Commentators stated that the NASD's markup rule has been vigorously and effectively enforced.²² Similarly, it was suggested that the "best execution rule" of the NASD²³ "has been effective in preventing dealers' overreaching and has resulted in customers receiving best execution in the over-the-counter market."²⁴ Some commentators also expressed the view that industry competition is sufficient to limit opportunities for abuse.²⁵ In addition, it was suggested that brokers and dealers are constrained to keep markups within reasonable limits because they are aware that the public has access to external sources for quotations in many securities.²⁶ It was also pointed out that in any event customers are free to request disclosure of the remuneration received by broker-dealers, and customers may stipulate the amount of the markups they are willing to pay.²⁷

²¹ See e.g., comment letters of Peterson & Co.; Reinholdt & Gardner; Mabon, Nugent & Co.; Roose, Wade & Co.; White Weld & Co., Inc.; and the NASD.

²² See article III, section 4, of the NASD Rules of Fair Practice, NASD Manual (CCH) §2154.

²³ See, e.g., comment letters of the NASD; Merrill Lynch, Pierce, Fenner & Smith Inc.; and Weinrich, Zitzmann, Whitehead, Inc.

²⁴ See Interpretation .03 under article III, section 1 of the NASD Rules of Fair Practice, NASD Manual (CCH) §2151.

²⁵ See comment letter of the Securities Industry Association, citing the statement made by Gordon S. Machlin, President, NASD, at the Commission's hearings on off-board trading rules (August 16, 1977), Securities and Exchange Commission File No. 4-180.

²⁶ See Comment letters of Authurs, Les-trange & Short; Peterson & Co.; and Reinholdt & Gardner.

²⁷ See comment letters of Reinholdt & Gardner; Mr. G. Shelby Friedrichs; and White, Weld & Co. Inc.

²⁸ See comment letter of Sutro & Co., Inc.

In proposing the markup disclosure requirement for "riskless" principal transactions, the Commission did not intend to replace any of the NASD investor protection provisions enumerated above. The markup disclosure requirement is intended to supplement those provisions. Nor did the Commission intend to imply that broker-dealers routinely charge excessive or unreasonable markups or markdowns in securities transactions with their customers. As the same time, disclosure of markups and markdowns is an appropriate means of insuring that customers have an opportunity to identify and object to any unreasonably high charges. That opportunity may well serve as a significant means of protecting investors against unfair and unreasonable pricing practices. It may also, as a practical matter, permit those broker-dealers which consistently observe the highest standards of practice to compete more effectively against broker-dealers which on occasion or more frequently charge unreasonably high markups or markdowns. In that way, the "riskless" principal disclosure requirement may help to insure that brokers and dealers adhere to appropriate standards of professional responsibility.

Furthermore, the Commission does not view the "riskless" principal disclosure requirement solely as a means to address abusive practices; as noted above, the "riskless" principal requirement is important also to permit investors themselves to make informed judgments about the transaction services they receive and pay for. Disclosure of markups and markdowns in "riskless" principal transactions should assist investors in comparing the costs they incur in transactions effected by broker-dealers on either an agency or "riskless" principal basis and in assessing those costs in relation to the quality of services provided by competing broker-dealers.²⁹

²⁹ The markup rule of the NASD does not impose any precise upper limit on the range of permissible markups. As the NASD Rules of Fair Practice indicate, the markup policy is "a guide—not a rule" (see interpretation of article III, section 4, NASD Rules of Fair Practice). Some commentators observed that flexibility in any markup policy is desirable in view of the variety of factors relevant to a determination of what constitutes an appropriate markup. The "riskless" principal disclosure requirement should, nevertheless, be useful to investors in evaluating transaction costs in all situations regardless of compliance or noncompliance with NASD rules.

In that connection, the Director of the Corporation and Securities Bureau of the Department of Commerce of the State of Michigan observed:

"From various investigations and enforcement proceedings in this State, a pattern appeared whereby small brokerage firms have been purchasing low-rated securities and using high pressure sales techniques to

The assertion that existing competitive forces may deter unreasonable markups might be true in some instances but does not lead the Commission to conclude that this disclosure requirement is unnecessary. Current quotations are, of course, not always available to public investors for all securities; in addition, many investors, particularly individuals, may not always be able to acquire inside or inter-dealer quotations on over-the-counter securities. In light of the reluctance evident in numerous comment letters to reveal markups to the public,³⁰ it is not clear that all, or even most, customers would be able to obtain such information in the absence of a requirement of the sort imposed by Rule 10b-10. Unless such information is made available, it seems unlikely that customers can, without great difficulty, compare the costs of effecting transactions that are structured as "riskless" principal transactions.³¹

The second principal concern of commentators was that the markup disclosure requirement would impose costs upon dealers that outweighed the benefits of disclosure. It was observed that to disclose the markup or markdown would increase the expense of confirming transactions.³² Some suggested that disclosure of markups would adversely affect the income of dealers, in that, as a general rule, markups, although reasonable, might be difficult to justify, and as a result,

place them with unsophisticated and inexperienced investors. During the sales period the market price in thinly traded securities was maintained by small purchases. The securities were sold to the public at NASD maximum markup, producing high yields to the firm, followed shortly by substantial investor losses in the millions of dollars.

"I would note also that certain small firms have engaged in the practice of advertising highly rated securities in local papers, drawing in unsophisticated investors, and selling them to the public in riskless transactions at maximum NASD markups, despite the fact that most firms in the area were charging a commission at significantly lower rates."

For example, Weinrich, Zitzmann, Whitehead, Inc. stated in its comment letter that "the customer has no fundamental right to this information."

See also Securities and Exchange Commission, Report of Special Study of Securities Markets, H.R. Doc. No. 95, Pt. 2, 88th Cong., 1st sess. 676 (1963). As noted earlier, brokers acting as agents have been required to disclose commissions on confirmations. Some commentators questioned, however, whether customers are able to judge the fairness of a markup (see, e.g., comment letter of Investment Income Services, Inc.). On the other hand, an investor's ability to judge markups may well improve as a result of disclosure.

See, e.g., comment letters of Mr. Keith Wentz; Richards, Merrill & Peterson, Inc.; Investment Income Services, Inc.; and Jefferies & Co., Inc.

might have to be decreased.³³ Several commentators stated that in no other business are gross profits required to be disclosed, and they argued that it is unfair to single out the securities industry in this way.³⁴ A decrease in markups reportedly would destroy the incentive of securities salesmen, and, consequently, the public's interest in purchasing securities would decline.³⁵ It was also asserted that, because brokers provide numerous uncompensated services, profitable principal transactions are necessary to recoup expenses.³⁶

These arguments appear to the Commission to be overstated. The markup disclosure requirement is not applicable to all principal transactions engaged in by broker-dealers, but solely to those transactions in which the dealer structures as two back-to-back principal transactions what is in economic substance an agency transaction. Furthermore, these arguments all appear to be premised upon the assumption that if customers knew what they are routinely being charged on "riskless" principal transactions, they would object because they would invariably view markups or markdowns as unfair and be able without any reasonable basis to force dealers to lower markups currently charged. While competitive forces might cause markups to be lowered in some instances, the Commission has not adopted this disclosure requirement on the basis of any predictions as to its effects on the level of markups. Instead, the Commission has based its decision to adopt the requirement in large part on the belief that investors should have an opportunity to make their own informed judgments as to the reasonableness of transaction charges.

The fact that markup disclosures may or may not be made in other industries does not answer the question whether such a requirement is appropriate for securities transactions. Because of the special nature of securities, analogies to the standards of conduct prevailing in other industries may not be pertinent. Indeed, by the very nature of a broker-dealer's relationship with its securities customers, and particularly its retail customers, the broker-dealer is frequently in an advisory role where principles of

caveat emptor and arm's length bargaining are simply not applicable. Although a securities professional generally may act both as broker and as dealer with his securities customers, the Commission, the self-regulatory organizations and the courts have recognized that the existence of special duties toward those customers does not turn on the capacity in which the securities professional acts.³⁷ In addition to those grounds for finding analogies to other industries not pertinent in this context, there is a practical ground. Whereas the prices of many retail goods are relatively stable, permitting customers to "comparison shop," securities prices are sufficiently volatile to make comparison shopping on the basis of net price extremely difficult in many instances, particularly for retail customers.

Predicting that the cost of preparing confirmations would rise and income would fall as a result of the markup disclosure requirement, many commentators also predicted that the structure of the securities industry would be altered. Some predicted that mergers would increase;³⁸ others predicted that the financial condition of small securities firms would be threatened.³⁹ Commentators also predicted that the liquidity in locally and actively traded securities would be adversely affected by this disclosure requirement.⁴⁰ It was suggested that the increased costs occasioned by the difficulty of effecting transactions in these securities justifies a greater markup than for exchange-listed or more widely traded over-the-counter securities. The Commission believes, however, that even if markups for these securities are justified, investors are entitled to know the amounts of such charges. The depth of the markets for, and liquidity of, locally traded securities and the continued ability of small broker-dealers to compete are matters of concern to the Commission, but the

assertions made by commentators are highly speculative, depending in large part on predictions about future investor preferences. Those predictions and certain other competitive implications of the "riskless" principal requirement are further discussed later in this release.⁴¹

Debt Securities. Finally, the Commission notes that several commentators have argued that a disclosure requirement for "riskless" principal transactions should not apply to debt securities.⁴²

The Commission first proposed to require confirmation disclosure of markups and markdowns in "riskless" principal transactions in September 1976, when it published its proposal to adopt Rule 10b-10.⁴³ As originally proposed, Rule 10b-10 would have required disclosure of markups and markdowns in "riskless" principal transactions in equity and debt securities, including municipal securities. When the Commission adopted Rule 10b-10 in May 1977,⁴⁴ it provided that Rule 10b-10 would not apply to municipal securities. At the same time, the Commission determined to revise and republish for further public comment the "riskless" principal markup disclosure provision.⁴⁵ The proposal, as then revised, applied to both equity securities and non-municipal debt securities.

Shortly after the Commission proposed those amendments, the MSRB undertook to determine whether confirmation disclosure of markups and markdowns should be required in the case of municipal securities. On August 3, 1977, the MSRB solicited public comment on that question and later held two public meetings in October 1977. Following those meetings, the MSRB sent to the Commission a letter dated November 16, 1977, summarizing some of the arguments made by commentators opposed to disclosure of markups and markdowns. On February 10, 1978, the MSRB sent to the Commission a letter in which it

³³See, e.g., *Arleen W. Hughes*, 27 SEC. 629 (1948), *aff'd sub nom. Arleen W. Hughes v. SEC*, 174 F.2d 969 (D.C. Cir. 1949); *Charles Hughes & Co., Inc.*, 13 SEC 676 (1943), *aff'd sub nom. Charles Hughes v. SEC*, 139 F.2d 434 (2d Cir. 1943); *Duker v. Duker*, 6 SEC 386 (1939); *Chasins v. Smith Barney & Co. Inc.*, 305 F. Supp. 489 (S.D.N.Y. 1969), *aff'd*, 438 F. 2d 1167 (2d Cir. 1971); *Opper v. Hancock Securities Corp.*, 250 F. Supp. 668 (S.D.N.Y.), *aff'd*, 367 F.2d 157 (2d Cir. 1966); *Cant v. A. G. Becker & Co., Inc.*, 374 F. Supp. 36 (N.D. Ill. 1974). See generally NASD Rules of Fair Practice, NASD Manual (CCH), para. 2001 et seq.

³⁴See comment letters of Martin Nelson & Co.; and Mabon, Nugent & Co.

³⁵See, e.g., comment letters of Wulff, Hansen & Co.; Mr. G. Shelby Friedrichs; Handel, Lundborg & Co.; and Smyth, Akins & Lerch, Inc.

³⁶See, e.g., comment letters of the NASD; Elmer E. Powell & Co.; Mabon, Nugent & Co.; Lowell M. Listrom & Co.; and Reinholdt & Gardner.

⁴¹See text accompanying note 51.

⁴²See, e.g., comment letters of Goldman, Sachs & Co.; John Nuveen & Co., Inc.; Mabon, Nugent & Co.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; the Municipal Securities Rulemaking Board (the "MSRB"); the Securities Industry Association; and Sullivan & Cromwell. A number of persons who did not comment on this proposed amendment to Rule 10b-10 commented on a similar provision published by the Commission when it proposed to adopt Rule 10b-10. See Securities Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (Sept. 22, 1976).

⁴³See Securities Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (Sept. 22, 1976).

⁴⁴See Securities Exchange Act Release No. 13508 (May 5, 1977), 42 FR 25318 (May 17, 1977).

⁴⁵See Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 (June 30, 1977).

³³See, e.g., comment letters of Lowell H. Listrom & Co., Inc.; Sutro & Co., Inc.; Investment Income Service, Inc.; Barrett & Co.; and Handel, Lundborg & Co.

³⁴See, e.g., comment letters of Adams, Hess, Moore & Co.; Imperial Investment Co.; Mabon, Nugent & Co.; Elmer E. Powell & Co.; and Weinrich, Zitzmann, Whitehead, Inc.

³⁵See, e.g., comment letters of Wulff, Hansen & Co.; Mabon, Nugent & Co.; and Carolina Securities Corp.

³⁶See comment letter of Martin Nelson & Co.

stated its conclusion that "the imposition of a requirement to disclose remuneration in principal transactions in municipal securities is unnecessary and inappropriate."⁴⁶

The Commission has determined to defer a final decision on whether to require disclosure of "riskless" principal compensation in transactions in debt securities, including municipal securities, in order to solicit more specific public comment on that matter. The MSRB has provided its views, as well as those of several commentators in the municipal securities industry, on the application of such a requirement to transactions in municipal securities. Nevertheless, the Commission received very limited comment on the application of "riskless" principal disclosures to nonmunicipal debt securities. In a separate release, issued today, the Commission is soliciting further comment on those matters in connection with specific rule proposals that would require such disclosure for "riskless" principal transactions for municipal and nonmunicipal debt securities.⁴⁷

Exclusion of market makers. The "riskless" principal markup disclosure requirement does not apply to a transaction in a security for which a dealer acts as a "market maker." The term "market maker" is defined in section 3(a)(38) of the act to mean "any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis."

The Commission has provided an exemption for market makers because the "riskless" principal disclosure requirement might otherwise create substantial compliance problems for market makers. In making a two-sided market, involving price quotations for both the bid and the offer, a market maker may often engage in transactions that effectively offset one another, giving the appearance of being "riskless" principal transactions, even though the market maker did not structure any particular pair of transactions as offsetting. "Riskless" principal transactions. As a result, the problem of identifying when a "riskless" principal disclosure might have to be made could create substantial practical and interpretive difficulties for a bona fide market maker. For that reason, the Commission has determined to provide an exemption from the "riskless" principal disclosure re-

quirement for broker-dealers which are in fact acting as market makers in the security in which customer transactions are being effected. At the same time, the Commission cautions that those not actually making a bona fide market in a security will not qualify for the market maker exemption.

As noted above, the statutory definition of the term "market maker" includes "any dealer acting in the capacity of block positioner." While the term "block positioner" is not defined in the act, the term is generally used to describe a broker-dealer who facilitates the execution of a block transaction in an equity security by positioning at least some part of the block, that is by committing its own capital to fill a part of a customer's block sale order or effecting a short sale (or a sale from inventory) to fill part of a customer's block purchase order.⁴⁸

Because a block transaction in a particular security is generally distinguishable from other transactions in that security, the Commission has not attempted to define the term "block" or the term "block positioner" for purposes of rule 10b-10. A determination as to whether a quantity of a security is a block necessarily rests to some degree on the purpose for which the determination is being made and frequently involves the number of shares as well as the dollar value of the shares traded.⁴⁹ In an effort to provide some objective guidance, the Commission notes that an order involving a quantity of securities having a market value of \$200,000 should generally be considered to involve a block for purposes of rule 10b-10.⁵⁰ The Commission stresses, however, that the \$200,000 guide is intended merely to provide a general standard for those seeking to establish their entitlement to the market maker exemption in rule 10b-10 on the basis of their acting as block positioners and should not be considered to be the exclusive measure for rule 10b-10 or for other purposes in circumstances where a different result would be appropriate.

In assembling the "other side" of a block transaction, broker-dealers are frequently able to fill portions of a block order by affecting transactions with other customers, leaving only a residual portion to be positioned for

the broker-dealer's own account. Particularly if the block transaction is effected in the over-the-counter market, it appears possible for the broker-dealer to structure such transactions with customers on the "other side" either as agency transactions at disclosed commissions or as "riskless" principal transactions. Accordingly, questions might arise as to whether any such "riskless" principal transactions should be exempt as block positioning (and thus market making) transactions or, instead, treated separately as nonblock positioning transactions and thus subject to the disclosure requirement of rule 10b-10, even though the broker-dealer has positioned, at its own risk, some portion of the block order. As a general matter, the Commission believes that the phrase "acting in the capacity of block positioner," as it relates to the market maker exemption from the "riskless" principal disclosure requirement, should be interpreted to make the exemption available for portions of a block trade which may take the form of "riskless" principal transactions with persons on the "other side" where the broker-dealer has positioned at its own bona fide risk more than a nominal part of the block order.

Competitive implications. Several commentators stated that the "riskless" principal proposal could have anticompetitive effects.⁵¹ Since the proposed disclosure requirement did not apply to market making transactions of bona fide inventory transactions, some commentators suggested that adoption of the requirement might result in a disparity between broker-dealers who routinely deal from a bona fide inventory or act as market makers and those who do not and instead effect "riskless" principal transactions.⁵²

While, for practical considerations, the disclosure requirement applies only to "riskless" principal transactions and not to bona fide inventory or market making transactions, the Commission is not persuaded that that disparity will necessarily result in any unjustifiably anticompetitive or discriminatory effect. It has been pointed out that many regional and smaller broker-dealers often effect "riskless" principal transactions, but it appears that some larger, nationally based firms effect either "riskless" principal or agency transactions in securities in which regional firms make markets. In addition, it is by no means clear that the disclosure of markups and mark-downs will cause customers of firms making such disclosures to go elsewhere.

⁴⁶ See n. 41, supra.

⁴⁷ See, e.g., comment letter of Mabon, Nugent & Co.

⁴⁸ Block positioners are sometimes described as "upstairs market makers" since they augment the market making capacity offered by exchange specialists and other dealers who make two-sided markets.

⁴⁹ See, e.g., NYSE Rule 127, 2 NYSE Guide (CCH) [2127; and Proposed Rule 13e-2(d), Securities Exchange Act Release No. 10539 (Dec. 6, 1973), 2 Federal Securities Law Reporter (CCH) [79,600.

⁵⁰ See Rule 17a-17(b)(1), 17 CFR 240.17a-17(b)(1); Regulation U of the Board of Governors of the Federal Reserve System, 12 CFR 221.3(z)(2).

⁴⁶ The MSRB's letters of November 17, 1977, and February 10, 1978, have been filed in Securities and Exchange Commission File No. S7-654.

⁴⁷ See Securities Exchange Act Release No. 15220 (Oct. 6, 1978).

Predictions that such a pattern could develop depend in large measure on the speculative assumption that customers will inappropriately conclude that the prices they receive from dealers who disclose markups and markdowns are necessarily inferior to the prices they obtain when dealing "net" with other broker-dealers whose markups and markdowns remain undisclosed. In that connection, the Commission notes that one leading broker-dealer for several years has followed a policy of disclosing markups and markdowns in principal transactions in equity securities, apparently without adverse effects on its competitive position.⁵³

At the same time, disclosure of markups and markdowns in "riskless" principal transactions may enhance competition in the pricing of services provided by broker-dealers. In the absence of markup or markdown disclosure in "riskless" principal transactions, it remains difficult for customers to assess the level of transaction costs incurred in relation to the services provided in connection with those transactions.

On balance, and in the absence of any clear support for the proposition that investors will generally make inappropriate decisions regarding disclosed transaction costs, the Commission does not believe that this disclosure requirement will impose any burden on competition that would not be necessary or appropriate in furtherance of the purposes of the act.

C. MARKET MAKING

Paragraph (a)(5)(ii) of rule 10b-10 in the form proposed would require that a dealer effecting a transaction in an equity security disclose whether he is a market maker in that security.⁵⁴ This provision codifies certain principles of existing case law.⁵⁵ While commentators generally did not object to it, a few questioned the need to apply the requirement to those broker-dealers which are market makers solely by reason of their acting as block positioners.⁵⁶ The Commission has concluded that it would be appropriate to exclude from the disclosure requirement a dealer which, in the transaction in question, is a market maker, within the meaning of section 3(a)(38) of the act, solely by reason of its acting as a block positioner.

⁵³In addition, exchange member firms dealing in listed equity securities apparently have not been competitively disadvantaged in doing business at disclosed commissions while third market firms were dealing at net prices in the same securities.

⁵⁴The term "market maker" is defined in section 3(a)(38) of the act.

⁵⁵See *Chasins v. Smith Barney & Co., Inc.*, 438 F.2d 1167 (2d Cir. 1971).

⁵⁶See comment letters of Salomon Brothers; and the Securities Industry Association.

D. PREVAILING MARKET PRICES

The Commission has decided to withdraw its proposal to amend rule 10b-10 to require disclosure on confirmations of the best bid and offer prices displayed on level 2 of NASDAQ, or on an equivalent inter-dealer quotation system, at the time the transaction was effected.⁵⁷

Numerous commentators urged for several reasons that the Commission not adopt this proposal. First, it was suggested, in light of the protection provided by the NASD's markup policy⁵⁸ and best execution rule⁵⁹ and the availability of quotations,⁶⁰ that this requirement is unnecessary. It was also conjectured that enforcement of this provision would prove cumbersome.⁶¹

Second, it was stated that the proposal could increase substantially the costs of doing business for some broker-dealers. It was suggested that, inasmuch as some broker-dealers now subscribe only to level 1 of NASDAQ, this provision would require them either to absorb the expense of subscribing to level 2 of NASDAQ or to forego trading in all securities except those traded on a national securities exchange or those not listed on any electronic quotation service.⁶² Commentators further suggested that the proposal might also require some broker-dealers to acquire new computer facilities⁶³ or to adapt their existing computer facilities so that they could interface with NASDAQ level 2 or some other information system for the purpose of capturing quotations at the time orders are executed.⁶⁴ If quotations were instead entered manually, it was noted, the likelihood for error might increase substantially and broker-dealers might have to adopt

⁵⁷See paragraph (a)(4) of the proposed amendments to rule 10b-10, Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 (June 30, 1977).

⁵⁸Article III, sec. 4 of the NASD Rules of Fair Practice, NASD Manual (CCH) ¶ 2154. See comment letters of Merrill Lynch, Pierce, Fenner & Smith Inc.; Reinholdt & Gardner; Roose, Wade & Co.; and the National Securities Traders Association.

⁵⁹Article III, sec. 1 of the NASD Rules of Fair Practice, interpretation .03, NASD Manual (CCH) ¶ 2151. See comment letters of Morgan, Olmstead, Kennedy & Gardner, Inc.; and the National Securities Traders Association.

⁶⁰See comment letters of Morgan, Olmstead, Kennedy & Gardner, Inc.; Reinholdt & Gardner; and Herzog, Heine & Co., Inc.

⁶¹See comment letters of the NASD; and the National Securities Traders Association.

⁶²See comment letters of Wulff, Hansen & Co.; Jefferies & Co., Inc.; J. & W. Seligman & Co.; the NASD; the National Securities Traders Association; and S. C. Parker & Co., Inc.

⁶³See comment letters of Reinholdt & Gardner; and Goldman Sachs & Co.

⁶⁴See comment letter of Merrill Lynch, Pierce, Fenner & Smith, Inc.

costly procedures to verify the information recorded.⁶⁵ Finally, several commentators contended that, for transactions involving more than 100 shares, inside market quotations for 100 shares would be irrelevant⁶⁶ and might mislead customers as to the quality of executions they were receiving.⁶⁷ In addition, it was conjectured that requiring the disclosure of inside market prices might pressure broker-dealers to lower retail prices to inside market levels.⁶⁸ If retail prices fell closer to inside market levels, commentators suggested, broker-dealers might be discouraged from effecting transactions in over-the-counter securities, and the liquidity of markets in those securities might thereby be endangered.⁶⁹

While the Commission has not concluded that any or all of these arguments obviate the ultimate need for disclosure of best bid and offer prices, it has determined to withdraw the proposed requirement at this time. The Commission intends, however, to give additional consideration to the disclosure of "inside" or inter-dealer quotations as other legal and technological developments occur.

E. REMUNERATION PAID BY THIRD PARTIES TO DEALERS

The Commission has decided to withdraw its proposal to require disclosure of the source and amount of certain remuneration received or to be received by a dealer from any person other than the customer.⁷⁰ That provision was intended to require disclosure of special or irregular inducements paid by a third party to a dealer in connection with a securities transaction.

In withdrawing its proposal to require confirmation disclosure of such payments, the Commission stresses that it is not in any way suggesting that such disclosure would not be required under other Commission rules or provisions of the act. Indeed, the Commission believes that a failure to

⁶⁵See comment letters of Arthurs, Lestrangle & Short; Jefferies & Co.; and Merrill Lynch, Pierce, Fenner & Smith, Inc.

⁶⁶See, e.g., comment letters of S. C. Parker & Co., Inc.; the NASD; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Reinholdt & Gardner; and Goldman, Sachs & Co.

⁶⁷See, e.g., comment letters of Merrill Lynch, Pierce, Fenner & Smith, Inc.; Sutro & Co., Inc.; J. & W. Seligman & Co.; NASD; and the National Securities Traders Association.

⁶⁸See, e.g., comment letters of Arthurs, Lestrangle & Short; Morgan, Olmstead, Kennedy & Gardner, Inc.; and Herzog, Heine & Co., Inc.

⁶⁹See comment letters of Morgan, Olmstead, Kennedy & Gardner, Inc.

⁷⁰See paragraph (a)(5)(i) of the rule as proposed to be adopted in Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 (June 30, 1977).

disclose special payments intended to induce dealers to effect transactions with customers would violate the anti-fraud provisions of the act.

At the same time, however, the Commission intends to consider whether broker-dealers should be required to disclose the amount of special compensation paid by a broker or dealer to an account executive or any other person associated with the broker or dealer in connection with customer transactions in a security designated by the broker-dealer where (1) investment recommendations for the purchase or sale of that security are made to customers and (2) such compensation exceeds the normal or customary remuneration that would otherwise have been paid by the firm to that employee or associated person. Among other things, it appears that many customers may regard the amount of such additional remuneration as important in evaluating investment recommendations made to them. Before proposing any such requirement, however, the Commission would appreciate receiving any data, views or arguments interested persons may care to make concerning such a requirement.

III. PROPOSAL TO PERMIT THE DELIVERY OF QUARTERLY CONFIRMATIONS FOR INVESTMENT COMPANY PLANS

Paragraph (b) of rule 10b-10, as amended, permits brokers and dealers to use quarterly statements instead of immediate confirmations for transactions effected pursuant to investment company plans as defined in paragraph (d)(5) of the rule. Investment company plans, as defined, include (1) individual, tax qualified retirement plans, (2) contractual or systematic plans pursuant to which a customer agrees to buy specified securities in specified amounts at regular intervals and (3) certain group plans where the members of the group purchase securities collectively through a person designated by the group provided that the purchase arrangements meet several specific requirements.

The Commission has previously permitted the use of quarterly statements rather than immediate confirmations in some circumstances in order to reduce regulatory costs that appear to outweigh the benefits to investor protection. The Commission has examined the existing quarterly statement provisions of rule 15c1-4 in light of its understanding that the quarterly statement procedure has not been used. The Commission has sought to revise those procedures for investment company plans to the extent it believes appropriate in view of the need to maintain adequate protection for investors and has determined to adopt paragraph (b) and the definitions set

out in paragraph (d) substantially in the form proposed.

Most of the comments concerning the investment company plan provisions were to the effect that, unless revised still further, the procedure for quarterly statements would remain unused. At the outset, some commentators suggested that the definition of "investment company plan" in paragraph (d)(5) of the rule is too limited to make the quarterly procedure useful.⁷¹ It was suggested that the quarterly procedure would not be economically feasible because qualifying plans do not represent a significant proportion of all accounts and are not readily identifiable. One commentator suggested that the quarterly statement procedure could appropriately be made available for all transactions in securities offered by investment companies where payments are made directly to the investment company by the customer.⁷² While the Commission appreciates the concerns for cost savings prompting these suggestions, it nevertheless believes that the cost savings of eliminating the requirement to send immediate confirmations in all such situations would not sufficiently outweigh the risks to investor protection.

Some commentators also stated that they regarded the language in paragraph (d)(5)(i), which stated that an investment company plan includes "an individual retirement or pension plan qualified under the Internal Revenue Code," to be vague and possibly subject to restrictive interpretation.⁷³ Those commentators suggested that this language might be regarded as permitting use of the quarterly confirmation procedure only with respect to individual retirement accounts established under the Employee Retirement Income Security Act of 1974 ("ERISA"), and perhaps corporate pension plans. In response to that comment, paragraph (d)(5)(i) has been revised to reflect more clearly the Commission's intention that it not have any application to pension plans established for more than one individual. That provision does, however, permit the use of quarterly confirmations with respect to any retirement or pension plan established for a single individual and qualifying under the Internal Revenue Code regardless of whether that plan is also subject to provisions of the Internal Revenue Code added by ERISA.

Most persons commenting upon the investment company plan provisions of proposed rule 10b-10 regarded the "negative" confirmation procedure set

forth in paragraph (d)(5)(iii)(B) as a continuing deterrent to the employment of quarterly confirmation for group plans.⁷⁴ While it was acknowledged that decreasing this requirement to a single confirmation following a period of investment inactivity might result in some cost reduction over current "negative" confirmation procedures, some commentators contended that the principal cost of compliance with this requirement arise from the necessity to establish and operate a confirmation system that includes even a single "negative" confirmation.⁷⁵

The Commission received comments from one company currently employing the quarterly confirmation procedure.⁷⁶ That commentator stated generally that it had been able to reduce its costs "considerably" through the use of quarterly statements and that they had been "well received" by customers. It also stated that it sends negative confirmations to participants in its group plans in each quarter in which there is not any account activity and stated that it did "not find the proposed negative confirmation requirements particularly onerous * * *". That experience suggests that these expenses may not be as prohibitive as some have predicted, and the Commission continues to believe that a "negative" confirmation is appropriate for the protection of investors in this context.

Finally, concern was reflected in several comments on proposed paragraph (d)(5)(iii)(C) of the rule, which required, among other things, that the "arrangement" be terminated if payment is not received from a group plan's designated person within 10 days of the date designated for delivery of payment. Some persons indicated that it was unclear whether the "arrangement" required to be terminated referred to the use of quarterly statements or the entire purchase plan.⁷⁷ It was noted that this provision would require careful attention to precisely when payments were due, a difficult matter for plans involving employers not following uniform pay-

⁷¹Concern was also expressed regarding the applicability of the so-called "negative" confirmation requirement of paragraph (d)(5)(iii)(B) to individual retirement and pension plans described in paragraph (d)(5)(i). See comment letter of American Council of Life Insurance. Paragraph (d)(5)(iii)(B) is included in rule 10b-10 as part of a proviso applicable by its terms only to paragraph (d)(5)(ii); accordingly, it is not a condition to plans under paragraphs (d)(5)(i) or (ii).

⁷²See generally comment letters of the NASD; and the Investment Company Institute.

⁷³See comment letter of the Variable Annuity Life Insurance Co. ("VALIC").

⁷⁴See comment letters of the NASD; and VALIC.

⁷⁵See comment letters of the NASD; and USAA Investment Management Co.

⁷⁶See comment letter of the NASD.

⁷⁷See comment letters of the NASD; and the Investment Company Institute.

ment patterns.⁷⁸ It would also require installation of a confirmation system to back up the quarterly statement procedure should payments not be made within the prescribed period.⁷⁹

The Commission believes that if payment is not received within 10 days of the date specified in the plan, quarterly statements should not be used in lieu of immediate confirmations. The wording of paragraph (d)(5)(iii)(C) has been revised, however, to avoid possible confusion, and the rule, as adopted, will require immediate confirmations to be sent for at least the next three succeeding payments in the event a payment is not received within the prescribed time limits. Thereafter, quarterly statements could again be used in lieu of immediate confirmations. The Commission continues to believe that investors are entitled to assurances that payments made by them or on their behalf are promptly applied to the purchase of securities. The requirement that payments be made within 10 days of a date certain specified for delivery of payment is intended to provide this assurance. The Commission believes that it is realistic to expect employers or other designated persons to deliver payments within 10 days of the dates specified for payment and that it is reasonable to require broker-dealers to advise customers if payments are not received under these circumstances.

IV. STATUTORY BASIS

The Securities and Exchange Commission, acting pursuant to the act, and particularly sections 3, 9, 10, 11, 15, 17, and 23 thereof (15 U.S.C. 78c, 78i, 78j, 78k, 78o, 78q, and 78w), hereby adopts amendments to § 240.10b-10 of Title 17 of the Code of Federal Regulations, effective December 18, 1978. The Commission also rescinds § 240-15c1-4, effective December 18, 1978. The revisions made in these amendments as originally proposed are either technical in nature or make less restrictive existing or proposed requirements; accordingly, the Commission finds, pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), that further notice and public procedure are not necessary.

The Commission also finds that the amendments to rule 10b-10 do not impose any burdens on competition not necessary or appropriate in furtherance of the purposes of the act. The confirmation rule, as adopted, imposes some regulatory burdens and costs on broker-dealers, but the Commission has determined that the rule does not impose any inappropriate burdens on competition. The Commission believes that the disclosures required by rule 10b-10, as amended, are

necessary and appropriate not only to protect investors against certain abuses but also to provide investors with information concerning transaction costs. The disclosure of odd-lot differentials may in fact increase competition among dealers which charge such differentials and those who do not. While some commentators have suggested that the "riskless" principal disclosure requirement will burden competition, those concerns are based largely on speculative judgments about future investor preferences. On balance, the Commission believes that any burdens imposed by rule 10b-10, as amended, are justified in view of, among other things, the important role confirmations serve in protecting the investing public.

17 CFR Part 240 is amended by revising § 240.10b-10 to read as follows:

§ 240.10b-10 Confirmation of transactions.

(a) It shall be unlawful for any broker or dealer to effect for or with the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing—

(1) Whether he is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for his own account;

(2) The date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request of such customer) and the identity, price, and number of shares or units (or principal amount) of such security purchased or sold by such customer; and

(3) Whether any odd-lot differential or equivalent fee has been paid by such customer in connection with the execution of an order for an odd-lot number of shares or units (or principal amount) of a security and that the amount of any such differential of fee will be furnished upon oral or written request; *Provided, however*, That such disclosure need not be made if the differential or fee is included in the remuneration disclosed, or exempted from disclosure, pursuant to paragraph (a)(4)(ii); and

(4) If he is acting as agent for such customer, for some other person, or for both such customer and some other person.

(i) The name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that such information will be furnished upon written request of such customer; and

(ii) The amount of any remuneration received or to be received by him from such customer in connection with the transaction unless remuneration paid by such customer is determined, pursuant to a written agreement with such customer, otherwise than on a transaction basis; and

(iii) The source and amount of any other remuneration received or to be received by him in connection with the transaction; *Provided, however*, That if, in the case of a purchase, the broker was not participating in a distribution, or in the case of a sale, was not participating in a tender offer, the written notification may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer; and

(5) If he is acting as principal for his own account—

(i) The amount of any mark-up, mark-down, or similar remuneration received in a transaction in an equity security if he is not a market maker in that security and if, after having received an order to buy from such customer, he purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from such customer; and

(ii) In the case of a transaction in an equity security, whether he is a market maker in that security (otherwise than by reason of his acting as a block positioner in that security).

(b) A broker or dealer may effect transactions for or with the account of a customer without giving or sending to such customer the written notification described in paragraph (a) of this section if—

(1) Such transactions are effected pursuant to a periodic plan or an investment company plan; and

(2) Such broker or dealer gives or sends to such customer within 5 days after the end of each quarterly period a written statement disclosing each purchase or sale, effected for or with, and each dividend or distribution credited to, or reinvested for, the account of such customer (pursuant to the plan) during the period; the date of each such transaction; the identity, number and price of any securities purchased or sold by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by paragraph (a) of this section will be furnished upon written request; *Provided, however*,

⁷⁸ See comment letter of VALIC.

⁷⁹ See comment letter of the NASD.

That the quarterly written statement may be delivered to some other person designated by the customer for distribution to the customer; and

(3) In the case of transactions effected pursuant to an investment company plan—

(i) Payments for the purchase of securities by such customer or by such customer's designated agent are made directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company; and

(ii) The intention to give or send to the customer the written statement referred to in paragraph (b)(2) of this section, in lieu of the written notification required by paragraph (a) of this section, is disclosed in writing to such customer.

(c) A broker or dealer shall give or send to a customer information requested pursuant to this rule within 5 business days of receipt of the request; *Provided, however*, That in the case of information pertaining to a transaction effected more than 30 days prior to receipt of the request, the information shall be given or sent to the customer within 15 business days.

(d) For the purposes of this rule—

(1) "Customer" shall not include a broker or dealer;

(2) "Completion of the transaction" shall have the meaning provided in rule 15c1-1 under the Act;

(3) "Time of the transaction" means the time of execution, to the extent feasible, of the customer's order;

(4) "Periodic plan" means any written authorization for a broker acting as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940), in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them); and

(5) "Investment company plan" means any plan under which securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 are purchased or sold by a customer pursuant to—

(i) An individual retirement or individual pension plan qualified under the Internal Revenue Code;

(ii) A contractual or systematic agreement under which the customer purchases at the applicable public offering price, or redeems at the applicable redemption price, such securities in specified amounts (calculated in security units or dollars) at specified time intervals and setting forth the

commissions or charges to be paid by such customer in connection therewith (or the manner of calculating them); or

(iii) Any other arrangement involving a group of two or more customers and contemplating periodic purchases of such securities by each customer through a person designated by the group; *Provided*, That such arrangement requires the registered investment company or its agent—

(A) To give or send to the designated person, at or before the completion of the transaction for the purchase of such securities, a written notification of the receipt of the total amount paid by the group;

(B) To send to anyone in the group who was a customer in the prior quarter and on whose behalf payment has not been received in the current quarter a quarterly written statement reflecting that a payment was not received on his behalf; and

(C) To advise each customer in the group if a payment is not received from the designated person on behalf of the group within 10 days of a date certain specified in the arrangement for delivery of that payment by the designated person and thereafter to send to each such customer the written notification described in paragraph (a) of this section for the next three succeeding payments.

(e) The Commission may exempt any broker or dealer from the requirements of paragraphs (a) and (b) of this section with regard to specific transactions of specific classes of transactions for which the broker or dealer will provide alternative procedures to effect the purposes of this section; any such exemption may be granted subject to compliance with such alternative procedures and upon such other stated terms and conditions as the Commission may impose.

(Secs. 3, 9, 10, 11, 15, 17, 23, 48 Stat. 891, 89 Stat. 97, 121, 137, 156 (15 U.S.C. 78c, 78i, 78j, 78k, 78o, 78q, 78w).)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 6, 1978.

[FR Doc. 29123 Filed 10-13-78; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue
CHAPTER 1—INTERNAL REVENUE
SERVICE, DEPARTMENT OF THE
TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7568]

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

Definition of "Other Security of the
United States" for Purposes of De-
termining Book-Entry Security

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations that add the Federal Home Loan Mortgage Corporation to the list of entities an obligation of which may qualify as an "other security of the United States" for purposes of the regulatory definition of "book-entry security." Under the new regulations, obligations of the Federal Home Loan Mortgage Corporation may be identified upon their sale or transfer (for basis and holding period purposes) by their lot numbers.

DATE: The regulations apply to sales and transfers of book-entry securities made after December 31, 1970.

FOR FURTHER INFORMATION
CONTACT:

Walter H. Woo 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) (202-566-3734).

SUPPLEMENTARY INFORMATION: Under existing § 1.1012-1(c)(7), taxpayers who sell or transfer book-entry securities of qualifying entities may identify those securities (for basis and holding period purposes) merely by specifying their lot numbers. Paragraph (c)(7)(ii)(a) of § 1.1012-1 defines book-entry securities to include Treasury bonds, notes, certificates of indebtedness, or bills issued under the Second Liberty Bond Act, or "other security of the United States." The amendment modifies § 1.1012-1(c)(7)(ii)(b) to add the Federal Home Loan Mortgage Corporation to the list of entities obligations of which may qualify as an "other security of the United States" for purposes of the definition of the term "book-entry security."

This amendment merely liberalizes the identification rules for purposes of determining basis and holding period in the case of certain securities. Accordingly, it is found unnecessary to issue this Treasury decision with

notice and public procedure. Additionally, this regulation is not a significant regulation under paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for May 24, 1978 (43 FR 22319) because it does not materially change existing policy.

DRAFTING INFORMATION

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

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 1 is amended by revising paragraph (c)(7)(iii)(b) of § 1.1012-1 to read as follows:

§ 1.1012-1 Basis of property.

- • • • •
- (c) *Sale of stock.* • • •
- (7) *Book-entry securities.*
- (iii) • • •

(b) The term "other security of the United States" means a bond, note, certificate of indebtedness, bill, debenture, or similar obligation which is subject to the provisions of 31 CFR Part 306 or other comparable Federal regulations and which is issued by (1) any department or agency of the Government of the United States, or (2) the Federal National Mortgage Association, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal Land Banks, the Federal Intermediate Credit Banks, the Banks for Cooperatives, or the Tennessee Valley Authority;

• • • • •

Because this Treasury decision merely liberalizes the identification rules for purposes of determining basis and holding period in the case of certain securities, it is found unnecessary to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917 (26 U.S.C. 7805)).)

JEROME KURTZ,
Commissioner of Internal
Revenue.

Approved: October 5, 1978.

DONALD C. LUBICK,
Assistant Secretary of the
Treasury.

[FR Doc. 78-29190 Filed 10-11-78; 4:26 pm]

[4810-35-M]

**Title 31—Money and Finance:
Treasury**

**CHAPTER II—FISCAL SERVICE;
DEPARTMENT OF THE TREASURY**

**TREASURY TAX AND LOAN
ACCOUNTS**

**Announcement of Effective Date of
Final Rules and Amendments to
Certain Provisions Concerning Col-
lateral Pledged**

AGENCY: Fiscal Service, Department of the Treasury.

ACTION: Announcement of effective date of final rules and amendments to certain provisions concerning collateral pledged under 31 CFR Part 203.

SUMMARY: In the FEDERAL REGISTER of May 2, 1978 (43 FR 18960) the Treasury Department issued final regulations (31 CFR Parts 203, 214, 317, and 321) and interim regulations (31 CFR 226) to implement the investment provisions of Pub. L. 95-147 of October 28, 1977. The regulations issued on May 2, 1978, called for an effective date of July 6, 1978, provided the Congress had appropriated funds to cover the payment of fees for certain services rendered under the regulations. Since the Congress had not appropriated the necessary funds, a notice was published in the FEDERAL REGISTER on June 19, 1978 (43 FR 26309) deferring that effective date.

The Congress has now made the necessary funds available. Accordingly, the effective date of both the final and interim rules issued on May 2 as amended by this notice is November 2, 1978.

The intent of Pub. L. 95-147 is to permit the Treasury to earn interest by the investment of its operating cash balances and, at the same time, pay fees for certain services which have not heretofore been compensable.

Subpart D of 31 CFR Part 203 relating to collateral pledged as security by depositaries for tax and loan accounts as published in the FEDERAL REGISTER of May 2 is being amended. First, by this amendment, the maturity of the type of collateral security accepted under subparagraph 9 of § 203.15(d) (i.e., commercial and agricultural paper and bankers' acceptances) is being extended from one year to two years. Second, by this amendment, a

new paragraph (i.e., paragraph (f)) is being added to § 203.15 to describe actions which will be taken, upon the insolvency of a depository, to perfect the Treasury's security interest in the proceeds of the collateral which that depository has pledged as security for tax and loan funds.

Further, 31 CFR Part 226, entitled "Recognition of Insurance Covering Treasury Tax and Loan Depositaries" which was published as an interim rule on May 2 is hereby being adopted as a final rule.

EFFECTIVE DATES: The provisions of the rules which were published in the FEDERAL REGISTER of May 2 (43 FR 18960) and as amended by this notice are effective on November 2, 1978.

**FOR FURTHER INFORMATION
CONTACT:**

Mr. John Kilcoyne, Assistant Fiscal Assistant Secretary (Banking), Office of the Secretary, Department of the Treasury, Washington, D.C. 20220, 202-566-2849.

Additionally, financial institutions having questions as to operating procedures may direct such questions to the Federal Reserve Bank or Branch serving the geographical area in which the institution is located.

SUPPLEMENTARY INFORMATION: By this notice, the effective date of the regulations issued on May 2, 1978, as amended, is being established. Certain paragraphs of the regulations issued on May 2, 1978, cited specific dates which were predicated on the presumption that those regulations were to be effective on July 6, 1978. Consequently, due to the postponement of the effective date to November 2, 1978, those paragraphs are hereby being revised to reflect dates consistent with the revised effective date.

In the preamble to the final regulations issued on May 2, 1978, it was stated that the Treasury was considering what action it could take to expand categories of eligible collateral. While the Treasury's study of collateral is continuing, the Department is now extending the maturity limitation of the collateral security accepted under subparagraph (9) of § 203.15(d) from one year to two years: at 90 percent of face value.

Further, by this amendment, the Treasury is adding a new paragraph (paragraph f) to § 203.15 to describe general requirements pertaining to the perfection of the Treasury's security interest in the proceeds of pledged collateral in the event of the insolvency of the depository. This is an amendment of a technical nature which is intended to preserve, subsequent to the insolvency of a depository, the Treasury's interest in the proceeds of the collateral that a tax and loan deposi-

tary has pledged for the purpose of securing the tax and loan funds on deposit or invested with it.

Since each Treasury Tax and Loan Depositary enters into a depositary contract as stated at § 203.6, the Treasury is of the view that the amendments involve a matter relating to "contracts" as that term is used in 5 U.S.C. 553(a)(2). Further, the Treasury is of the view that because the amendments (1) add to the supply of securities available to depositaries to secure tax and loan funds, and (2) set forth requirements intended to solidify the Treasury's rights to the proceeds of the collateral which a depositary has pledged to secure public funds, subsequent to the insolvency of that depositary, they involve a matter relating to "public property" within the meaning of 5 U.S.C. 553(a)(2).

Consequently, it has been determined that the amendments are not subject to the rulemaking requirements, including notice or proposed rulemaking, which are contained in 5 U.S.C. 553.

31 CFR Part 226, entitled "Recognition of Insurance Covering Treasury Tax and Loan Depositaries" was published as an interim rule in the FEDERAL REGISTER of May 2, 1978 (43 FR 18972). Since the publication of that part, the Department received one written comment concerning that interim rule. In essence that comment was a request for clarification of one of the provisions of that rule. Accordingly, in view of the absence of any substantive comment, the Department is of the view that 31 CFR Part 226, which was published in the FEDERAL REGISTER of May 2, 1978, as an interim rule, should hereafter be regarded as a final rule. By this notice, 31 CFR Part 226 is being adopted as a final regulation.

On May 24, 1978, a proposed Treasury directive entitled "Criteria and Procedures for the Preparation, Review and Approval of Regulations" was published at 43 FR 22319, in implementation of Executive Order 12044 (March 23, 1978; 43 FR 12661). Although the proposed directive was made effective on May 22, 1978, it was provided that regulations in process of preparation before that date which had been the subject of a public hearing would not be subject to the requirement of paragraph 9 of the proposed directive that a work plan be prepared. As the instant publication is the culmination of a regulatory project which was the subject of a public hearing on January 12, 1978, no work plan has been prepared. Nevertheless, the other applicable requirements of the proposed Treasury directive have been complied with.

In consideration of all the foregoing, 31 CFR Chapter II is amended as follows:

PART 203—TREASURY TAX AND LOAN DEPOSITORIES

§ 203.3 [Amended]

1. Section 203.3 is amended by changing the date, "July 5, 1978," in the first sentence of paragraph (a), to "November 1, 1978."

§ 203.11 [Amended]

2. Section 203.11 is amended as follows:

(a) By changing the date, "July 5, 1978," in the first sentence of paragraph (a), to "November 1, 1978."

(b) By changing the date, "July 6, 1978," in the last sentence of paragraph (a), to "November 2, 1978."

(c) By changing the date, "July 6, 1978," each time it appears in paragraphs (b) and (c), to "November 2, 1978."

3. Section 203.15 is amended by amending paragraph (d)(9) and by adding a new paragraph (f) to read as follows:

§ 203.15 Collateral security requirements.

(d) ***

(9) Commercial and agricultural paper and bankers' acceptances approved by the Federal Reserve Bank of the district and having a maturity at the time of pledge not to exceed 2 years: At 90 percent of face value.

(f) *Effecting payments of principal and interest on securities pledged as collateral subsequent to the insolvency of a depositary—(1) General.* In the event of the depositary's insolvency or closure, or in the event of the appointment of a receiver, conservator, liquidator or other similar officer to terminate its business, the depositary agrees that all principal and interest payments on any security pledged to protect the note account (if applicable) and the Treasury tax and loan account, due as of the date of the insolvency of closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States.

(2) *Payment procedures.* (i) Subject to the waiver in subparagraph (2)(iii) of this paragraph, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) shall immediately remit each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section to the Federal Reserve Bank of the district, as fiscal agent of the United States, and in any event shall

so remit no later than ten days after receipt of such a payment.

(ii) Subject to the waiver in subparagraph (2)(iii) of this paragraph, each obligor on a security pledged by a depositary pursuant to this section shall make each payment of principal and/or interest due with respect to such security directly to the Federal Reserve Bank of the district, as fiscal agent of the United States.

(iii) The requirements of subparagraphs (2) (i) and (ii) of this paragraph are hereby waived for only so long as a pledging depositary remains solvent. The foregoing waiver is terminated without further action immediately upon the insolvency of a pledging depositary or, if earlier, upon notice by the Treasury or the Federal Reserve Bank of the district of such termination. For purposes of this paragraph, a depositary is insolvent when, voluntarily or by action of competent authority, it is closed because of present or prospective inability to meet the demands of its depositors or shareholders.

4. Section 203.18 is amended to read as follows:

§ 203.18 Effective date.

This revision of this part is effective November 2, 1978.

PART 214—DEPOSITORIES FOR FEDERAL TAXES

5. Section 214.9 is amended to read as follows:

§ 214.9 Effective date.

This revision of this part is effective November 2, 1978.

PART 226—RECOGNITION OF INSURANCE COVERING TREASURY TAX AND LOAN DEPOSITORIES

6. Section 226.7 is amended to read as follows:

§ 226.7 Effective date.

The provisions of this part become effective November 2, 1978.

7. Interim 31 CFR Part 226, as amended in item 6. of this document, is hereby adopted as a final rule.

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF U.S. SAVINGS BONDS OF SERIES E AND U.S. SAVINGS NOTES

8. Section 317.5 is amended by changing paragraph (e) to read as follows:

§ 317.5 Issuance of bonds.

(e) The provisions of this section, as amended, are effective November 2, 1978.

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

9. Section 321.5 is amended by changing paragraph (e) to read as follows:

§ 321.5 Paying agent fees and charges.

(e) The provisions of this section, as amended, are effective November 2, 1978.

Dated: October 11, 1978.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 78-29199 Filed 10-13-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunications

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-681]

PART 1—PRACTICE AND PROCEDURE

PART 73—RADIO BROADCAST SERVICES

Reregulation of Radio and Television Broadcasting; Correction

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This document corrects a final rule (Order FCC 78-681) appearing in the FEDERAL REGISTER October 4, 1978 at 43 FR 45842 relating to reregulation of radio and television broadcasting.

EFFECTIVE DATE: October 16, 1978.

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

FOR FURTHER INFORMATION CONTACT:

John Reiser, Steve Crane, Phillip Cross, Broadcast Bureau, 202-632-9660.

Released: October 6, 1978.

In the matter of reregulation of Radio and TV Broadcasting.

In the above captioned Order FCC 78-681, appearing in the FEDERAL REGISTER October 4, 1978 at 43 FR 45842, the Preamble reads November 1, 1978 for an effective date and should read: October 16, 1978; and paragraph 24 of

Appendix A should be corrected to read as follows:

24. Section 73.99 headnote is amended to read as follows:

§ 73.99 Presunrise service authorizations (PSA).

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-29063 Filed 10-13-78; 8:45 am]

[4910-59-M]

Title 49—Transportation

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

[Docket No. 78-15, Notice 1]

PART 511—ADJUDICATIVE PROCEDURES

Final Rule; Request for Comment

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Final rule, request for comment.

SUMMARY: This rule contains the procedures and rules of practice that will be followed in adjudications to enforce title V of the Motor Vehicle Information and Cost Savings Act, as amended. Title V concerns average fuel economy standards for passenger automobiles and light trucks. Congress, by adding title V to the Cost Savings Act, gave to the Secretary of Transportation, or his delegate, the Administrator of the National Highway Traffic Safety Administration, the responsibility to enforce provisions of that title, and regulations issued thereunder. These procedural regulations are necessary to carry out that enforcement responsibility. These regulations are intended to enable a full, fair, and expeditious hearing in all cases of alleged violations of the provisions of title V administered by the National Highway Traffic Safety Administration, or of regulations or orders issued thereunder. Because this rule is procedural, it is issued as an interim final rule without notice and opportunity for comment. However, interested persons have an opportunity to comment on this rule before the agency adopts a permanent final rule.

DATES: This rule is effective November 15, 1978. Comments on this rule

must be received on or before November 30, 1978.

ADDRESS: Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that ten copies be submitted.

FOR FURTHER INFORMATION, CONTACT:

Roger Fairchild, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, 202-426-2992.

SUPPLEMENTARY INFORMATION: This rule establishes the procedures and rules of practice which the agency will follow in enforcing the provisions of title V of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), as amended, 15 U.S.C. 2001 et seq., relating to automotive fuel economy. Section 508(a)(2) of the Cost Savings Act provides that civil penalties be assessed by the Secretary of Transportation, or his delegate, the Administrator of the National Highway Traffic Safety Administration (NHTSA), if after a hearing on the record, he determines that a manufacturer or other person or organization, has violated an average fuel economy standard, or some other regulation or order established by or under title V and enforced by the NHTSA. The procedures and rules of practice established herein will govern the "hearing on the record" required by the statutory language of section 508(a)(2).

The starting point for these regulations is the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq. Section 554 of the APA sets forth requirements for administrative adjudications required by statute to be determined on the record after opportunity for agency hearing. This section dictates that the provisions of the APA governing formal, trial-type administrative hearings (secs. 554, 555, 556, and 557) are applicable, in accordance with their terms, to such adjudications. Because section 508 of the Cost Savings Act provides for adjudications on the record after opportunity for hearing, the formal hearing requirements of sections 554, 555, 556, and 557, of the APA apply, in accordance with their terms.

In addition to the formal hearing provisions of the APA, title V of the Cost Savings Act contains several provisions that affect the rights of persons or parties in adjudicative proceedings. Therefore, the procedures set out herein, in addition to conforming to requirements of the APA, also must conform to the requirements of title V. For example, the issue of settle-

ment, which will be discussed fully below, is a procedural area much affected by the specific language of title V.

The APA provisions governing formal hearings provide only a general framework for a formal trial-type adjudicative hearing. There is much that must be filled in by the agency. Because the formal, adjudicative hearings are essentially trial-type hearings, the agency used the Federal Rules of Civil Procedure as a general model in fashioning this rule. In addition, the agency also considered and benefited greatly from formal hearing procedures proposed by the Consumer Product Safety Commission, 42 FR 31431, June 21, 1977. However, the agency has made numerous departure from these two models to suit both statutory requirements and the particular needs of proceedings to enforce the requirements of the automotive fuel economy program. Although the structure of these procedures may look familiar to persons conversant with the Federal Rules of Civil Procedure or the proposed rules of the Consumer Product Safety Commission, interested persons are cautioned to note the differences between those procedures, and the procedures set out here.

Following is a discussion of the specific provisions of the agency formal hearing procedures and rules of practice. Many sections are quite straightforward and not controversial, and will be discussed in a very summary way. Other provisions which the agency believes to be more controversial, or which otherwise warrant attention, will be discussed more fully.

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings; Definitions. These rules apply only to enforcement cases arising under portions of title V of the Cost Savings Act administered by the NHTSA. Such cases would include cases of violation of average fuel economy standards for either passenger automobiles or light trucks established by or under section 502 of the Cost Savings Act, failure to comply with a reporting requirement or request for information made pursuant to section 505 of the Cost Savings Act, failure to comply with the regulations of the Environmental Protection Agency under section 506(b) of the Cost Savings Act relating to the display of automobile gas mileage guides, or failure to comply with any other regulation established under title V except those issued pursuant to section 506(a) concerning automobile fuel economy labeling, section 510 regarding passenger automobiles acquired by executive agencies, and section 511 regarding retrofit devices.

It is the policy of the agency to conduct hearings expeditiously, with due

regard for the rights of all parties, and persons, and the public interest.

It should be noted that the term "motion" is limited to requests for rulings or orders which may be ruled upon after opportunity for response only by each affected party. The agency contemplates that certain motions, for example, discovery motions, may not affect all parties. The agency believes that allowing each party to respond to motions that do not affect each party may generate needless delay and paperwork with no corresponding benefits. Therefore, the agency believes that the Presiding Officer should have the flexibility to limit the number of parties who may respond to a motion. This flexibility is specifically provided in § 511.23, *Motions*. Of course, it is intended that the Presiding Officer will limit the opportunity for a party to respond to a motion only when such a limitation would not significantly prejudice any party.

It should also be noted that the Presiding Officer in these proceedings will be an Administrative Law Judge qualified under title 5, United States Code, section 3105. This is to be distinguished from a Presiding Officer under 49 CFR part 510, Information Gathering Powers, who may be the Administrator, or any agency official or employee designated by the Administrator.

Subpart B—Pleadings; Form; Execution; Service of Documents. This subpart deals with matters of form relating to pleadings, commencement of proceedings, time and its computation, and the service of documents. All pleadings are to be concise, and sufficient to illuminate the positions of the parties, their contentions, and the areas of real factual or legal controversy. An adjudicative proceeding is initiated by the issuance of a complaint. Each complaint must contain a recital of the legal authority upon which it is based, identification of the respondent, a clear statement of the charges, and the relief sought by the agency. Complaints are published in the *FEDERAL REGISTER* in order to notify the public of the enforcement proceeding. The *FEDERAL REGISTER* notice also advises persons who may wish to intervene that they must file petitions to that effect prior to the first prehearing conference. It is the intention of the agency that petitions to intervene be filed by the first prehearing conference so that the parties in the proceeding are known at an early stage, and that there is no undue delay in the case caused by latecoming persons who wish to be parties.

Answers to complaints must meet the issues raised in the complaint, and must indicate the areas of contention in the case. The rules allow amend-

ment and supplementation of pleadings which will facilitate the proceedings and not result in undue prejudice or delay.

The subpart specifies the form of pleadings, where and when they are to be filed, and how to compute time under the rules. Service of documents may be by registered or certified mail, delivery to a person, or delivery to an address.

Section 511.17 relates to intervention in a formal adjudication. Section 508(a)(2) of the Cost Savings Act provides: "Any interested person may participate in any proceeding under this paragraph." Since a proceeding under these rules is clearly a proceeding under paragraph 508(a)(2), interested persons are guaranteed the right to participate in formal enforcement proceedings.

In order to assure that interested persons are able to participate in proceedings under these regulations, while also reducing the possibility that the proceedings become hopelessly bogged down by large number of parties, the agency has provided for two types of participation by interested members of the public; the intervenor and the nonparty participant (referred to as a "participant"). An intervenor, once granted leave to intervene by the Presiding Officer, will have all rights of a party, including such rights as the right to present evidence, and to cross-examine witnesses. Participants will have a more limited role in the proceedings; they will have the right to make a written or oral statement of position, and to file proposed findings of fact, conclusions of law, and a posthearing brief in accordance with these rules.

Any person may participate as a participant merely by filing a notice of intention to participate, and serving a copy on all parties before the commencement of the hearing. The agency believes that such a filing requirement, although a slight burden on the right to participate, is permissible as a necessary housekeeping measure, so that the Presiding Officer and the parties know who, and how many persons are likely to participate in the proceeding. Because the agency believes that the nonparty participants will be able to make a meaningful contribution to the hearing, and by so doing, affect the issues considered and the direction of the hearing, the rule requires the participants to make their intentions to participate known before the commencement of the hearing.

Persons or organizations wishing to participate as an intervenor, with all the rights of a party, may petition the Presiding Officer for leave to intervene. Copies of such petitions must be filed with all parties. So that the proceedings are not unduly delayed by pe-

titions to intervene, such petitions must be filed no later than the beginning of the first prehearing conference. Petitions to intervene must set forth the interest of the petitioner in the proceeding, state how the petitioner's interest may be affected by the outcome of the proceeding, and, with particular reference to the considerations on which the Presiding Officer shall base his or her ruling, state why the petitioner believes that he should be allowed to participate as a party in the proceeding. In ruling on a petition to intervene, the Presiding Officer shall consider the nature and extent of the petitioner's interest in the proceeding, the extent to which the petitioner's participation as a party is likely to assist in developing a sound record for the hearing, the extent to which the petitioner's participation as a party may broaden the issues or delay the proceedings, and the extent to which the petitioner's interest may be protected by other means, such as the participation of other parties, the designation of a single representative or the participation of the petitioner as a nonparty participant. It is the agency's intention that the Presiding Officer, by a consideration of the factors outlined above, the general policy of the agency favoring public participation in agency activities, and a sound exercise of discretion, will be able to accommodate the interests of public participation in agency activities and the need for expeditious completion of enforcement proceedings. Moreover, in order to afford maximum protection to a person's, or organization's, interest in participating as a party, a denial of a petition to intervene may be appealed to the Administrator as an interlocutory matter, under § 511.24 of the rules.

Finally, the Presiding Officer will have the authority to consolidate two or more matters which have been scheduled for adjudicative proceedings, and which involve similar issues.

Subpart C—Prehearing Procedures; Interlocutory Appeals; Summary Decision; Settlement. Subpart C deals with a critical stage of the formal hearing process: That time subsequent to the commencement of a proceeding, but prior to the beginning of the hearing. It is during this period that the Presiding Officer and the parties can structure the hearing, and through clarification and simplification of the issues, and resolution of threshold procedural and housekeeping issues, do much to insure that the hearing can conclude expeditiously and fairly. Indeed, the prehearing procedures may result in the termination of the case without the need for a formal hearing, through settlement or summary decision.

Section 511.21 relates to the prehearing conference. The prehearing conference is the primary means by which issues will be simplified and procedural matters resolved prior to the hearing. Matters to be considered at the prehearing conference include petitions for leave to intervene, motions for consolidation of proceedings, identification and simplification of the issues, amendments to pleadings, stipulations and admissions of fact, matters as to which official notice will be taken, limitation and identification of witnesses, consideration of offers for settlement, and matters relating to discovery, including the issuance of subpoenas. Of particular importance are stipulations and admissions of fact, and matters of which official notice will be taken. The agency anticipates that proceedings to enforce average fuel economy standards may be decided on the basis of fuel economy tests conducted pursuant to requirements of the Environmental Protection Agency, about which there may be no material issues of fact that would warrant a formal trial-type hearing. Therefore, admissions or official notice of such facts are likely to be dispositive of such cases.

Prehearing conferences will be convened only after public notice. Although it is anticipated that a single prehearing conference will be sufficient, the Presiding Officer will have the discretion to convene additional prehearing conferences. Prehearing conferences will normally be open to the public, and will be stenographically recorded. After the prehearing conference, the Presiding Officer will enter an order reciting the rulings made and agreements reached at the prehearing conference. The prehearing order will govern the subsequent course of the proceeding, unless modified to prevent injustice.

Section 511.22 provides that all parties and intervenors must file and serve prehearing briefs, setting forth a statement of facts expected to be proved, the anticipated order of proof, a statement of issues and the legal arguments in support of the parties' contentions regarding each issue, and a table of supporting authorities.

Section 511.23 governs motions. Motions may be oral or written, and are to be addressed to the Presiding Officer, except for motions to disqualify the Presiding Officer, which shall be filed with the Executive Secretary and decided by the Administrator. Any party that may be affected by a motion will have the right to reply.

Section 511.24 addresses the question of interlocutory appeals to the Administrator of rulings by the Presiding Officer. In general, such interlocutory appeals will not be permitted, except in certain enumerated situa-

tions. These situations include where the Presiding Officer requires the production of confidential records, or the testimony of a supervisory official of the agency who does not have particular knowledge of the facts under adjudication, or where an attorney is excluded from participation, or where a petition to intervene is denied or unduly limited. Interlocutory review of decisions on these matters may be obtained at the discretion of the Administrator by petition to the Administrator. Interlocutory appeals may also be obtained through a determination of the Presiding Officer that a ruling involves a controlling question of law or policy as to which there is substantial grounds for a difference of opinion, and that an immediate appeal will materially advance the disposition of the proceeding, or that subsequent review would be an inadequate remedy. Interlocutory appeals will not stay a proceeding unless the Administrator or the Presiding Officer so orders. With the exception of appeals of rulings requiring the production of records which are claimed to be confidential. Such rulings will be automatically stayed for 10 days to permit affected parties to petition for an interlocutory appeal.

Section 511.25 provides for summary decision. Summary decision may be obtained by motion, if there are no material issues of fact, and if one party is entitled to a decision as a matter of law. An order granting a motion for summary decision constitutes the Initial Decision of the Presiding Officer, and may be appealed to the Administrator. Complaint Counsel may move for summary decision after thirty days following the issuance of a complaint, and any other party may so move at any time.

Section 511.26 governs settlement in all cases except cases of alleged violation of average fuel economy standards. The settlement procedures for fuel economy standards violation cases are found in Subpart G, and will be discussed fully in connection with that subpart. Settlement procedure is bifurcated because title V of the Cost Savings Act imposes limitations on the authority of the agency to settle cases of alleged violation of average fuel economy standards, within which limitations the agency must act. In brief, section 508 of the Cost Savings Act allows the Administrator to settle cases of violations of average fuel economy standards only when necessary to prevent insolvency or bankruptcy, or when the violation was the result of a fire, strike, or act of God, or if the Federal Trade Commission certifies that settlement is necessary to avoid a lessening of competition.

Even though section 554(c)(1) of the APA provides that the agency shall

give interested parties the right to submit offers of settlement, that provision in the APA does not override the specific limitations on settlement found in title V. It is an established rule of statutory construction that a statute dealing with a specific facet of a subject matter controls rather than an earlier statute dealing with the same subject matter in only a general fashion. Since the APA preceded title V, and deals with settlement in only a general fashion, the APA is superseded by the limitations placed on settlement by title V. Sutherland, *STATUTORY CONSTRUCTION*, 4th ed., §23.16. Moreover, the right to settlement contained in the APA is a limited right. Under the APA, settlement must be available only when the nature of the proceedings, time, or the public interest permit. In title V, Congress has provided that the public interest will be better served by a limited opportunity for settlement of cases alleging violations of average fuel economy standards. Therefore, even if the APA were controlling, settlement of cases involving violations of average fuel economy standards must be in accordance with title V.

Settlement of cases other than average fuel economy standards violations is governed by §511.26. Such settlement may be offered by any party. Offers of settlement are transmitted to the Presiding Officer, shall be in the form of a consent agreement, shall be signed by its proponent and endorsed by any other parties who wish to do so. Each proposed agreement shall be accompanied by a motion to transmit the agreement to the Administrator, and an order outlining the provisions of the agreement and reasons why the Administrator should accept the agreement. The contents of any proposed settlement agreement are set out in the regulation, and include an admission of jurisdictional facts, a waiver of further procedural steps, a description of the alleged violation or noncompliance, and a description of the corrective measures that will be taken. The Presiding Officer will transmit all settlement offers correct in form to the Administrator for decision, with or without a recommendation relating to whether the offer should be accepted. The proceedings will be stayed pending a decision on the settlement offer only if the offer has been endorsed by all parties. The Administrator determines whether to accept a proposed settlement. Rejected offers of settlement, or the fact of offer of settlement will not be admissible into evidence over the objection of any party.

Subpart D—Discovery; Compulsory Process. Discovery under these procedures is available only to parties or intervenors. Discovery may be obtained

from other parties, or any other persons who are not parties. There are four methods of discovery under these rules: Written interrogatories, requests for the production of documents and things, requests for admissions, and testimony upon oral examination. Discovery may be had regarding any matter, not privileged, which is relevant to the subject matter of the proceeding. The Presiding Officer may issue protective orders to limit discovery when justice requires. Discovery may begin any time after the filing of an answer, and should be completed as soon as practicable, usually no longer than 150 days after the issuance of a complaint. Parties are under a duty to supplement responses to discovery to include after acquired information. If a party refuses to provide or permit discovery, the Presiding Officer may take such action as is appropriate, including allowing the inference that the admission, testimony, document or other evidence sought to be discovered would have been adverse to the party refusing discovery.

Subpenas are obtained by application made by a party to the Presiding Officer, and may be served in person or by registered or certified mail. Any person served with a subpoena may move to quash or limit the subpoena.

Subpart E—Hearings. Subpart E sets out the procedures and the rules that govern the actual hearing phase of an enforcement proceeding. Section 511.41 sets out general rules. Hearings are public unless otherwise ordered by the Presiding Officer. Hearings shall proceed as expeditiously as possible. Each party, including the intervenor is guaranteed all rights essential to a fair hearing, including, but not limited to timely notice, the right to be heard by objection, brief and argument, the right to present evidence, and the right to conduct cross examination. Non-party participants have the right to make a statement of position, and file proposed findings of fact, conclusions of law, and a post-hearing brief. Any person who is compelled to appear as a witness may be accompanied and advised by counsel, may obtain a copy of the transcript of his testimony at no cost, and will be reimbursed for his time and travel expenses.

Section 511.42 sets out the duties and powers of the Presiding Officer. The primary duty of the Presiding Officer is to conduct full, fair, and impartial hearings, as expeditiously as possible. The Presiding Officer has all powers necessary to accomplish that end. Section 511.42 enumerates certain of those powers, including the power to administer oaths and affirmations, to resolve issues relating to discovery, to rule on and receive evidence, to hold prehearing conferences, to con-

sider and rule on motions made in the course of an adjudication, to issue Initial Decisions, to certify questions to the Administrator for determination, and to take any other action authorized by these rules, or by the APA.

The Presiding Officer, for good cause stated on the record, as the authority to exclude from the proceeding any person who violates the standards of conduct set out in §511.76 of these rules. The Presiding Officer also has the authority to exclude himself from the proceedings if he believes he is unable to carry out his responsibilities. Moreover, parties may move to have a Presiding Officer removed.

The Presiding Officer, in the performance of adjudicative functions, is not subject to the supervision of any officer, agent, or employee of the agency who is engaged in investigative or prosecuting functions.

Section 511.43 relates to evidence. All relevant and reliable evidence is admissible in proceedings under this rule, notwithstanding the fact that such evidence may not be competent under the rules of evidence. It is universally recognized that the rules of evidence were designed to insure that impressionable juries would not be improperly swayed by the consideration of evidence which, while appealing, was not reliable. Where no jury is involved, as in adjudications under this rule, the need for the protections afforded by the rules of evidence diminishes dramatically. Therefore, the Presiding Officer is specifically granted the authority to receive evidence that may not be admissible under the rules of evidence. However, the Presiding Officer considers the Federal Rules of Evidence as a general guide in evaluating the reliability of evidence. In all cases, the Presiding Officer may exclude evidence if its probative value is outweighed by confusion of issues, or by considerations of delay, immateriality, or the needless presentation of cumulative evidence.

Objections to evidence must be timely interposed, shall appear on the record, and must contain the ground upon which they are based. Formal exception to an adverse ruling is not necessary to preserve the question for appeal. When an objection is sustained, the party sponsoring the offer of evidence may make an offer of what he expects to prove by the evidence. Any other party may then make an offer to how he or she expects to rebut or contract that offer of proof. Written offers of proof and of rebuttal become part of the record.

The Presiding Officer may take official notice of facts not appearing on the record, or the inferences drawn from such facts, either on his own initiative, or on motion of any party. The record must reflect the facts or infer-

ences which have been noticed. An officially noticed fact or conclusion must not be subject to reasonable dispute, in that it is generally known in the Presiding Officer's jurisdiction or expertise, or it is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. The agency contemplates that the results of testing supervised by the Environmental Protection Agency to measure average fuel economy may be one kind of fact liable to official notice under this section. In all cases, however, any party will have the right to rebut any fact of which official notice is taken, either by written or oral presentation.

Section 511.44 governs expert witnesses. A written statement of the elements of the testimony of any expert witness must be filed and exchanged between the parties no later than 10 days preceding the commencement of the hearing. This requirement is to enable all parties to prepare a meaningful cross-examination of an expert witness without requiring a delay in the hearing. A party may waive direct examination of an expert by stating that the written statement constitutes the testimony of the expert. In such cases, the written statement becomes part of the record, and cross-examination and redirect examination proceed as if the expert had been examined on direct.

Section 511.45 relates to *in camera* materials. *In camera* materials are those documents, testimony or other data that the Presiding Officer, or the Administrator in the context of an interlocutory appeal, orders to be kept confidential. Only materials which are exempt under the Freedom of Information Act can be afforded *in camera* treatment. Determinations whether alleged confidential business records are exempt under the Freedom of Information Act are made by the NHTSA's Chief Counsel pursuant to the NHTSA's regulations governing confidential business information (49 CFR part 512). In general, the parties will be permitted access to the *in camera* materials. However, there are two situations in which the parties will not be granted access. The first situation is when the Government has obtained confidential information from a person not a party to the instant proceeding, and the second situation is when one of the parties to the proceeding provides confidential information which should not be disclosed to the other parties. In these situations, parties may examine the *in camera* materials only after leave of the Presiding Officer, or the Administrator in the case of an appeal. The Presiding Officer, Administrator, or a reviewing court may order the release of *in camera* materials after notice to the

party or parties requesting *in camera* treatment.

Section 511.46 provides that all parties and participants may file posthearing briefs, including proposed findings of fact, conclusions of law, and a proposed order, together with the reasons therefore. Parties may also file reply briefs to posthearing briefs. The time for the submission of posthearing briefs and reply briefs is set by the Presiding Officer, but is not later than 45 days after the closing of the record for the posthearing briefs, and not more than 15 days after filing of the posthearing briefs for the reply briefs.

Sections 511.47 through 511.49 relate to housekeeping matters involving the record, the official docket, and fees. Hearings will be transcribed, will become part of the record, and will be available for purchase from the reporter. Corrections of the transcript may be made, but corrections will be made as interlineations in the original transcript. An official docket for a proceeding will be maintained in the docket room of the agency. Witnesses appearing pursuant to subpoena will be paid at least the same attendance and mileage fees as are paid witnesses in the courts of the United States. Such fees will be paid by the party at whose instance the witness appears.

Subpart F—Decision. Section 511.51 relates to the initial decision. An initial decision is to be made and filed by the Presiding Officer who presided over the hearing, unless otherwise ordered by the Administrator. The initial decision should be filed no later than 60 days after the close of the record, the filing of posthearing briefs, or the filing of reply briefs, whichever is latest. The initial decision should be based upon a consideration of the entire record, and should be supported by reliable, probative and substantial evidence. The initial decision shall include findings and conclusions on all the material facts, issues of law, and exercise of discretion, with the reasons therefore, and where practical, shall include citations to the record and to legal or other materials relied upon. At any time prior to or concomitant with the filing of the initial decision, the Presiding Officer may reopen the proceedings for the reception of further evidence. The initial decision shall also include an appropriate order.

Section 511.52 provides that the initial decision will become the final decision of the Administrator unless appeal is taken, or unless the Administrator determines to review the decision on his or her own motion.

Section 511.53 provides for appeal from the initial decision. Any party may appeal an initial decision to the Administrator. However, a notice of intention to appeal must be filed and

served within ten days after issuance of the initial decision. The appeal shall be in the form of a brief filed within forty days after the issuance of the initial decision, and shall include an index of the matters in the brief, a concise statement of the case, a specification of the position urged, argument in support of that position, and a proposed order. Other parties and participants may file answering briefs within thirty days after service of the appeal brief. If a timely notice of appeal is filed, other parties may file cross appeals, which shall be included in the answering brief. Reply briefs to answering briefs may be filed, but are limited to rebuttal of matters in answering briefs, including matters raised in cross appeal. Oral argument may be allowed by the Administrator.

Section 511.54 provides that the Administrator may order review of an initial decision, after which parties shall, and participants may, file briefs in accordance with the briefing schedule set out in § 511.53. However, the Administrator may establish a different briefing schedule in his or her order.

Reaching a final decision after appeal or review of an initial decision is governed by § 511.55. The Administrator considers the record in review of the initial decision, and adopts, modifies, or sets aside the findings and conclusions in the initial decision. An order shall be issued reflecting the final decision, and shall include a statement of reasons or bases of the Administrator's actions.

Under § 511.56, any party may petition for reconsideration of the final decision. Any party desiring to oppose such a petition shall file an answer thereto.

Section 511.57 provides that consent orders are effective immediately, but that litigated orders are effective upon the expiration of the statutory review period specified in section 508(c)(1) of the Motor Vehicle Information and Cost Savings Act.

Subpart G—Settlement procedures in cases of violation of average fuel economy standards. As discussed earlier, Congress placed certain limitations on the authority of the agency to settle cases in which it is alleged that a manufacturer has violated an average fuel economy standard established by or under section 502 of the Motor Vehicle Information and Cost Savings Act. This subpart establishes the special procedures by which such cases may be settled, within the authority granted to the agency by Congress.

Section 511.61 provides that the procedures set out in subpart G are the only means of settlement of cases alleging a violation of an average fuel economy standard. Section 511.62 sets out the definitions used in the subpart. The term "settlement" is defined

as compromise, modification, or remission of a civil penalty assessed under these rules. There is no provision for, and no opportunity for, settlement of any kind prior to a finding of a violation of an average fuel economy standard. Congress, by establishing the detailed criteria governing settlement discussed below, has shown a clear intent that cases are to be settled only in accordance with those criteria. The agency believes that allowing settlement of a case of alleged violation of an average fuel economy standard prior to a finding of a violation would be a circumvention of a clear congressional intent. Therefore, settlement of average fuel economy standard violation cases will be made only in accordance with this subpart.

Section 511.63 sets out the criteria for settlement of cases of violation of average fuel economy standards. These criteria are those contained in section 508(b)(3) of the Cost Savings Act. Under those criteria, settlement is available only to the extent that is necessary to prevent insolvency or bankruptcy of the manufacturer, that the violation of the average fuel economy standard was the result of a strike, fire, or act of God, or that the Federal Trade Commission certifies reduction is necessary to prevent a substantial lessening of competition. However, it should be emphasized that in all cases, even where one or more of the criteria for settlement are met, settlement is within the discretion of the Administrator.

The agency also concludes that the settlement process contemplated by section 508 of the Cost Savings Act was intended by Congress to take place apart from the formal adjudicative hearing, and therefore, not be subject to the requirements of sections 554, 555, 556, and 557 of the APA. This conclusion is based upon the language and structure of section 508.

Section 508(a)(2) provides that opportunity for a hearing on the record, or a formal hearing under the APA, is required before the Secretary can determine whether there has been a violation of an average fuel economy standard, or other regulation or order issued under title V which is subject to enforcement by the agency. However, once the Secretary has made that determination, the right to a hearing ends. If a violation is found, the Secretary is required to assess civil penalties as prescribed by the Cost Savings Act, subject to a later modification. The requirement of penalties and the amount of penalties are mandated by the Cost Savings Act, and are not matters for determination by any type of hearing, let alone a formal, trial-type, adjudicative hearing.

Moreover, the language of section 508(b)(3), which relates to modifica-

tion of civil penalties, clearly contemplates that such modifications are matters for the Secretary's discretion, not matters to be determined by a hearing, and that the exercise of that discretion is to take place after the fact of violation has been determined, and therefore, after the right to a formal hearing has expired. Section 508(d)(3) provides in relevant part:

"* * * The Secretary shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection, except that any civil penalty assessed for a violation of [an average fuel economy standard] may be so compromised, modified, or remitted only to the extent—

(A) necessary to prevent the insolvency or bankruptcy of such manufacturer,

(B) such manufacturer shows that the violation * * * resulted from an act of God, a strike, or a fire, or

(C) the Federal Trade Commission has certified that modifications of such penalty is necessary to prevent a substantial lessening of competition, * * *

Thus, modification of civil penalties is expressly discretionary, and can take place only after a penalty has been assessed. Both the timing and the discretionary nature of the modification of civil penalty process indicate that Congress intended the settlement process to be a process separate from the process of adjudication to establish a violation. Because settlement is not part of the hearing on the record, there is no need for formal adjudicative procedures.

Section 511.64 sets out the procedures by which manufacturers may seek settlement. The settlement process is commenced by the filing of a petition seeking settlement. This petition must be filed within 30 days after the issuance of a final order assessing a civil penalty. The petition should contain sufficient information to allow the Administrator to determine that at least one of the criteria set out in § 511.63 is met, and that settlement would be in the public interest. In addition to this general requirement, there are particular requirements for petitions claiming to fall within three enumerated settlement criteria.

Section 511.64 sets out the procedures by which manufacturers may seek settlement. The settlement process is commenced by the filing of a petition seeking settlement. This petition must be filed within 30 days after the issuance of a final order assessing a civil penalty. The petition should contain sufficient information to allow the Administrator to determine that at least one of the criteria set out in § 511.63 is met, and that settlement would be in the public interest. In addition to this general requirement, there are particular requirements for petitions claiming to fall within the three enumerated settlement criteria.

Petitions claiming that settlement is necessary to prevent bankruptcy or insolvency must submit corporate financial records, auditors reports, or other documentation in support of the assertion that the assessment of a civil penalty would cause bankruptcy or insolvency. Such petitions must also contain a payment schedule that would allow the manufacturer to pay the entire civil penalty over a period of time, without resulting in insolvency or an act of bankruptcy. Petitions asserting that the violation was the result of a fire, strike, or act of God, must specify the corrective and ameliorative steps taken to mitigate the effects of the fire, strike, or act of God.

In addition, each petition must include proposed conditions for settlement. The agency believes that unconditional settlement will seldom, if ever, be in the public interest. Conditions for settlement can include educational programs or research programs related to improving automotive fuel economy, or any activity related to fuel economy that will confer a public benefit.

Because the agency believes that public participation in this settlement process is clearly in the public interest, such participation is guaranteed by § 511.65. Notice of the receipt of a petition seeking settlement will be published in the FEDERAL REGISTER, and the petition and supporting documentation will be placed in a public docket, except that the Administrator is authorized to segregate from the public docket information in support of a petition for settlement which has been determined to be confidential business information under the agency's regulations on that subject (49 CFR Part 512). Any settlement proposal agreed to by the Administrator will be placed in the public docket, and there will be a 30-day period in which interested persons may comment on the agreement. No agreement shall be binding until the Administrator has considered all comments received.

Section 511.66 provides that an order of settlement be issued when the Administrator allows settlement under this subpart. This order of settlement must set out the terms of the settlement, and must contain a brief discussion of the factors underlying the Administrator's decision, including a discussion of significant comments received under § 511.65.

Subpart H—Appearances; Standards of Conduct. Sections 511.71 through 511.77 govern appearances and general standards of conduct. Section 511.78 relates to a particular type of prohibited conduct, prohibited *ex parte* contacts.

In general, in a proceeding under these rules, a party or participant may appear in person, or may be represent-

ed by counsel or some other representative. The Presiding Officer may require any individual acting in a representative capacity to show his authority to act in that capacity. Any person who appears at a proceeding must file a written notice of appearance. A person who has previously appeared in a proceeding may withdraw his appearance by filing a written notice of withdrawal of appearance.

An attorney-at-law may appear in a representative capacity in a proceeding. A person may also appear upon his own behalf, or upon the behalf of a corporation, partnership, or association of which that person is a partner, officer, or regular employee. Other persons who wish to appear may file applications with the Presiding Officer, requesting leave to appear, and setting out the applicant's qualifications. Such other persons may appear only if their applications are approved.

In general, persons appearing in a proceeding under these rules must act with integrity, in an ethical manner, and in good faith. The Presiding Officer may exclude from participation persons who do not meet these standards of conduct.

Section 207 of Title 18, United States Code, shall govern past Administrators or agency employees with respect to their activities in matters connected with their former duties and responsibilities. In brief, that statute forever prohibits a former agency official or employee from representing a party before the agency on a matter in which the former official or employee participated personally and substantially during the time of his employment with the agency, and prohibits for 1 year a former official or employee from representing a person on a matter subject to that former official or employee's responsibility during the time of his or her agency employment.

Section 511.78 governs *ex parte* communications in adjudications under these rules, and reflects the requirements of the Administrative Procedure Act. Section 511.78 is applicable from the time of the issuance of a complaint to the time of a final order of the Administrator deciding the case. It is not applicable to settlement procedures set out in Subpart G, which procedures are not part of an adjudication.

Section 511.78 prohibits all written communications relevant to the merits of a proceeding made to the decision maker, either the Presiding Officer or the Administrator, that are not served on all other parties, and all oral communications relevant to the merits of a proceeding to the decision maker, either the Presiding Officer or the Administrator, made without advance

notice to other parties, and opportunity for them to be present. *Ex parte* communications authorized by statute or these rules are excepted from the general prohibition. In the event a prohibited *ex parte* communication is made, the recipient of the prohibited communication shall forward a copy of the communication, or a memorandum regarding the communication, to the Executive Secretary. Such copies or memoranda will then be placed in a public file and served upon all parties. A person making a prohibited *ex parte* communication will be subject to an appropriate sanction, including exclusion from the proceedings, or an adverse ruling on the issue which is the subject of the communication.

Because this regulation is procedural, it is being issued as an interim final rule without notice.

The economic impacts of this regulation have been considered and the agency has determined the regulation is not significant within the meaning of Executive Order 12044. Further, the impacts are so minimal that a detailed evaluation of the regulation is not warranted. As noted above, this regulation does not set forth substantive requirements. It merely sets forth the procedural requirements for the hearings on the record specified by title V of the Motor Vehicle Information and Cost Savings Act.

It is the judgment of this agency, based on available information, that no significant environmental impact would result from execution of this action.

In consideration of the foregoing, Title 49, Code of Federal Regulations, is amended by adding a new Part 511, *Adjudicative Procedures* to read as set forth below.

Interested persons are invited to submit comments on this interim rule. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. In view of the number and breadth of issues in this notice, the agency has determined that the 15-page limitation in 49 CFR 553.21 (Nov. 14, 1977; 42 FR 58949) on rulemaking should not apply to this notice. Instead, a limit of 20 pages for comments on this notice is adopted. Additional supporting material may be submitted as appendices of attachments. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be consid-

ered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

The lawyer principally responsible for the development of this regulation is Nancy Eager.

Issued on October 2, 1978.

JOAN CLAYBROOK,
Administrator.

Title 49, Chapter V, of the Code of Federal Regulations is amended by adding Part 511 to read as follows:

PART 511—ADJUDICATIVE PROCEDURES

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings; Definitions

- Sec.
- 511.1 Scope of the rules.
- 511.2 Nature of adjudicative proceedings.
- 511.3 Definitions.

Subpart B—Pleadings; Form; Execution; Service of Documents

- 511.11 Commencement of proceedings.
- 511.12 Answer.
- 511.13 Amendments and supplemental pleadings.
- 511.14 Form and filing of documents.
- 511.15 Time.
- 511.16 Service.
- 511.17 Intervention.
- 511.18 Joinder of proceedings.

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Judgment; Settlement

- 511.21 Prehearing conferences.
- 511.22 Prehearing briefs.
- 511.23 Motions.
- 511.24 Interlocutory appeals.
- 511.25 Summary decision and order.
- 511.26 Settlement.

Subpart D—Discovery; Compulsory Process

- 511.31 General provisions governing discovery.
- 511.32 Written interrogatories to parties.
- 511.33 Production of documents and things.
- 511.34 Requests for admission.
- 511.35 Testimony upon oral examination.
- 511.36 Motions to compel discovery.
- 511.37 Sanctions for failure to comply with order.
- 511.38 Subpenas.
- 511.39 Orders requiring witnesses to testify or provide other information and granting immunity.

Subpart E—Hearings

- 511.41 General rules.
- 511.42 Powers and duties of presiding officer.
- 511.43 Evidence.
- 511.44 Expert witnesses.
- 511.45 *In camera* materials.

- 511.46 Proposed findings, conclusions, and order.
 511.47 Record.
 511.48 Official docket.
 511.49 Fees.

Support F—Decision.

- 511.51 Initial decision.
 511.52 Adoption of initial decision.
 511.53 Appeal from initial decision.
 511.54 Review of initial decision in absence of appeal.
 511.55 Final decision on appeal or review.
 511.56 Reconsideration.
 511.57 Effective date of order.

Support G—Settlement Procedure in Cases of Violation of Average Fuel Economy Standards

- 511.61 Purpose.
 511.62 Definitions.
 511.63 Criteria for settlement.
 511.64 Petitions for settlement; timing; contents.
 511.65 Public comment.
 511.66 Confidential business information.
 511.67 Settlement order.

Support H—Appearances; Standards of Conduct

- 511.71 Who may make appearances.
 511.72 Authority for representation.
 511.73 Written appearances.
 511.74 Attorneys.
 511.75 Persons not attorneys.
 511.76 Qualifications and standards of conduct.
 511.77 Restrictions as to former members and employees.
 511.78 Prohibited communications.

Appendix I—Final Prehearing Order.

AUTHORITY: Sec. 9, Pub. L. 89-670, 80 Stat. 981 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976.

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings, Definitions

§ 511.1 Scope of the rules.

This part establishes rules of practice and procedure for adjudicative proceedings conducted pursuant to section 508(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. Pub. L. 94-163, 89 Stat. 911, Sec. 2008(a)(2)), which are required by statute to be determined on the record after opportunity for a public hearing.

§ 511.2 Nature of adjudicative proceedings.

Adjudicative proceedings shall be conducted in accordance with title 5, United States Code, sections 551 through 559 and this part. It is the policy of the agency that adjudicative proceedings shall be conducted expeditiously and with due regard to the rights and interests of all persons affected, and to the public interest. Therefore, the presiding officer and all parties shall make every effort at each stage of a proceeding to avoid unnecessary delay.

§ 511.3 Definitions.

As used in this part:

(1) The term "application" means an *ex parte* request by a party for an order that may be granted or denied without opportunity for response by any other party.

(2) The term "NHTSA" means the National Highway Traffic Safety Administration.

(3) The term "Administrator" means the Administrator of the National Highway Traffic Safety Administration.

(4) The term "Complaint Counsel" means prosecuting counsel for the NHTSA.

(5) The term "motion" means a request by a party for a ruling or order that may be granted or denied only after opportunity for response by each affected party.

(6) The term "party" means the NHTSA, and any person named as a respondent or any intervenor in a proceeding governed by this part.

(7) The term "person" means any individual, partnership, corporation, association, public or private organization, or Federal, State or municipal governmental entity.

(8) The term "petition" means a written request, made by a person or a party and addressed to the Presiding Officer or the Administrator, that the addressee take some action.

(9) The term "Presiding Officer" means the person who conducts an adjudicative hearing under this part, who shall be an administrative law judge qualified under title 5, United States Code, section 3105 and assigned by the Chief Administrative Law Judge of the Civil Service Commission.

(10) The term "Respondent" means any person against whom a complaint has been issued.

(11) The term "Executive Secretary" means the Executive Secretary of the National Highway Traffic Safety Administration.

(12) The term "staff" means the staff of the National Highway Traffic Safety Administration.

Subpart B—Pleadings; Form; Execution; Service of Documents

§ 511.11 Commencement of proceedings.

(a) *Notice of institution of an enforcement proceeding.* An adjudicative proceeding under this part is commenced by the issuance of a complaint by the NHTSA.

(b) *Form and content of complaint.* The complaint shall be signed by the Complaint Counsel under seal of the NHTSA, and shall contain the following:

(1) Recital of the legal authority for instituting the proceeding, with specific designation of the statutory provisions involved in each allegation.

(2) Identification of each respondent.

(3) A clear and concise statement of the charges, sufficient to inform each respondent with reasonable definiteness of the factual basis of the allegations of violation. A list and summary of documentary evidence supporting the charges shall be attached.

(4) A statement of the civil penalty which the Complaint Counsel believes is in the public interest, or which is required by law.

(c) *Notice to the public.* Once issued, the complaint shall be immediately submitted to the FEDERAL REGISTER for publication. The notice in the FEDERAL REGISTER shall state that petitions to intervene as a party must be filed no later than the first prehearing conference.

§ 511.12 Answer.

(a) *Time for filing.* A respondent shall have twenty (20) days after service of a complaint within which to file an answer.

(b) *Content of answer.* An answer shall conform to the following:

(1) *Contested allegations.* An answer in which the allegations of a complaint are contested shall contain:

(i) Specific admission or denial of each allegation in the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, respondent shall so state. Such a statement shall have the effect of a denial. Denials shall fairly meet the substance of the allegations denied. Allegations not thus answered shall be deemed to have been admitted.

(ii) A concise statement of the factual and/or legal defenses to each allegation of the complaint.

(2) *Admitted allegations.* If the respondent admits or fails to deny any factual allegation, he or she shall be deemed to have waived a hearing as to such allegation.

(c) *Default.* Failure of the respondent to file an answer within the time provided, unless extended, shall be deemed to constitute a waiver of the right to appear and contest the allegations set forth in the complaint and to authorize the Presiding Officer to make such findings of fact, reasonable under the circumstances.

§ 511.13 Amendments and supplemental pleadings.

Whenever determination of a controversy on the merits will be facilitated thereby, the Presiding Officer upon motion, may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceeding or cause undue delay.

§ 511.14 Form and filing of documents.

(a) *Filing.* Except as otherwise provided, all documents submitted to the

Administrator or a Presiding Officer shall be addressed to and filed with the Executive Secretary. Documents may be filed in person or by mail and shall be deemed filed on the day of filing or mailing.

(b) *Caption.* Every document shall contain a caption setting forth the name of the action in connection with which it is filed, the docket number, and the title of the document.

(c) *Copies.* An original and nine (9) copies of all documents shall be filed. Documents may be reproduced by printing or any other process, provided that all copies filed are clear and legible.

(d) *Signature.* (1) The original of each document filed shall be signed by a representative of record for the party; or in the case of parties not represented, by the party; or by a partner, officer, or regular employee of any corporation, partnership, or association, who files an appearance on behalf of the party.

(2) The act of signing a document constitutes a representation by the signer that the signer has read it; that to the best of the signer's knowledge, information and belief, the statements made in it are true; and that it is not filed for purposes of delay.

(e) *Form.* (1) All documents shall be dated and shall contain the address and telephone number of the signatory.

(2) If printed, documents shall be on opaque, unglazed paper not more than seven (7) inches by ten (10) inches, nor less than six and one-eighth (6 $\frac{1}{8}$) inches by nine and one-quarter (9 $\frac{1}{4}$) inches.

(3) If typewritten, the impression shall be on only one side of the paper and shall be double spaced, except that quotations of more than three lines shall be single spaced and indented. The documents shall be on paper not less than eight (8) inches nor more than eight and one-half (8 $\frac{1}{2}$) inches by not less than ten and one-half (10 $\frac{1}{2}$) inches nor more than eleven (11) inches.

(4) The type size for both printed and typewritten documents shall not be less than standard elite or twelve (12) point type. The type shall be clear and adequately leaded.

(5) All documents shall be fastened at the top left corner. The left margin of each page shall be at least one and one-half (1 $\frac{1}{2}$) inches and the right margin at least one (1) inch.

§ 511.15 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the rules in this part, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be in-

cluded, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this part, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) *Additional Time After Service by Mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the document is served by mail, three (3) days shall be added to the prescribed period.

(c) *Extensions.* For good cause shown, the Presiding Officer may extend any time limit prescribed or allowed under this part or by order of the Administrator or the Presiding Officer, except those governing the filing of interlocutory appeals and appeals from Initial Decisions and those expressly requiring the Administrator's action. Except as otherwise provided by law, the Administrator, for good cause shown, may extend any time limit prescribed under this part, or by order of the Administrator or the Presiding Officer. A party or participant may petition the Presiding Officer or the Administrator, as appropriate, for an extension under this paragraph. Such a petition shall be filed prior to the occurrence of the time limit which is the subject of the petition.

§ 511.16 Service.

(a) *Mandatory service.* Every document filed with the Executive Secretary shall be served upon all parties and participants to a proceeding, i.e., Complaint Counsel, respondent(s), and party intervenors, and upon the Presiding Officer.

(b) *Service of complaint, ruling, order, decision, or subpoena.* Service of a complaint, ruling, order, decision, or subpoena may be effected as follows:

(1) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his or its residence or principal office or place of business; registered or certified; and mailed; or

(2) *By delivery to an individual.* A copy of the document may be delivered to the person to be served; or to a member of the partnership to be served; or to the president, secretary, or other executive officer, or a direc-

tor of the corporation or unincorporated association to be served; or to an agent authorized by appointment or by law to receive service; or

(3) *By delivery to an address.* A copy of the document may be left at the principal office or place of business of the person, partnership, corporation, unincorporated association, or authorized agent with an officer, a managing or general agent; or it may be left with a person of suitable age and discretion residing therein, at the residence of the person or of a member of the partnership or of an executive officer, director, or agent of the corporation or unincorporated association to be served.

(c) *Service of documents with prescribed response periods.* When service of a document starts the running of a prescribed period of time for the submission of a responsive document or the occurrence of an event, the document shall be served as provided in paragraph (b) of this section.

(d) *Service of other documents.* All documents other than those specified in paragraph (c) of this section may be served as provided in paragraph (b) of this section, or by ordinary first-class mail, properly addressed, postage prepaid.

(e) *Service on a representative.* When a party has appeared by an attorney or other representative, service upon that attorney or other representative shall constitute service on the party.

(f) *Certificate of service.* The original of every document filed with the agency and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing, postage prepaid (or by delivering in person) a copy to each such party.

Dated at _____, this _____ day of _____, 19____.

(Signature) _____
For _____

(g) *Date of Service.* The date of service of a document shall be the date on which the document is deposited in the United States mail or is delivered in person.

§ 511.17 Intervention.

(a) *Participation as an intervenor.* Any interested person who desires to participate as a party in a proceeding commenced pursuant to § 511.11 shall file a written petition for leave to intervene with the Executive Secretary and shall serve a copy of such petition on each party to the proceeding. A pe-

tition shall be filed not later than the opening of the prehearing conference. Nontimely filings will not be entertained absent a determination by the Presiding Officer that the petitioner has made a substantial showing of good cause for failure to file on time. A petition shall (1) set forth the interest of the petitioner in the proceeding, (2) state how the petitioner's interest may be affected by the results of the proceeding, and (3) state any other contentions of the petitioner, including the facts and reasons why the petitioner should be permitted to intervene as a party, with particular reference to the factors set forth in paragraph (d) of this section. Any person who files a petition for leave to intervene pursuant to this paragraph and whose petition is granted by the Presiding Officer shall be known as an "intervenor" and as such shall have the full range of litigating rights afforded to any other party.

(b) *Participation by a person not an intervenor.* Any person interested in a proceeding commenced pursuant to § 511.11 who does not elect to petition for leave to intervene in the proceeding as an intervenor pursuant to paragraph (a) of this section, but who desires to participate in the proceeding as a nonparty, shall file with the Executive Secretary a notice of intention to participate in the proceeding and shall serve a copy of such notice on each party to the proceeding. A notice of intention to participate shall be filed not later than the commencement of the hearing. Untimely filings will not be accepted absent a determination by the Presiding Officer that the person making the request has made a substantial showing of good cause for failure to file on time. Any person who files a notice to participate in the proceeding as a nonparty shall be known as a "participant" and shall have the right to make a written or oral statement of position, file proposed findings of fact, conclusions of law and a post hearing brief with the Presiding Officer, and file an appellate brief if an appeal is taken or review is ordered in accordance with §§ 511.53-511.54.

(c) *Response to petition to intervene.* Any party to a proceeding may file a response to a petition for leave to intervene after the petition is filed with the Executive Secretary, with particular reference to the factors set forth in paragraph (d) of this section. A response shall be filed not later than the commencement of the hearing.

(d) *Ruling by Presiding Officer on petition to intervene.* In ruling on a petition for leave to intervene as an intervenor, the Presiding Officer shall consider the following factors, among other things:

(1) The nature and extent of the petitioner's interest in ensuring compliance with regulations issued under Title V of the Motor Vehicle Information and Cost Savings Act,

(2) The nature and extent of the petitioner's property, financial or other substantial interest in the proceeding;

(3) Whether the petitioner would be aggrieved by any order which may be entered in the proceeding;

(4) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;

(5) The extent to which the petitioner's interest will be represented by existing parties;

(6) The extent to which the petitioner's participation may broaden the issues or delay the proceeding; and

(7) The extent to which the petitioner's interest can be protected by other available means.

If the Presiding Officer determines that a petitioner does not meet the requirements to be an intervenor, the Presiding Officer shall view such petition to intervene as if it had been timely filed as a notice to participate in the proceeding as a participant pursuant to paragraph (b) of this section.

(e) *Designation of single representative.* If the Presiding Officer, in the course of a hearing held under this part, determines that a petitioner pursuant to paragraph (a) of this section is a member of a class of prospective intervenors who share an identity of interest, the Presiding Officer may limit such intervention through designation of a single representative of such a class.

§ 511.18 Joinder of proceedings.

Two or more matters which have been scheduled for adjudicative proceedings, and which involve similar issues, may be consolidated for the purpose of hearing, appeal or the Administrator's review. A motion for consolidation for the purpose of hearing may be filed by any party to such proceedings not later than thirty (30) days prior to the hearing. A motion for consolidation for the purpose of appeal may be filed by any party to such proceedings within 10 days after issuance of the Initial Decision. A motion to consolidate shall be served upon all parties to all proceedings whose joinder is contemplated. The proceedings may be consolidated to such extent and upon such terms as may be deemed proper. Such consolidation may also be ordered upon the initiative of the Presiding Officer or the Administrator, as appropriate.

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Judgment; Settlement

§ 511.21 Prehearing conferences.

(a) *When held.* (1) A prehearing conference shall be held in person or by conference telephone call, except in unusual circumstances, approximately fifty (50) days after publication in the FEDERAL REGISTER of the complaint, upon ten (10) days notice to all parties and participants, to consider any or all the following:

(i) Petitions for leave to intervene;

(ii) Motions for consolidation of proceedings;

(iii) Identification, simplification and clarification of the issues;

(iv) Necessity or desirability of amending the pleadings;

(v) Stipulations and admissions of fact and of the content and authenticity of documents;

(vi) Oppositions to notices of oral examination;

(vii) Motions for protective orders to limit or modify discovery;

(viii) Issuance of subpoenas to compel the appearance of witnesses and the production of documents;

(ix) Limitation of the number of witnesses, particularly the avoidance of duplicate expert witnesses; and

(x) Matters of which official notice will be taken and matters which may be resolved by reliance upon findings of other Federal agencies.

§ 511.22 Prehearing briefs.

Not later than ten (10) days prior to the hearing, the parties shall, except when ordered otherwise by the Presiding Officer in unusual circumstances, simultaneously serve and file prehearing briefs, which shall set forth (a) a statement of the facts expected to be proved, and of the anticipated order of proof; (b) a statement of the issues and the legal argument in support of the party's contentions with respect to each issue; and (c) a table of authorities with a designation by asterisk of the principal authorities relied upon.

§ 511.23 Motions.

(a) *Presentation and disposition.* During the time a proceeding is before a Presiding Officer, all motions, whether oral or written, except those filed under § 511.42(e), shall be addressed to the Presiding Officer, who shall rule upon them promptly after affording an opportunity for response.

(b) *Written motions.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor. If a motion is supported by memoranda, affidavits or other documents, they shall be served and filed with the motion. All motions shall contain a proposed order setting

forth the relief sought. All written motions shall be filed with the Executive Secretary and served on all parties, and all motions addressed to the Administrator shall be in writing.

(c) *Responses.* Within ten (10) days after service of any written motion or petition or within such longer or shorter time as may be designated by these Rules or by the Presiding Officer or the Administrator, the opposing party or parties shall file a written response to such motion. Where a motion would affect only a single party, or an identifiable group of parties, the Presiding Officer or Administrator may limit the response to the motion to the affected party or parties. Failure to respond to a written motion may, in the discretion of the Presiding Officer be deemed as consent to the granting of the relief sought in the motion. The moving party shall have no right to reply, except as permitted by the Presiding Officer or the Administrator.

(d) *Rulings on motions for dismissal.* When a motion to dismiss a complaint or motion for other relief is granted with the result that the proceeding before the Presiding Officer is terminated, the Presiding Officer shall issue an Initial Decision and Order thereon in accordance with the provisions of § 511.51. If such a motion is granted as to all issues alleged in the complaint in regard to some, but not all, the respondents, or is granted as to any part of the allegations in regard to any or all the respondents, the Presiding Officer shall enter an order on the record and consider the remaining issues in the Initial Decision. The Presiding Officer may elect to defer ruling on a motion to dismiss until the close of the case.

§ 511.24 Interlocutory appeals.

(a) *General.* Rulings of the Presiding Officer may not be appealed to the Administrator prior to the Initial Decision, except as provided herein.

(b) *Exceptions—(1) Interlocutory appeals to Administrator.* The Administrator may, in his or her discretion, entertain interlocutory appeals where a ruling of the Presiding Officer:

- (i) Requires the production of records claimed to be confidential;
- (ii) Requires the testimony of a supervisory official of the agency other than one especially cognizant of the facts of the matter in adjudication.
- (iii) Excludes an attorney from participation in a proceeding pursuant to § 511.42(b);
- (iv) Denies or limits a petition to intervene pursuant to the provisions of § 511.17.

(2) *Procedures for interlocutory appeals.* Within ten (10) days of issuance of a ruling, any party may petition the Administrator to entertain an interlocutory appeal on a ruling in the categories enumerated above. The petition shall not exceed fifteen (15) pages. Any other party may file a response to the petition with ten (10) day of its service. The response shall not exceed fifteen (15) pages. The Administrator shall thereupon act upon the petition, or the Administrator shall request such further briefing or oral presentation as he may deem necessary.

(3) *Interlocutory appeals from all other rulings—(i) Grounds.* Interlocutory appeals from all other rulings by the Presiding Officer may proceed only upon motion to the Presiding Officer and a determination by the Presiding Officer in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation, or that subsequent review will be an inadequate remedy.

(ii) *Form.* If the Presiding Officer determines, in accordance with paragraph (b)(3)(i) of this section that an interlocutory appeal may proceed a petition for interlocutory appeal may be filed with and acted upon by the Administrator in accordance with paragraph (b)(2) of this section.

(c) *Proceedings not stayed.* A petition for interlocutory appeal under this part shall not stay the proceedings before the Presiding Officer unless the Presiding Officer shall so order, except that a ruling of the Presiding Officer requiring the production of records claimed to be confidential shall be automatically stayed for a period of 10 days following the issuance of such ruling to allow an affected party the opportunity to file a petition for an interlocutory appeal pursuant to § 511.24(b)(2). The filing of such a petition shall automatically extend the stay of such a ruling pending the Administrator's action on such petition.

§ 511.25 Summary decision and order.

(a) *Motion.* Any party may move, with a supporting memorandum, for a Summary Decision and Order in its favor upon all or any of the issues in controversy. Complaint Counsel may so move at any time after thirty (30) days following issuance of a complaint, and any other party may so move at any time after issuance of a complaint. Any such motion by any party shall be filed at least twenty (20) days before the date fixed for the adjudicatory hearing.

(b) *Response to motion.* Any other party may, within ten (10) days after service of the motion, file a response thereto with a supporting memorandum.

(c) *Grounds.* A Summary Decision and Order shall be granted if the pleadings and any testimony upon oral examination, answers to interrogatories, admissions, and/or affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a Summary Decision and Order as a matter of law.

(d) *Legal effect.* A Summary Decision and Order upon all the issues being adjudicated shall constitute the Initial Decision of the Presiding Officer, and may be appealed to the Administrator in accordance with § 511.53. A Summary Decision, interlocutory in character, may be rendered on fewer than all issues and may not be appealed prior to issuance of the Initial Decision, except in accordance with § 511.24.

(e) *Case not fully adjudicated on motion.* A Summary Decision and Order that does not dispose of the whole case shall include a statement of those material facts as to which there is no substantial controversy, and of those material facts that are actually and in good faith controverted. The Summary Order shall direct such further proceedings as are just.

§ 511.26 Settlement.

(a) *Applicability.* This section applies only to cases of alleged violations of section 507(3) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. Section 2007(3)). Settlement in other cases may be made only in accordance with Subpart G of this part.

(b) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer.

(c) *Form.* Offers of settlement shall be in the form of a consent agreement and order, shall be signed by the party submitting the offer or his representative, and may be signed by any other party. Each offer of settlement shall be accompanied by a motion to transmit to the Administrator the proposed agreement and order, outlining the substantive provisions of the agreement, and the reasons why it should be accepted.

(d) *Contents.* The proposed consent agreement and order which constitute the offer of settlement shall contain the following:

- (1) An admission of all jurisdictional facts;
- (2) An express waiver of further procedural steps, and of all rights to seek judicial review or otherwise to contest the validity of the order;
- (3) A description of the alleged non-compliance, or violation.
- (4) Provisions to the effect that the allegations of the complaint are resolved by the proposed consent agreement and order;

(5) A listing of the acts or practices from which the respondent shall refrain;

(6) A detailed statement of the corrective action(s) which the respondent shall execute and the civil penalty, if any, that respondent shall pay.

(e) *Transmittal.* The Presiding Officer may transmit to the Administrator for decision all offers of settlement and accompanying memoranda that meet the requirements enumerated in paragraph (d) of this section. The Presiding Officer may, but need not, recommend acceptance or rejection of such offers. Any party or participant, may object to a proposed consent agreement by filing a motion and supporting memorandum with the Administrator.

(f) *Stay of proceedings.* When an offer of settlement has been agreed to by the parties and has been transmitted to the Administrator, the proceedings shall be stayed until the Administrator has ruled on the offer. When an offer of settlement has been made and transmitted to the Administrator but has not been agreed to by all parties, the proceedings shall not be stayed pending the Administrator's decision on the offer.

(g) *Administrator's ruling.* The Administrator will rule upon all transmitted offers of settlement. If the Administrator accepts the offer, the Administrator shall issue an appropriate order. The order shall become effective upon issuance.

(h) *Rejection.* If the Administrator rejects an offer of settlement, the Executive Secretary shall give written notice of that decision to the parties and the Presiding Officer. Promptly thereafter, the Presiding Officer shall issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

(i) *Effect of rejected offer.* Rejected offers of settlement shall not be admissible in evidence over the objection of any signatory, nor shall the fact of the proposal of the offer be admissible in evidence.

Subpart D—Discovery; Compulsory Process

§ 511.31 General provisions governing discovery.

(a) *Applicability.* The discovery rules established in this subpart are applicable to the discovery of information among the parties to a proceeding. Parties seeking information from persons not parties may do so by subpoena in accordance with § 511.38.

(b) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: (1) Written interrogatories; (2) requests for production

of documents or things; (3) requests for admissions; or (4) testimony upon oral examination. Unless the Presiding Officer otherwise orders under paragraph (d) of this section, the frequency of use of these methods is not limited.

(c) *Scope of discovery.* The scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the proceedings, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Exception.* Parties may not obtain discovery of documents which accompanied the staff's recommendation as to whether a complaint should issue.

(3) *Hearing preparation; Experts.* A party may obtain discovery of facts known and opinions held by experts, regardless of whether they are acquired or developed in anticipation of or for litigation. Such discovery may be had by any of the methods provided in paragraph (b) of this section.

(d) *Protective orders.* Upon motion by a party, and for good cause shown, the Presiding Officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, competitive disadvantage, oppression or undue burden or expense, including one or more of the following: (1) That the discovery shall not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and/or place; (3) that the discovery shall be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters shall not be inquired into, or that the scope of discovery shall be limited to certain matters; (5) that discovery shall be conducted with no one present except persons designated by the Presiding Officer; (6) that a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way or only to designated parties; and (7) that responses to discovery shall be placed in camera in accordance with § 511.45.

If a motion for a protective order is denied in whole or in part, the Presiding Officer may, on such terms or conditions as are just, order that any party provide or permit discovery.

(e) *Sequence and timing of discovery.* Discovery may commence at any time after filing of the answer. Unless

otherwise provided in these Rules or by order of the Presiding Officer, methods of discovery may be used in any sequence and the fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(f) *Supplementation of responses.* A party who has responded to a request for discovery shall supplement the response with information thereafter acquired.

(g) *Completion of discovery.* All discovery shall be completed as soon as practical but in no case longer than one hundred fifty (150) days after issuance of a complaint unless otherwise ordered by the Presiding Officer in exceptional circumstances and for good cause shown. All discovery shall be served by a date which affords the party from whom discovery is sought the full response period provided by these Rules.

(h) *Service and filing of discovery.* All discovery requests and written responses, and all notices of the taking of testimony, shall be filed with the Executive Secretary and served on all parties and the Presiding Officer.

(i) *Control of discovery.* The use of these discovery procedures is subject to the control of the Presiding Officer, who may issue any just and appropriate order for the purpose of ensuring their timely completion.

§ 511.32 Written interrogatories to parties.

(a) *Availability; procedures for use.* Any party may serve upon any other party written interrogatories to be answered 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. Interrogatories may, without leave of the Presiding Officer, be served upon any party after filing of the answer.

(b) *Procedures for response.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the persons making them, and the objections signed by the representative making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after service of the interrogatories. The Presiding Officer may allow a shorter or longer time for response. The party submitting the interrogatories may move for an order under § 511.36 with respect to any objection to or other failure to answer an interrogatory.

(c) *Scope of interrogatories.* Interrogatories may relate to any matters

which can be inquired into under § 511.31(c)(1), and the answers may be used to the extent permitted under this part. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory would involve an opinion or contention that relates to fact or to the application of law to fact, but the Presiding Officer may order that such an interrogatory need not be answered until a later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts, or summaries.

§ 511.33 Production of documents and things.

(a) *Scope.* Any party may serve upon any other party a request (1) to produce and permit the party making the request, or someone acting on behalf of that party, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and any other data-compilation from which information can be obtained, translated, if necessary, by the party in possession into reasonably usable form), or (2) to inspect and copy, test or sample tangible things which constitute or contain matters within the scope of § 511.31(c)(1) and which are in the possession, custody or control of the party upon whom the request is served.

(b) *Procedure for request.* The request may be served at any time after the filing of the answer without leave of the Presiding Officer. The request shall set forth the items to be inspected either by individual item or by category, and shall describe each item or category with reasonable particularity. The request shall specify a reasonable time, place and manner for making the inspection and performing the related acts.

(c) *Procedure for response.* The party upon whom the request is served shall serve a written response within twenty (20) days after service of the request. The Presiding Officer may allow a shorter or longer time for response.

The response shall state, with respect to each item or category requested, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an item or category, that part shall be so specified. The party submitting the request may move for an order under § 511.36 with respect to any objection to or other failure to respond to the request or any part thereof, or to any failure to permit inspection as requested.

§ 511.34 Requests for admission.

(a) *Procedure for request.* A party may serve upon any other party a written request for the admission, for the purposes of the pending proceeding only, of the truth of any matters within the scope of § 511.31(c)(1) set forth in the request that relate to statements or opinions of fact or if the application of law to fact, including the genuineness of documents described in the request. Copies of documents shall be served with the request unless they have been, or are otherwise, furnished or made available for inspection and copying. The request may, without leave of the Presiding Officer, be served upon any party after filing of the answer. Each matter as to which an admission is requested shall be separately set forth.

(b) *Procedure for response.* The matter as to which an admission is requested is deemed admitted unless within thirty (30) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representatives. If objection is made, the reasons therefore shall be stated.

The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When good faith requires that a party qualify an answer or deny only a part of the matter as to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the party states that he or she has made reasonable inquiry and that the information known or readily available to him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter as to which an admission has been requested presents a

genuine issue for hearing may not, on that ground alone, object to the request but may deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested an admission may move to determine the sufficiency of the answer or objection thereto in accordance with § 511.36. If the Presiding Officer determines that an answer does not comply with the requirements of this section, he or she may order that the matter be deemed admitted or that an amended answer be served.

(c) *Effect of admission.* Any matter admitted under this section is conclusively established unless the Presiding Officer on motion permits withdrawal or amendment of such admission. The Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party that obtained the admission fails to satisfy the Presiding Officer that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits.

§ 511.35 Testimony upon oral examination.

(a) *When testimony may be taken.* At any time after the first prehearing conference, upon leave of the Presiding Officer and under such terms and conditions as the Presiding Officer may prescribe, any party may take the testimony of any other party, including the agents, employees, consultants or prospective witnesses of that party at a place convenient to the witness. The attendance of witnesses and the production of documents and things at the examination may be compelled by subpoena as provided in § 511.38.

(b) *Notice of oral examination.—(1) Examination of a party.* A party desiring to examine another party to the proceeding shall, after obtaining leave from the Presiding Officer, serve written notice of the examination on all other parties and the Presiding Officer at least ten (10) days before the date of the examination. The notice shall state (i) the time and place for making the examination; (ii) 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; and (iii) the subject matter of the expected testimony. If a subpoena *duces tecum* is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice of examination.

(2) *Examination of a nonparty.* A party desiring to examine a person who is not a party to the proceeding shall make application for a subpoena, in accordance with § 511.38, to compel the attendance, testimony and/or pro-

duction of documents by such person who is not a party. The party desiring such examination shall serve written notice of the examination on all other parties to the proceeding, after issuance of the subpoena by the Presiding Officer of a designated alternate.

(3) *Opposition to notice.* A person served with a notice of examination may, within 3 days of the date of service, oppose, in writing, the examination. The Presiding Officer shall rule on the notice and any opposition and may order the making of all noticed examinations, upon a showing of good cause therefor. The Presiding Officer may, for good cause shown, enlarge or shorten the time for the making of an examination.

(c) *Persons before whom examinations may be made.* Examinations may be taken before any person authorized to administer oaths by the laws of the United States or of the place where the examination is held. No examination shall be taken before a person who is a relative or employee or attorney or representative of any party, or who is a relative or employee of such attorney or representative, or who is financially interested in the action.

(d) *Procedure.*—(1) *Examination.* Each witness shall be duly sworn, and all testimony shall be duly recorded. All parties or their representatives may be present and participate in the examination. Examination and cross-examination of witnesses may proceed as permitted at the hearing. Questions objected to shall be answered subject to the objections. Objections shall be in short form, and shall state the grounds relied upon. The questions propounded and the answers thereto, together with all objections made, shall be recorded by the official reporter before whom the examination is made. The original or a verified copy of all documents and things produced for inspection during the examination of the witness shall, upon a request of any party present, be marked for identification and annexed to the record of the examination.

(2) *Motion to terminate or limit examination.* At any time during the examination, upon motion of any party or of the witness, and upon showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the witness or party, the Presiding Officer may, upon motion, order the party conducting the examination to terminate the examination, or may limit the scope and manner of the examination as provided in § 511.31(d).

(3) *Participation by parties not present.* In lieu of attending an examination, any party may serve written questions in a sealed envelope on the party conducting the examination.

That party shall transmit the envelope to the official reporter, who shall unseal it and propound the questions contained therein to the witness.

(e) *Transcription and filing of testimony.*—(1) *Transcription.* Upon request by any party, the testimony recorded at an examination shall be transcribed. When the testimony is fully transcribed, the transcript shall be submitted to the witness for examination and signing, and shall be read to or by the witness, unless such examination and signature are waived by the witness. Any change in form or substance which the witness desires to make shall be entered upon the transcript of the official reporter with a statement of the reasons given by the witness for making them. The transcript shall then be signed by the witness, unless the parties by stipulation waive the signing, or the witness is ill or cannot be found or refuses to sign. If the transcript is not signed by the witness within thirty (30) days of its submission to him, the official reporter shall sign it and state on the record the fact of the waiver of signature or of the illness or absence of the witness or the fact of the refusal to sign, together with a statement of the reasons therefor. The testimony may then be used as fully as though signed, in accordance with paragraph (i) of this section.

(2) *Certification and filing.* The official reporter shall certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given and corrections made by the witness. The official reporter shall then seal the transcript in an envelope endorsed with the title and docket number of the action and marked "Testimony of [name of witness]" and shall promptly file the transcript with the Executive Secretary. The Executive Secretary shall notify all parties of the filing of the transcript and shall furnish a copy of the transcript to any party or to the witness upon payment of reasonable charges therefor.

(f) *Costs of examination.* The party who notices the examination shall pay for the examination. The party who requests transcription of the examination shall pay for the transcription.

(g) *Failure to attend or to serve subpoena; expenses.* If a party who notices an examination fails to attend and proceed therewith and another party attends in person or by a representative pursuant to the notice, the Presiding Officer may order the party who gave the notice to pay the attending party the reasonable expenses incurred. If a party who notices an examination fails to serve a subpoena upon the witness and as a result the witness does not attend, and if another party attends in person or by a

representative because that party expects the examination to be made, the Presiding Officer may order the party who gave notice to pay the attending party the reasonable expenses incurred.

(h) *Examination to preserve testimony.*—(1) *When available.* By leave of the Presiding Officer, a party may examine his or her witness for the purpose of perpetuating the testimony of that witness. A party who wishes to conduct such an examination shall obtain prior leave of the Presiding Officer by filing a motion. The motion shall include a showing of substantial reason to believe that the testimony could not be presented at the hearing. If the Presiding Officer is satisfied that the perpetuation of the testimony may prevent a failure of justice or is otherwise reasonably necessary, he or she shall order that the deposition be taken.

(2) *Procedure.* Notice of an examination to preserve testimony shall be served at least fifteen (15) days prior to the examination. The examination shall be taken in accordance with the provisions of paragraph (d) of this section. Any examination taken to preserve testimony shall be fully transcribed and filed in accordance with paragraph (e) of this section.

(i) *Use of testimony obtained under this section.* At the hearing or upon a motion or interlocutory proceeding, any part or all of testimony obtained at an examination may be used against any party or participant for any purpose, in the discretion of the Presiding Officer. If only part of the testimony is offered in evidence by a party, any other party may move to introduce any other part of the testimony.

§ 511.36 Motions to compel discovery.

If a party fails to respond to discovery, in whole or in part, the party seeking discovery may move within twenty (20) days for an order compelling an answer, or compelling inspection or production of documents, or otherwise compelling discovery. For purposes of this subsection, an evasive or incomplete response is to be treated as a failure to respond. If the motion is granted, the Presiding Officer shall issue an order compelling discovery. If the motion is denied in whole or in part, the Presiding Officer may make such protective order as it would have been empowered to make on a motion pursuant to § 511.31(d). When making oral examinations, the discovering party shall continue the examination to the extent possible with respect to other areas of inquiry before moving to compel discovery.

§ 511.37 Sanctions for failure to comply with order.

If a party fails to obey an order to provide or permit discovery, the Presiding Officer may take such action as is just, including but not limited to the following:

- (1) Infer that the admission, testimony, document of other evidence would have been adverse to the party;
 - (2) Order that for the purposes of the proceeding, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;
 - (3) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon the documents or other evidence withheld;
 - (4) Order that the party withholding discovery not introduce into evidence, or otherwise use at the hearing, information obtained in discovery;
 - (5) Order that the party withholding discovery not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony documents, or other evidence would have shown;
 - (6) Order that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order was issued, be stricken, or that decision on the pleadings be rendered against the party, or both;
 - (7) Exclude the party or representative from proceedings, in accordance with § 511.42(b).
- Any such action may be taken by order at any point in the proceedings.

§ 511.38 Subpenas.

- (a) *Availability.* A subpoena shall be addressed to any party or any person not a party for the purpose of compelling attendance, testimony and production of documents at a hearing or oral examination.
- (b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the Executive Secretary or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents, or other materials or data-compilations to be produced.
- (c) *How obtained.*—(1) *Content of application.* An application for the issuance of a subpoena stating reasons shall be submitted in triplicate to the Presiding Officer.
- (2) *Procedure for application.* The original and two copies of the subpoena, marked "original," "duplicate" and "triplicate," shall accompany the

application. The Presiding Officer shall rule upon an application for a subpoena *ex parte*, by issuing the subpoena or by issuing an order denying the application.

(d) *Issuance of a subpoena.* The Presiding Officer shall issue a subpoena by signing and dating, or ordering the Executive Secretary to sign and date, each copy in the lower right-hand corner of the document. The "duplicate" and "triplicate" copies of the subpoena shall be transmitted to the applicant for service in accordance with these Rules; the "original" copy shall be retained by or be forwarded to the Executive Secretary for retention in the docket of the proceeding.

(e) *Service of a subpoena.* A subpoena may be served in person or by certified mail, return receipt requested, as provided in § 511.16(b). Service shall be made by delivery of the signed "duplicate" copy to the person named therein.

(f) *Return of service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time, and manner of service. If service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The "triplicate" of the subpoena, bearing or accompanied by the return of service, shall be returned forthwith to the Executive Secretary after service has been completed.

(g) *Motion to quash or limit subpoena.* Within five (5) days of receipt of a subpoena, the person against whom it is directed may file with the Presiding Officer a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be modified or limited in scope. Any such motion shall be answered within five (5) days of service, and shall be ruled on immediately thereafter. The order shall specify the date, if any, for compliance with the specifications of the subpoena.

(h) *Consequences of failure to comply.* In the event of failure to comply with a subpoena, the Presiding Officer may take any of the actions enumerated in § 511.37 or may order any other appropriate relief to compensate for the withheld testimony, documents, or other materials. If in the opinion of the Presiding Officer such relief is insufficient, the Presiding Officer shall certify to the Administrator a request for judicial enforcement of the subpoena.

§ 511.39 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) A party who desires the issuance of an order requiring a witness to testify or provide other information upon

being granted immunity from prosecution under title 18, United States Code, section 6002, may make a motion to that effect. The motion shall be made and ruled on in accordance with § 511.22, and shall include a showing:

- (1) That the testimony or other information sought from a witness or prospective witness may be necessary to the public interest; and
 - (2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of that individual's privilege against self-incrimination.
- (b) If the Presiding Officer determines that the witness' testimony appears necessary and that the privilege against self-incrimination may be invoked, he or she may certify to the Administrator a request that he or she obtain the approval of the Attorney General of the United States for the issuance of an order granting immunity.
- (c) Upon application to and approval of the Attorney General of the United States, and after the witness has invoked the privilege against self-incrimination, the Presiding Officer shall issue the order granting immunity unless he or she determines that the privilege was improperly invoked.
- (d) Failure of a witness to testify after a grant of immunity or after a denial of the issuance of an order granting immunity shall result in the imposition of appropriate sanctions as provided in § 511.37.

Subpart E—Hearings

§ 511.41 General rules.

- (a) *Public hearings.* All hearings pursuant to this Part shall be public unless otherwise ordered by the Presiding Officer.
- (b) *Expedition.* Hearings shall proceed with all reasonable speed, and insofar as practicable and with due regard to the convenience of the parties and shall continue without suspension until concluded, except in unusual circumstances.
- (c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the rights to present evidence, to conduct such cross-examination as may be necessary in the judgment of the Presiding Officer for a full and complete disclosure of the facts, and to be heard by objection, motion, brief, and argument.
- (d) *Rights of participants.* Every participant shall have the right to make a written or oral statement of position, file proposed findings of fact, conclusions of law and a posthearing brief, in accordance with § 511.17(b).
- (e) *Rights of witnesses.* Any person compelled to testify in a proceeding in

response to a subpoena may be accompanied, represented, and advised by counsel or other representative, and may obtain a transcript of his or her testimony at no cost.

§ 511.42 Powers and duties of Presiding Officer.

(a) *General.* A Presiding Officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He or she shall have all powers necessary to that end, including the following powers:

- (1) To administer oaths and affirmations;
- (2) To compel discovery and to impose appropriate sanctions for failure to make discovery;
- (3) To issue subpoenas;
- (4) To rule upon offers of proof and receive relevant and probative evidence;
- (5) To regulate the course of the hearings and the conduct of the parties and their representatives therein;
- (6) To hold conferences for simplification of the issues, settlement of the proceedings, or any other proper purposes;
- (7) To consider and rule, orally or in writing, upon all procedural and other motions appropriate in an adjudicative proceeding;
- (8) To issue initial decisions, rulings, and orders, as appropriate;
- (9) To certify questions to the Administrator for determination; and
- (10) To take any action authorized in this Part or in conformance with the provisions of title 5, United States Code, sections 551 through 559.

(b) *Exclusion of parties by Presiding Officer.* A Presiding Officer shall have the authority, for good cause stated on the record, to exclude from participation in a proceeding any party, participant, and/or representative who shall violate requirements of § 511.76. Any party, participant and/or representative so excluded may appeal to the Administrator in accordance with the provisions of § 511.23. If the representative of a party or participant is excluded, the hearing shall be suspended for a reasonable time so that the party or participant may obtain another representative.

(c) *Substitution of Presiding Officer.* In the event of the substitution of a new Presiding Officer for the one originally designated, any motion predicated upon such substitution shall be made within five (5) days of the substitution.

(d) *Interference.* In the performance of adjudicative functions, a Presiding Officer shall not be responsible to or subject to the supervision or direction of the Administrator or of any officer,

employee, or agent engaged in the performance of investigative or prosecuting functions for NHTSA. All directions by the Administrator to a Presiding Officer concerning any adjudicative proceeding shall appear on and be made a part of the record.

(e) *Disqualification of Presiding Officer.* (1) When a Presiding Officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw by notice on the record and shall notify the Chief Administrative Law Judge and the Executive Secretary of the withdrawal.

(2) Whenever, for any reason, any party shall deem the Presiding Officer to be disqualified to preside, or to continue to preside, in a particular proceeding, that party may file with the Executive Secretary a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s) shall be served by the Executive Secretary on the Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days from service to reply in writing. Such motion shall not stay the proceeding unless otherwise ordered by the Presiding Officer or the Administrator. If the Presiding Officer does not disqualify himself or herself, the Administrator will determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose, and shall in the event of disqualification take appropriate action, by assigning another Presiding Officer or requesting loan of another Administrative Law Judge through the U.S. Civil Service Commission.

§ 511.43 Evidence.

(a) *Applicability of Federal Rules of Evidence.* The Federal Rules of Evidence shall apply to proceedings held under this part only as a general guide. The Presiding Officer may admit any relevant and probative evidence.

(b) *Burden of proof.* (1) Complaint counsel shall have the burden of sustaining the allegations of any complaint.

(2) Any party who is the proponent of a legal and/or factual proposition shall have the burden of sustaining the proposition.

(c) *Presumptions.* A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the hearing upon the party on whom it was originally cast.

(d) *Admissibility.* All relevant and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence.

(e) *Official notice.*—(1) *Definition.* Official notice means use by the Presiding Officer of extra-record facts and legal conclusions drawn from those facts. An officially noticed fact or legal conclusion must be one not subject to reasonable dispute in that it is either (i) generally known within the jurisdiction of the Presiding Officer or (ii) known by the Presiding Officer in areas of his or her expertise; or (iii) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(2) *Method of taking official notice.* The Presiding Officer may at any time take official notice upon motion of any party or upon its own initiative. The record shall reflect the facts and conclusions which have been officially noticed.

(3) *Opportunity to challenge.* Any party may upon application in writing rebut officially noticed facts and conclusions by supplementing the record. The Presiding Officer shall determine the permissible extent of this challenge; that is, whether to limit the party to presentation of written materials, whether to allow presentation of testimony, whether to allow cross-examination, or whether to allow oral argument. The Presiding Officer shall grant or deny the application on the record.

(f) *Objections and exceptions.* Objections to evidence shall be timely interposed, shall appear on the record, and shall contain the grounds upon which they are based. Rulings on all objections, and the bases therefore, shall appear on the record. Formal exception to an adverse ruling is not required to preserve the question for appeal.

(g) *Offer of proof.* When an objection to proffered testimony or documentary evidence is sustained, the sponsoring party may make a specific offer, either in writing or orally, of what the party expects to prove by the testimony or the document. When an offer of proof is made, any other party may make a specific offer, either in writing or orally, of what the party expects to present to rebut or contradict the offer of proof. Written offers of proof or of rebuttal, adequately marked for identification, shall accompany the record and be available for consideration by any reviewing authority.

§ 511.44 Expert witnesses.

(a) *Definition.* An expert witness is one who, by reason of education, training, experience, or profession, has peculiar knowledge concerning the matter of science or skill to which his or her testimony relates and from which he or she may draw inferences based upon hypothetically stated facts or from facts involving scientific or technical knowledge.

(b) *Method of presenting testimony of expert witness.* Except as may be otherwise ordered by the Presiding Officer, a detailed written statement of the elements of the direct testimony of an expert witness shall be filed on the record and exchanged between the parties no later than 10 days preceding the commencement of the hearing. The statement must contain a full explanation of the methodology underlying any analysis, and a full disclosure of the basis of any opinion. The direct testimony of an expert witness shall not include points not contained in the written statement. A party may waive direct examination of an expert witness by indicating that the written statement be considered the testimony of the witness. In such a case, the written testimony shall be incorporated into the record and shall constitute the testimony of the witness.

(c) *Cross-examination and redirect examination of expert witness.* Cross-examination, redirect examination, and re-cross-examination of an expert witness will proceed in due course based upon the written testimony and any amplifying oral testimony.

(d) *Failure to file and/or to exchange written statement.* Failure to file and/or to exchange the written statement of an expert witness as provided in this section shall deprive the sponsoring party of the use of the expert witness and of the conclusions which that witness would have presented.

§ 511.45 In camera materials.

(a) *Definition.* In camera materials are documents, testimony, or other data which by order of the Presiding Officer or the Administrator, as appropriate under this Part, are kept confidential and excluded from the public record. Only materials exempt under the Freedom of Information Act may be kept confidential and excluded from the public record. Pursuant to 49 CFR Part 512, the Chief Counsel of the NHTSA is responsible for determining whether an alleged confidential business record is exempt from the Freedom of Information Act. The right of the Presiding Officer, the Administrator and reviewing courts to order disclosure of in camera materials is specifically reserved.

(b) *In Camera Treatment of documents and testimony.* The Presiding

Officer or the Administrator, as appropriate under this part, shall have authority, when good cause is found on the record, to order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserved in camera. The order shall specify the length of time for in camera treatment and shall include:

(1) A description of the documents and/or testimony;

(2) The reasons for granting in camera treatment for the specified length of time.

(c) *Access and disclosure to parties.*

(1) The Administrator and Presiding Officer, and their immediate advisory staffs shall have complete access to all in camera materials. All other parties shall also have complete access to all in camera materials, except that these parties may seek access only in accordance with paragraph (c)(2) of this section when:

(i) The in camera materials consist of information obtained by the government from persons not parties to the proceeding; or

(ii) The in camera materials consist of information provided by one of the parties to the proceeding which is confidential as to the other parties to the proceeding.

(2) Any party desiring access to and/or disclosure of the in camera materials specified in paragraph (c)(1) (i) and (ii) of this section for the preparation and presentation of the that party's case shall make a motion which sets forth the justification therefore. The Presiding Officer or the Administrator, as appropriate under this part, may grant such motion only for substantial good cause shown and shall enter a protective order prohibiting unnecessary disclosure and requiring other necessary safeguards. The Presiding Officer or the Administrator, as appropriate, may examine the in camera materials and excise portions thereof before disclosing the materials to the moving party.

(d) *Segregation of in camera materials.* In camera materials shall be segregated from the public record and protected from public view.

(e) *Public release of in camera materials.* In camera materials constitute a part of the confidential records of the NHTSA and shall not be released to the public until the expiration of in camera treatment.

(f) *Reference to in camera materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of in camera materials. Such refraining shall not preclude general references to such materials. To the extent that parties consider it necessary to include specific details of in camera materials, the references shall be incorporated into

separate proposed findings, briefs, or other documents marked "CONFIDENTIAL, CONTAINS IN CAMERA MATERIAL," which shall be placed in camera and become part of the in camera record. These documents shall be served only on parties accorded access to the in camera materials in accordance with paragraph (c)(2) of this section.

§ 511.46 Proposed findings, conclusions, and order.

Within a reasonable time after the closing of the record and receipt of the transcript, all parties and participants may, simultaneously, file post-hearing briefs, including proposed findings of fact, conclusions of law and a proposed order, together with reasons therefore. The Presiding Officer shall establish a date certain for the filing of the briefs, which shall not exceed 45 days after the close of the record except in unusual circumstances. The briefs shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. Replies shall be filed within fifteen (15) days of the date for the filing of briefs unless otherwise established by the Presiding Officer. The parties and participants may waive either or both submissions.

§ 511.47 Record.

(a) *Reporting and transcription.* Hearings shall be recorded and transcribed under the supervision of the Presiding Officer by a reporter appointed by the Administrator. The original transcript shall be a part of the record and the official transcript. Copies of transcripts are available from the reporter at a cost not to exceed the maximum rates fixed by contract between the NHTSA and the reporter.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. The Presiding Officer may order corrections, either on his or her own motion or on motion of any party. The Presiding Officer shall determine the corrections to be made and so order. Corrections shall be interlineated or otherwise inserted in the official transcript so as not to obliterate the original text.

§ 511.48 Official docket.

(a) The official docket in adjudicatory proceedings will be maintained in the Docket Section, Room 5108, 400 Seventh Street S.W., Washington, D.C. and will be available for public inspection during normal working hours (7:45 a.m.-4:15 p.m.) Monday through Friday.

(b) Fees for production or disclosure of records contained in the official docket shall be levied as prescribed in the NHTSA's Procedures for Disclosure or Production of Information under the Freedom of Information Act.

§ 511.49 Fees.

(a) *Witnesses.* Any person compelled to appear in person in response to a subpoena or notice of oral examination shall be paid at least the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with Title 28, United States Code, Section 1821.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance witnesses appear.

Subpart F—Decision

§ 511.51 Initial decision.

(a) *When filed.* The Presiding Officer shall endeavor to file an Initial Decision with the Administrator within sixty (60) days of the close of the record, the filing of post-hearing briefs, or the filing of replies thereto, whichever is latest.

(b) *Content.* The Initial Decision shall be based upon a consideration of the entire record and it shall be supported by reliable, probative, and substantial evidence. It shall include:

(1) Findings and conclusions, as well as the reasons or bases therefore, upon the material questions of fact, material issues of law, or discretion presented on the record, and should, where practicable, be accompanied by specific page citations to the record and to legal and other materials relied upon.

(2) An appropriate order.

(c) *By whom made.* The Initial Decision shall be made and filed by the Presiding Officer who presided over the hearing, unless otherwise ordered by the Administrator.

(d) *Reopening of proceeding by presiding officer; termination of jurisdiction.* (1) At any time prior to or concomitant with the filing of the Initial Decision, the Presiding Officer may reopen the proceedings for the reception of further evidence.

(2) Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the filing of the Initial Decision, unless and until the proceeding is remanded to the Presiding Officer by the Administrator.

§ 511.52 Adoption of initial decision.

The Initial Decision and Order shall become the Final Decision and Order of the Administrator forty (40) days after issuance unless an appeal is noted and perfected or unless review is

ordered by the Administrator. Upon the expiration of the fortieth day, the Executive Secretary shall prepare, sign and enter an order adopting the Initial Decision and Order.

§ 511.53 Appeal from initial decision.

(a) *Who may file notice of intention.* Any party may appeal an Initial Decision to the Administrator provided that within ten (10) days after issuance of the Initial Decision such party files and serves a notice of intention to appeal.

(b) *Appeal brief.* The appeal shall be in the form of a brief, filed within forty (40) days after service of the Initial Decision, duly served upon all parties. The appeal brief shall contain, in the order indicated, the following:

(1) A subject index of the matters 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 concise statement of the case;

(3) A specification of the position urged;

(4) The argument, presenting clearly the points of fact and law relied upon in support of the position on each question, with specific page references to the record and the legal or other material relied upon; and

(5) A proposed form of order for the Administrator's consideration in lieu of the order contained in the Initial Decision.

(c) *Answering brief.* Within thirty (30) days after service of the appeal brief upon all parties, any party may file an answering brief which shall also contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto. Such brief shall present clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and legal or other material relied upon.

(d) *Participant's brief.* Within thirty (30) days after service of the appeal brief upon all parties, any participant may file an appeal brief which should contain a subject index, with page references, and a table of authorities being relied upon. Such brief shall present clearly the position taken by the participant on each question raised by the appellant(s).

(e) *Cross appeal.* If a timely notice of appeal is filed by a party, any other party may file a notice of cross-appeal within ten (10) days of the date on which the first notice of appeal was filed. Cross-appeals shall be included in the answering brief and shall conform to the requirements for form, content and filing specified in para-

graph (c) of this section. If an appeal is noticed but not perfected, no cross-appeal shall be permitted and the notice of cross-appeal shall be deemed void.

(f) *Reply brief.* A reply brief shall be limited to rebuttal of matters in answering briefs, including matters raised in cross-appeals. A reply brief shall be filed and within fourteen (14) days after service of an answering brief, or on the day preceding the oral argument, whichever comes first.

(g) *Oral argument.* The purpose of an oral argument is to emphasize and clarify the issues. Any party may request oral argument. The Administrator may order oral argument upon request or upon his or her own initiative. All oral arguments shall be reported and transcribed.

§ 511.54 Review of initial decision in absence of appeal.

The Administrator may, by order, review a case not otherwise appealed by a party. Thereupon the parties shall and participants may file briefs in accordance with § 511.53 (b), (c), (d), (e), and (f) except that the Administrator may, in his or her discretion, establish a different briefing schedule in his or her order. Any such order shall issue within forty (40) days of issuance of the Initial Decision. The order shall set forth the issues which the Administrator will review.

§ 511.55 Final decision on appeal or review.

(a) Upon appeal from or review of an Initial 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 it could have exercised if he or she had made the Initial Decision.

(b) In rendering his or her decision, the Administrator shall adopt, modify, or set aside the findings, conclusions, and order contained in the Initial Decision, and shall include in his or her Final Decision a statement of the reasons or bases for his or her action. The Administrator shall issue an order reflecting his or her Final Decision.

§ 511.56 Reconsideration.

Within twenty (20) days after issuance of a Final Decision and Order, any party may file with the Administrator a petition for reconsideration of such decision or order, setting forth the relief desired and the grounds in support thereof. Any party desiring to oppose such a petition shall file an answer thereto within ten (10) days after service of the petition. The filing of a petition for reconsideration shall not stay the effective date of the Decision and Order or toll the running of

any statutory time period affecting the decision or order unless specifically so ordered by the Administrator.

§ 511.57 Effective date of order.

(a) *Consent orders.* An order which has been issued following acceptance of an offer of settlement in accordance with § 511.26 becomes effective upon issuance.

(b) *Litigated orders.* All other orders become effective upon the expiration of the statutory period for court review specified in Section 508(c)(1) of the Motor Vehicle Information and Cost Savings Act, Title 15, United States Code Section 2008(c)(1), Pub. L. 94-163, 89 Stat. 911, or, if a petition for review has been filed, upon court affirmance of the Administrator's order.

Subpart G—Settlement Procedure in Cases of Violation of Average Fuel Economy Standards

§ 511.61 Purpose.

This subpart establishes the procedures and requirements necessary to obtain a settlement of a case of violation of section 507 (1) or (2) of the Motor Vehicle Information and Cost Savings Act, as amended, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. Section 2007(1)(2)). No settlement of such cases may be had except as in accordance with this subpart.

§ 511.62 Definitions.

"Average fuel economy standard" means an average fuel economy standard established by or pursuant to the Motor Vehicle Information and Cost Savings Act.

"Insolvency" means the inability to meet expenses when due.

"Settlement" means a compromise, modification, or remission of a civil penalty assessed under this Part for a violation of an average fuel economy standard.

§ 511.63 Criteria for settlement.

Settlement of a case of violation of an average fuel economy standard is discretionary with the Administrator. The Administrator will consider settlement only to the extent—

(a) Necessary to prevent the insolvency or bankruptcy of the person seeking settlement, or

(b) That the violation of the average fuel economy standard resulted, as shown by the person seeking settlement, from an act of God, a strike, or fire, or

(c) That modification of a civil penalty assessed under this part is necessary to prevent lessening of competition, as determined and as certified by the Federal Trade Commission under

section 508(b)(4) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. sec. 2008(b)(4)).

§ 511.64 Petitions for settlement; timing, contents.

(a) A petition seeking settlement under this subpart must be filed within 30 days after the issuance of a final order assessing a civil penalty for a violation of an average fuel economy standard.

(b)(1) A petition for settlement should be sufficient to allow the Administrator to determine that at least one of the criteria set out in § 511.63 is satisfied, and that the public interest would be served by settlement.

(2) A petition asserting that settlement is necessary to prevent bankruptcy or insolvency must include:

(i) Copies of all pertinent financial records, auditors reports, and documents that show that the imposition of a civil penalty would cause insolvency, or would cause a company to do an act of bankruptcy, and

(ii) A payment schedule that would allow the petitioner to pay a civil penalty without resulting in insolvency or an act of bankruptcy.

(3) A petition asserting that the violation of the average fuel economy standard was caused by an act of God, fire, or strike must describe corrective and ameliorative steps taken to mitigate the effects of the act of God, fire, or strike.

(4) A petition based on a certification by the Federal Trade Commission that modification of the civil penalty assessed is necessary to prevent a substantial lessening of competition must include a certified copy of:

(i) The application to the Federal Trade Commission for a certification under section 508(b)(4) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. Sec. 2008(b)(4)), and materials supporting the application,

(ii) The administrative record of any Federal Trade Commission proceeding held in regard to the application, and

(iii) The certification by the Federal Trade Commission.

(c) It is the policy of the National Highway Traffic Safety Administration that unconditional settlements of violations of average fuel economy standards are not in the public interest, and absent special and extraordinary circumstances, will not be allowed. All petitions for settlement shall contain a section proposing conditions for settlement. Conditions for settlement can be specific acts designed to lead to the reduction of automotive fuel consumption, which the petitioner is not otherwise required to perform pursuant to any statute, regulation, or administrative or judicial

order, such as sponsoring public education programs, advertising, accelerating commercial application of technology, accelerating technology development programs, or making public the results of privately performed studies, surveys, or research activities.

§ 511.65 Public comment.

Notice and opportunity for comment are provided to the public in regard to settlements under this part. Subject to § 511.66, notice of receipt of a petition for settlement is published in the FEDERAL REGISTER, and a copy of such petitions and any supporting information is placed in a public docket. Any settlement agreed to by the Administrator shall be placed in the public docket for 30 days so that interested persons may comment thereon. No settlement is binding until the Administrator has considered all comments that are submitted.

§ 511.66 Confidential business information.

The Administrator shall have authority to segregate from the public docket and to protect from public view information in support of a petition for settlement which has been determined to be confidential business information pursuant to 49 CFR Part 512. The provisions of 49 CFR Part 512 pertaining to discretionary release by the Administrator of and to limited disclosure of, information determined to be confidential business information pursuant to 49 CFR Part 512, shall apply to this section.

§ 511.67 Settlement order.

If, in accordance with this subpart, the Administrator allows a settlement of a case of violation of an average fuel economy standard, an order of settlement shall be issued, setting out the terms of the settlement, and containing a brief discussion of the factors underlying the exercise of the Administrator's discretion in allowing the settlement, including a discussion of comments received under § 511.65.

Subpart H—Appearances; Standards of Conduct

§ 511.71 Who may make appearances.

A party or participant may appear in person, or by a duly authorized officer, partner, regular employee, or other agent of this party or participant, or by or with counsel or other duly qualified representative, in any proceeding under the part.

§ 511.72 Authority for representation.

Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Presiding Officer or the Administrator to show his or her authority to act in

such capacity. A regular employee of a party who appears on behalf of the party shall be required by the Presiding Officer or the Administrator to show his or her authority to so appear.

§ 511.73 Written appearances.

(a) Any person who appears in a proceeding shall file a written notice of appearance with the Executive Secretary or deliver a written notice of appearance to the reporter at the hearing, stating for whom the appearance is made and the name, address, and telephone number (including area code) of the person making the appearance and the date of the commencement of the appearance. The written appearance shall be made a part of the record.

(b) Any person who has previously appeared in a proceeding may withdraw his or her appearance by filing a written notice of withdrawal of appearance with the Executive Secretary. The notice of withdrawal of appearance shall state the name, address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance, and such notice of withdrawal shall be filed within five (5) days of the effective date of the withdrawal of the appearance.

§ 511.74 Attorneys.

An attorney at law who is admitted to practice before the Federal courts or before the highest court of any State, the District of Columbia, or any territory or Commonwealth of the United States, may practice before the NHTSA. An attorney's own representation that he or she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Presiding Officer or the Administrator.

§ 511.75 Persons not attorneys.

(a) Any person who is not an attorney at law may be admitted to appear in an adjudicative proceeding if that person files proof to the satisfaction of the Presiding Officer that he or she possesses the necessary legal, technical, or other qualifications to render valuable service in the proceeding and is otherwise competent to advise and assist in the presentation of matters in the proceedings. An application by a person not an attorney at law for admission to appear in a proceeding shall be submitted in writing to the Executive Secretary, not later than thirty (30) days prior to the hearing in the proceedings. The application shall set forth in detail the applicant's qualifications to appear in the proceedings.

(b) No person who is not an attorney at law and whose application has not been approved shall be permitted to appear in the Administration's proceedings. However, this provision shall not apply to any person who appears before the NHTSA on his or her own behalf or on behalf of any corporation, partnership, or association of which the person is a partner, officer, or regular employee.

§ 511.76 Qualifications and standards of conduct.

(a) The NHTSA expects all persons appearing in proceedings before it to act with integrity, with respect, and in an ethical manner. Business transacted before and with the NHTSA shall be in good faith.

(b) To maintain orderly proceedings, the Presiding Officer or the Administrator, as appropriate under this part, may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against certain ex parte communications.

(c) An excluded party, participant, or representative thereof may petition the Administrator to entertain an interlocutory appeal in accordance with § 511.24. If, after such appeal, the representative of a party or participant, is excluded, the hearing shall, at the request of the party or participant, be suspended for a reasonable time so that the party or participant may obtain another representative.

§ 511.77 Restrictions as to former members and employees.

The postemployee restrictions applicable to former Administrators and NHTSA employees, as set forth in 18 U.S.C. 207, shall govern the activities of former Administrators and NHTSA employees in matters connected with their former duties and responsibilities.

§ 511.78 Prohibited communications.

(a) *Applicability.* This section is applicable during the period commencing with the date of issuance of a complaint and ending upon final NHTSA action in the matter.

(b) *Definitions.* (1) "Decision-maker" means those NHTSA personnel who render decisions in adjudicative proceedings under this part, or who advise officials who render such decisions, including:

- (i) The Administrator;
- (ii) The Administrative Law Judges;
- (2) "Ex parte communications" means:

(i) Any written communication other than a request for a status report on

the proceeding made to a decision-maker by any person other than a decisionmaker which is not served on all parties,

(ii) Any oral communication other than a request for a status report on the proceeding made to a decision-maker by any person other than a decisionmaker without advance notice to the parties to the proceeding and opportunity for them to be present.

(c) *Prohibited ex parte communications.* Any oral or written ex parte communication relative to the merits of a proceeding under this part is a prohibited ex parte communication, except as provided in paragraph (d) of this section.

(d) *Permissible ex parte communications.* The following communications shall not be prohibited under this section:

(1) Ex parte communications authorized by statute or by this part.

(2) Any staff communication concerning judicial review or judicial enforcement in any matter pending before or decided by the Administrator.

(e) *Procedures for handling prohibited ex parte communication.* (1) Prohibited written ex parte communication. To the extent possible, a prohibited written ex parte communication received by any NHTSA employee shall be forwarded to the Executive Secretary rather than to a decisionmaker. A prohibited written ex parte communication which reaches a decisionmaker shall be forwarded by the decisionmaker to the Executive Secretary. If the circumstances in which a prohibited ex parte written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) Prohibited oral ex parte communication.

(i) If a prohibited oral ex parte communication is made to a decisionmaker, he shall advise the person making the communication that the communication is prohibited and shall terminate the discussion.

(ii) In the event of a prohibited oral ex parte communication, the decisionmaker shall forward to the Executive Secretary a dated statement containing such of the following information as is known to him/her:

(A) The title and docket number of the proceeding;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(C) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed;

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) *Filing.* All communications and statements forwarded to the Executive Secretary under this section shall be placed in a public file which shall be associated with, but not made a part of, the record of the proceedings, to which the communication or statement pertains.

(4) *Service on parties.* The Executive Secretary shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Executive Secretary that service of the communication or statement would be unduly burdensome, he or she may, in lieu of service, notify all parties in writing that the communication or statement has been made and filed and that it is available for inspection and copying.

(5) *Service on maker.* The Executive Secretary shall forward to the person who made the prohibited ex parte communication a copy of each communication and/or statement filed under this section.

(f) *Effect of ex parte communications.* No prohibited ex parte communication shall be considered as part of the record for decision unless introduced into evidence by a party to the proceedings.

(g) *Sanctions.* A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and adverse rulings on the issues which are the subject of the prohibited communication.

APPENDIX I—FINAL PREHEARING ORDER

CASE CAPTION

Final Prehearing Order

A prehearing conference was held in this matter pursuant to Rule 21 of the Administration's Rules of Practice for Adjudicative Proceedings, on the _____ day of _____, 19____, at _____ o'clock, —M.

Counsel appeared as follows:

For the Administration staff:

For the Respondent(s):

Others:

1. NATURE OF ACTION AND JURISDICTION.

This is an action for _____

and the jurisdiction of the Administration is involved under Section _____ of Title _____, U.S.C. The jurisdiction of the Administra-

tion is (not) disputed. The questions of jurisdiction was decided as follows:

2. STIPULATIONS AND STATEMENTS.

The following stipulations and statements were submitted, attached to, and made a part of this order:

(a) A comprehensive written stipulation or statement of all uncontested facts;

(b) A concise summary of the ultimate facts as claimed by each party. (Complaint Counsel must set forth the claimed facts, specifically; for example, if violation is claimed, Complaint Counsel must assert specifically the acts of violation complained of; each respondent must reply with equal clarity and detail.)

(c) Written stipulations or statements setting forth the qualifications of the expert witnesses to be called by each party;

(d) A written list or lists of the witnesses whom each party will call, a written list or lists of the additional witnesses whom each party may call, and a statement of the subject on which each witness will testify;

(e) An agreed statement of the contested issues of fact and of law, and/or separate statements by each party or any contested issues of fact and law not agreed to;

(f) A list of all depositions to be read into evidence and statements of any objections thereto;

(g) A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects that will be used in opening statements or closing arguments, but will not be offered in evidence. If any other such objects are to be used by any party, they will be submitted to opposing counsel at least three days prior to hearing. If there is then any objection to their use, the dispute will be submitted to the Presiding Officer at least one day prior to hearing;

(h) Written waivers of claims or defenses which have been abandoned by the parties.

The foregoing were modified at the pretrial conference as follows:

[To be completed at the conference itself. If none, recite "none".]

3. COMPLAINT COUNSEL'S EVIDENCE.

3.1 The following exhibits were offered by Complaint Counsel, received in evidence, and marked as follows:

[Identification number and brief description of each exhibit]

The authenticity of these exhibits has been stipulated.

3.2 The following exhibits were offered by the Complaint Counsel and marked for identification. There was reserved to the respondent(s) and party intervenors, if any, the right to object to their receipt in evidence on the grounds stated:

[Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality]

4. RESPONDENT'S EVIDENCE.

4.1 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

[Identification number and brief description of each exhibit]

The authenticity of these exhibits has been stipulated.

4.2 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to Complaint Counsel and party intervenors, if any, the right to object to their receipt in evidence on the grounds stated:

[Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality]

5. PARTY INTERVENOR'S EVIDENCE.

5.1 The following exhibits were offered by the party intervenor(s), received in evidence, and marked as herein indicated:

[Identification number and brief description of each exhibit]

The authenticity of these exhibits has been stipulated.

5.2 The following exhibits were offered by the party intervenor(s) and marked for identification. There was reserved to Complaint Counsel and respondent(s) the right to object to their receipt in evidence on the grounds stated:

[Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality]

NOTE.—If any other exhibits are to be offered by any party, they will be submitted to opposing counsel at least ten (10) days prior to hearing, and a supplemental note of evidence filed into this record.

6. ADDITIONAL ACTIONS.

The following additional action was taken:

[Amendments to pleadings, agreements of the parties, disposition of motions, separation of issues of liability and remedy, etc., if necessary]

7. LIMITATIONS AND RESERVATIONS.

7.1 Each of the parties has the right to further supplement the list of witnesses not later than ten (10) days prior to trial by furnishing opposing counsel with the name and address of the witness and general subject matter of his or her testimony and filing a supplement to this pretrial order. Thereafter additional witnesses may be added only after application to the Presiding Officer, for good cause shown.

7.2 Rebuttal witnesses not listed in the exhibits to this order may be called only if the necessity of their testimony could not reasonably be foreseen ten (10) days prior to trial. If it appears to counsel at any time before trial that such rebuttal witnesses will be called, notice will immediately be given to opposing counsel and the Presiding Officer.

7.3 The probable length of hearing is _____ days. The hearings will be commenced on the _____ day of _____, 19____, at _____ o'clock —M. at (location) _____.

7.4 Prehearing briefs will be filed not later than 5:00 p.m. on _____ (Insert date not later than ten (10) days prior to hearing.) All anticipated legal questions, including those relating to the admissibility of evidence, must be covered by prehearing briefs.

This prehearing order has been formulated after a conference at which counsel for the respective parties appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing. It will control the course of the hearing, and it

may not be amended except by consent of the parties and the Presiding Officer, or by order of the Presiding Officer to prevent manifest injustice.

(Presiding Officer's Name)
(Presiding Officer's Title)

APPROVED AS TO FORM AND SUBSTANCE

Date: _____

Complaint Counsel.

Attorney for Respondent(s).

NOTE.—Where intervenors appear pursuant to § 511.17, the prehearing order may be suitably modified; the initial page may be modified to reflect the intervention.

[FR Doc. 78-28878 Filed 10-13-78; 8:45 am]

[4310-55-M]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of Pinckney Island National Wildlife Refuge, S.C., to Big Game Hunting

ACTION: Final rule.

SUMMARY: This rule adds Pinckney Island National Wildlife Refuge, S.C. to the list of refuge areas open for the hunting of big game. The Director has determined that this action would be in accordance with the provisions of all laws applicable to the area, would be compatible with the principles of sound wildlife management, would otherwise be in the public interest, and that such use is compatible with the management objectives established for the refuge. Hunting, subject to annual special regulations, will provide population controls necessary to the proper management of wildlife on the refuge.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald G. Young, Division of National Wildlife Refuges, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 202-343-4307.

SUPPLEMENTARY INFORMATION: Donald G. Young is also the principal author of the final rule. On August 7, 1978, there was published (43 CFR 34825) a notice of proposed rulemaking adding Pinckney Island National Wildlife Refuge, S.C. to the list of refuge areas which are open to the

hunting of big game. As a general rule, most areas within the National Wildlife Refuge System are closed to hunting until officially opened by regulation.

The public was provided a 30-day comment period and was advised that an environmental assessment had been prepared on the proposal and was available for public inspection. No comments were received on the proposed rulemaking.

Accordingly, 50 CFR 32.31 is amended as follows:

§ 32.31 List of open areas; big game.

SOUTH CAROLINA

Pinckney Island National Wildlife Refuge.

Dated: October 6, 1978.

LYNN A. GREENWALT,
Director,

U.S. Fish and Wildlife Service.

[FR Doc. 78-29137 Filed 10-13-78; 8:45 am]

[3510-22-M]

CHAPTER III—INTERNATIONAL REGULATORY AGENCIES (FISHING AND WHALING)

PART 351—WHALING

Subpart B—International Whaling Commission Current Schedule of the International Convention for the Regulation of Whaling

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Section 916K of the Whaling Convention Act, 16 U.S.C. 916 et seq., requires that the Schedule of the International Convention for the Regulation of Whaling, 1946, be published in the FEDERAL REGISTER by the Secretary of Commerce in order for the schedule to "become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations * * *." This final rule consists of the most recent amendments to the Schedule of the International Convention for the Regulation of Whaling.

DATES: The amendments to the schedule become effective at noon on October 19, 1978.

FOR FURTHER INFORMATION CONTACT:

William P. Jensen, Marine Mammal and Endangered Species Division, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235, telephone 202-634-7461.

SUPPLEMENTARY INFORMATION: At its 30th annual meeting in London, held June 26-30, 1978, the International Whaling Commission agreed to amend the schedule for the Southern Hemisphere 1978-79 pelagic season and 1979 coastal season, and for the Northern Hemisphere 1979 season. In addition, with respect to the Bering Sea stock of bowhead whales only, the Commission agreed to amend the schedule for the Northern Hemisphere 1978 season. The 1978 bowhead amendment has already been published, 43 FR 43025 (September 22, 1978). This publication sets forth all remaining amendments to the schedule which were adopted at the 30th annual meeting.

The United States received official notice of the amendment on July 21, 1978. By the terms of the Convention, these amendments become effective on October 19, 1978.

Regulations under the Whaling Convention Act, which will implement amendments to the schedule for 1979 which relate to the taking of bowhead whales, will be published at a later date and will appear in 50 CFR Part 230.

Dated: October 11, 1978.

JACK W. GEHRINGER,
Acting Deputy Assistance
Administrator for Fisheries.

50 CFR Part 351 is amended as follows:

Section 351.1 is revised as follows:

§ 351.1 Definitions.

(a) The following expressions have the meaning respectively assigned to them, that is to say:

"Baleen whale" means any whale which has baleen or whale bone in the mouth, i.e., any whale other than a toothed whale.

"Beaked whale" means any whale belonging to the genus *Mesoplodon*, or any whale known as Cuvier's beaked whale (*Ziphius cavirostris*), or Shepherd's beaked whale (*Tasmacetus shepherdi*).

"Blue whale" (*Balaenoptera musculus*) means any whale known as blue whale, Sibbald's rorqual, or sulphur bottom, and including pygmy blue whale.

"Bottlenose whale" means any whale known as Baird's beaked whale (*Berardius bairdii*), Arnoux's whale (*Berardius arnuxii*), southern bottlenose whale (*Hyperoodon planifrons*), or northern bottlenose whale (*Hyperoodon ampullatus*).

"Bowhead" (*Balaena mysticetus*) means any whale known as bowhead, Arctic right whale, great polar whale, Greenland right whale, Greenland whale.

"Bryde's whale" (*Balaenoptera edeni*, *B. brydei*) means any whale known as Bryde's whale.

"Dauhval" means any unclaimed dead whale found floating.

"Fin whale" (*Balaenoptera physalus*) means any whale known as common finback, common rorqual, fin whale, herring whale, or true fin whale.

"Gray whale" (*Eschrichtius robustus*) means any whale known as gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

"Humpback whale" (*Megaptera novaeangliae*) means any whale known as bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchbacked whale.

"Killer whale" (*Orcinus orca*) means any whale known as killer whale or orca.

"Minke whale" (*Balaenoptera acutorostrata*, *B. bonaerensis*) means any whale known as lesser rorqual, little piked whale, minke whale, pike-headed whale or sharp headed finner.

"Pilot whale" means any whale known as long-finned pilot whale (*Globicephala melaena*) or short-finned pilot whale (*G. macrorhynchus*).

"Right whale" (*Eubalaena glacialis*, *E. australis*) means any whale known as Atlantic right whale, Biscayan right whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, Southern right whale.

"Pygmy right whale" (*Caperca marginata*) means any whale known as southern pygmy right whale, pygmy right whale.

"Sei whale" (*Balaenoptera borealis*) means any whale known as sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale.

"Sperm whale" (*Physeter macrocephalus*) means any whale known as sperm whale, spermacet whale, cachalot or pot whale.

"Toothed whale" means any whale which has teeth in the jaws.

"Lost whale" means any that has been taken but not delivered to the factory ship or land station.

"Whales taken" means whales that have been killed and either flagged or made fast to catchers.

"Lactating whale" means (1) with respect to baleen whales—a female which has any milk present in a mammary gland, (2) with respect to sperm whales—a female which has milk present in a mammary gland the maximum thickness (depth) of which is 10 cm or more. This measurement shall be at the mid ventral point of the mammary gland perpendicular to the body axis, and shall be logged to the nearest centimeter; that is to say, any gland between 9.5 cm and 10.5 cm shall be logged as 10 cm. The measurement of any gland which falls on an exact 0.5 centimeter shall be logged at the next 0.5 centimeter, e.g., 10.5 cm shall be logged as 11.0 cm. However, notwithstanding these criteria, a whale shall not be considered a lactating whale if scientific (histological or other biological) evidence is presented to the appropriate national authority establishing that the whale could not at that point in its physical cycle have had a calf dependent on it for milk.

"Small-type whaling" means catching operations using powered vessels with mounted harpoon guns hunting exclusively for minke, bottlenose, beaked, pilot or killer whales.

Paragraph (d) of § 351.33 is revised.

§ 351.33 Classification of areas and divisions.

(d) Geographical boundaries in the North Pacific. The geographical boundaries for the sperm and Bryde's whale stocks in the North Pacific are:

SPERM WHALE STOCKS

(1) *Western Division*. West of a line from the ice edge south along the 180° meridian of longitude to 180° 50' N, then east along the 50° N parallel of the latitude to 160° W, 50° N, then south along the 160° W meridian of longitude to 160° W, 40° N, then east along the 40° N parallel of latitude to 150° W, 40° N, then south along the 150° W meridian of longitude to the equator.

(2) *Eastern Division*. East of the line described in (1).

BRYDE'S WHALE STOCK

(1) *Western Stock*. West of the 160° W meridian of longitude.

(2) *Eastern Stock*. East of the 160° W meridian of longitude.

§ 351.34 [Amended]

[Amend the first sentence of § 351.34, paragraph (a)(1)(iii) to read: "For the 1978/79 pelagic season and the 1979 coastal season in the Southern Hemisphere and for the 1979 season in all other areas * * *"]

Tables 1 and 2 are revised as follows:

RG/PRP/1938

TABLE 1. BALEEN WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS

SOUTHERN HEMISPHERE - 1978/79 pelagic season and 1979 coastal season.

AREA	LONGITUDES	SEI	MINKE	BRYDE'S	FIN	BLUE	HUMP- BACK	RIGHT, BOWHEAD, PYCMB	GRAY	BOTTLE- NOSE
		Classi- fication limit	Classi- fication limit	Classi- fication limit	Classi- fication limit	Classi- fication limit	Classi- fication limit	Classi- fication limit	Classi- fication limit	Classi- fication limit
I	120°W - 60°W	PS	0	IMS	0	PS	PS	PS	-	-
II	60°W - 0°	PS	0	IMS	0	PS	PS	PS	-	-
III	0° - 70°E	PS	0	IMS	0	PS	PS	PS	-	-
IV	70°E - 130°E	PS	0	IMS	0	PS	PS	PS	-	-
V	130°E - 170°W	PS	0	IMS	0	PS	PS	PS	-	-
VI	170°W - 120°W	PS	0	IMS	0	PS	PS	PS	-	-
Total catch not to exceed -		0	6,221	0*	0	0	0	0	-	-

NORTHERN HEMISPHERE - 1979 season										
ARCTIC										
NORTH PACIFIC										
Whole region		PS	0	-	-	-	-	PS	-	-
Okhotsk Sea-West Pacific Stock		-	-	-	-	-	-	-	-	-
Sea of Japan Stock		-	-	-	-	-	-	-	-	-
Remainder		-	-	-	-	-	-	-	-	-
Eastern Stock		-	-	IMS	0*	-	-	-	-	-
Western Stock		-	-	IMS	454	-	-	-	-	-
NORTH ATLANTIC										
Whole region		-	-	IMS	0*	-	PS	PS	-	PS**
West Greenland Stock		-	-	-	-	-	-	-	-	-
Newfoundland-Labrador Stock		-	-	-	-	-	-	-	-	-
Canadian East Coast Stock		-	-	-	-	-	-	-	-	-
Nova Scotia Stock		PS	0	-	-	-	-	-	-	-
East Greenland-Iceland-Jan Mayen Stock		-	-	-	-	-	-	-	-	-
East Greenland-Iceland Stock		-	-	-	-	-	-	-	-	-
Iceland-Denmark Strait Stock		-	-	-	-	-	-	-	-	-
Spain-Portugal-British Isles Stock		SMS	84	-	-	-	-	-	-	-
Svalbard-Norway-British Isles Stock		-	-	-	-	-	-	-	-	-
West Norway-Faroe Islands Stock		-	-	-	-	-	-	-	-	-
North Norway Stock		-	-	-	-	-	-	-	-	-

* Pending a satisfactory estimate of stock size.

** The total catch of fin whales shall not exceed 1,524 in the six years 1977 to 1982 inclusive.

*** Provisionally listed as SMS for 1979, pending the accumulation of sufficient information for classification.

+ Provisionally listed as SMS for 1979, catches not to exceed present catch levels.

++ Provisionally listed as PS for 1979, pending the accumulation of sufficient information for classification.

+++ Available to be taken by aborigines or a Contracting Government on behalf of aborigines pursuant to paragraph 11, but not for commercial purposes.

1 The combined catch limit of fin and humpback whales in West Greenland waters shall not exceed 15 whales.

TABLE 2. SPERM WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS

SOUTHERN HEMISPHERE - 1978/79 pelagic season and 1979 coastal season

DIVISIONS	LONGITUDES	MALES		FEMALES	
		Classification	Catch limit	Classification	Catch limit
1	60°W - 30°W	SMS	273	SMS	91
2	30°W - 20°E	IMS	808	IMS	241
3	20°E - 60°E	SMS	847	SMS	281
4	60°E - 90°E	IMS	566	PS	0
5	90°E - 130°E	SMS	402	IMS	159
6	130°E - 160°E	IMS	276	IMS	83
7	160°E - 170°W	SMS	176	SMS	98
8	170°W - 100°W	IMS	874	IMS	261
9	100°W - 60°W	PS	0	PS	0

NORTHERN HEMISPHERE - 1979 season

NORTH PACIFIC

Western Division	SMS	- ²	SMS	- ²
Eastern Division	IMS	- ²	IMS	- ²

NORTH ATLANTIC

TOTAL	Classification	Catch Limit
	SMS	685

* Catch limits for 1979 are to be set later by decision of the Commission before operations start.

Section 351.35 is revised.

§ 351.35 Catch limits for baleen whales.

(a) The number of baleen whales taken during the open season in the Southern Hemisphere by factory ships, land stations, or whale catchers attached thereto under the jurisdiction of the contracting governments shall not exceed 6,221 minke whales and 0 Bryde's whales pending a satisfactory estimate of stock size, in the 1978-79 pelagic season and the 1979 coastal season. The total catches taken in any of the areas I and VI shall not exceed the limits shown in table 1. However, in no circumstances shall the sum of the area catches exceed the total quotas for each species.

(b) The number of baleen whales taken in the North Pacific Ocean and dependent waters in 1979 and in the North Atlantic Ocean in 1979 shall not exceed the limits shown in table 1.

Paragraph (a) of § 351.36 is amended by revising subparagraphs (1) and (2) and adding (3).

§ 351.36 Limitations on the taking of humpback, gray, and bowhead whales.

(a) * * * with respect to the Bering Sea stock of bowhead whales that:

(1) In 1978, hunting shall cease when either 20 have been struck or 14 landed,

(2) In 1979, hunting shall cease when either 27 have been struck or 18 landed,

(3) It is forbidden to strike, take, or kill calves or any bowhead whale accompanied by a calf.

* * * * *

Section 351.38 is revised.

§ 351.38 Catch limits for sperm whales.

(a) The number of sperm whales taken in the Southern Hemisphere in the 1978-79 pelagic season and the 1979 coastal season shall not exceed 4,222 males and 1,214 females. The total catch in any of the divisions 1 to

9 shall not exceed the limits shown in table 2.

(b) The number of sperm whales taken in the North Pacific Ocean and dependent waters in 1979 and in the North Atlantic Ocean in 1979 shall not exceed the limits shown in table 2.

Section 351.71 is amended by adding new paragraphs (e) and (f) as follows:

§ 351.71 Reports and records.

* * * * *

(e) All whale catchers operating in conjunction with factory ships and land stations shall report the following information on each whale taken:

(1) Methods used to kill a whale, other than a harpoon, and in particular compressed air.

(2) Number of whales struck but lost.

(f) A record similar to that described in subparagraph (e) of this section shall be maintained by vessels engaged in "small-type whaling" operations and by native peoples taking species listed in section 351.1 and all the information mentioned in the said subparagraph shall be entered therein as soon as available.

§ 351.72 [Amended]

Section 351.72 is amended as follows: Delete "fin, sei," in the first sentence. The remainder of § 351.72 is unchanged.

Section 351.74 is amended by revising paragraph (a)(1).

§ 351.74 Collection of specimens.

(a) Where possible all factory ships and land stations shall collect from each whale taken:

(1) Both ovaries or the combined weight of both testes.

* * * * *

The remainder of § 351.74 is unchanged.

[FR Doc. 78-29171 Filed 10-13-78; 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.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 905]

HANDLING OF ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Proposed Extension of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This notice invites written comment on a proposal that would continue through October 14, 1979, current minimum grade and size requirements for Florida oranges, grapefruit, tangerines, and tangelos and imported grapefruit. The regulations will expire on November 12, 1978, unless extended. The proposed action is necessary to assure shipment of ample supplies of fruit of acceptable grades and sizes in the interest of growers and consumers.

DATES: Comments must be received on or before October 27, 1978.

PROPOSED EFFECTIVE DATE: November 13, 1978.

ADDRESSES: Send two copies of comments to: Hearing Clerk, United States Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250, where they will be made available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: The Department is considering extension of the regulations, as hereinafter set forth, effective under the marketing agreement, and Order No. 905, both as amended (7 CFR Part 905; 42 FR 59367, 61853), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and to a conforming extension of the regulation for imported grapefruit, effective pursuant to section 8e of the act. The proposed action is based upon recommendations of the Citrus Administrative Committee established under the marketing order.

The proposed minimum grade and size requirements for domestic and export markets reflect the committee's appraisal of the need for regulation of the designated varieties of Florida oranges, grapefruit, tangerines, and tangelos during the specified period based on the available supply and current and prospective market demand conditions. The committee reports that such requirements are necessary to establish and maintain orderly marketing, consistent with the objectives of the act and the interests of producers and consumers.

The committee estimates the 1978-79 season's crop of Florida round oranges at about 10 percent over last season's production. It estimates grapefruit production slightly higher than the record large 1976-77 season production and that the Temple orange, tangelo, and tangerine crops are comparable in size to those harvested last season. The committee reports the Florida citrus industry has recovered extremely well from the severe freeze of January 1977 and groves are generally in excellent condition. The bloom period peaked around April 1, about three to four weeks later than normal. The new crop should be of good quality, and as a result of ample rainfall, individual fruit sizes are generally running average to larger than average for this time of year. The Committee's appraisal indicates fresh market demand at 19,500 carlots of round oranges, 4,000 carlots of Temple oranges, 10 carlots of seeded grapefruit, 37,500

carlots of seedless grapefruit, 4,800 carlots of tangelos, and 6,100 carlots of tangerines. Hence, considering the available supply and the reported size and quality of the fruit more than ample quantities of each of the specified fruits meeting the proposed grade and size requirements will be available to supply such demands.

The proposed minimum grade and size requirements for imported grapefruit would be consistent with section 8e of the act. This section requires that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The proposal is that § 905.302 Orange, Grapefruit, Tangerine and Tangelo Regulation 2 (43 FR 43013) and § 944.102 Grapefruit Regulation 2 (43 FR 43013; 43015) be amended to read as follows:

§ 905.302 Orange, grapefruit, tangerine, and tangelo regulation 2.

Order. (a) During the period specified in column (2) of table I no handler shall ship between the production area and any point outside thereof in continental United States, Canada, or Mexico, any variety of fruit listed in column (1) of such table unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) hereof) specified for such variety in columns (3) and (4) of such table.

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges:			
Early and midseason.....	Nov. 13, 1978 to Oct. 14, 1979	U.S. No. 1	2½
Navel.....	do.....	U.S. No. 1 Golden.....	2½
Valencia and other late type.....	do.....	U.S. No. 1	2½
Temple	do.....	do.....	2½
Grapefruit:			
Seeded, except pink	do.....	do.....	3½
Seeded, pink	do.....	do.....	3½
Seedless, except pink	do.....	Improved No. 2	3½
Seedless, pink	do.....	do.....	2½
Tangerines:			
Robinson	do.....	U.S. No. 1	2½
Dancy	do.....	do.....	2½
Honey	do.....	Florida No. 1.....	2½
Tangelos:			
Tangelos.....	do.....	U.S. No. 1.....	2½

PROPOSED RULES

(b) During the period specified in column (2) of table II no handler shall ship to any destination outside the continental United States, other than Canada or Mexico, any variety of fruit listed in column (1) of such table

unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) hereof) specified for such variety in columns (3) and (4) of such table.

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges:			
Early and midseason.....	Nov. 13, 1978 to Oct. 14, 1979	U.S. No. 1	2½
Navel	do	U.S. No. 1 Golden	2½
Valencia and other late type	do	U.S. No. 1	2½
Temple	do	do	2½
Grapefruit:			
Seeded, except pink	do	do	3½
Seeded, pink	do	do	3½
Seedless, except pink	do	Improved No. 2	3½
Seedless, pink	do	do	3½
Tangerines:			
Robinson	do	U.S. No. 1	2½
Dancy	do	do	2½
Honey	do	Florida No. 1	2½
Tangelos:			
Tangelos	do	U.S. No. 1	2½

(c) *Size tolerances:* In the determination of minimum size as prescribed in tables I and II, the following tolerances are permitted (1) for oranges, as set forth in § 51.1152 of the U.S. Standards for Grades of Florida Oranges and Tangelos, except that such tolerances for other than Navel and Temple Oranges shall be based only on the oranges in the lot measuring 2½ inches or smaller in diameter, and the tolerance for Honey tangerines shall be as specified in § 51.1818 of the U.S. Standards for Grades of Florida Tangerines; (2) for grapefruit, as specified in § 51.761 of the U.S. Standards for Grades of Florida Grapefruit; (3) for tangerines, as specified in § 51.1818 of the U.S. Standards for Grades of Florida Tangerines; and (4) for tangelos, as set forth in § 51.1152 of the U.S. Standards for Grades of Florida Oranges and Tangelos.

(d) Terms used in the marketing order, including Improved No. 2 grade for grapefruit, when used herein, mean the same as is given to the terms in the order; Florida No. 1 grade for Honey tangerines means the same as provided in rule No. 20-35.03 of the regulations of the Florida Department of Citrus, and terms relating to grade, except Improved No. 2 grade for grapefruit, and diameter shall mean the same as is given to the terms in the revised U.S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140-51.1180), the revised U.S.

Standards for Florida Tangerines (7 CFR 51.1810-51.1835), or the revised U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750-51.784).

§ 944.102 Grapefruit Regulation 2.

(a) *Applicability to imports.* Pursuant to section 8e of the act and Part 944—Fruits; Import Regulations, during the period specified in column (2) of table I, in § 905.302, the importation into the United States of any variety of grapefruit listed in column (1) of said table is prohibited unless such variety meets the applicable minimum grade and size specified for such variety in columns (3) and (4) of said table. In the determination of minimum size as prescribed in table I, a tolerance is permitted as specified in paragraph (c) of § 905.302.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of grapefruit that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of grapefruit, is required on all imports. The inspection and certification services will be available upon ap-

plication in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944; 43 FR 19340).

(c) Notwithstanding any other provisions of this regulation, any importation of grapefruit which, in the aggregate, does not exceed 10 standard packed cartons, equivalent to four-fifths (¾) of a U.S. bushel of grapefruit, each, or equivalent quantity, may be imported without regard to the requirements specified herein.

Dated: October 10, 1978.

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

[FR Doc. 78-29114 Filed 10-13-78; 8:45 am]

[3410-02-M]

[7 CFR Part 1126]

[Docket No. AO-231-A46]

MILK IN THE TEXAS MARKETING AREA

Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the present order provisions based on industry proposals considered at a public hearing held June 13-14, 1978. The recommended amendments would modify the basis on which a person may qualify as a "producer-handler" under the order. They also would allow handlers to divert milk between pool distributing plants and would modify the payment requirements of the order. The proposed changes are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

DATE: Comments are due on or before November 6, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4824.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing: Issued May 26, 1978, published June 1, 1978 (43 FR 23725). Partial recommended decision: Issued August 4, 1978, published August 8, 1978 (43 FR 35047). Partial final decision: Issued September 1, 1978, published September 8, 1978 (43 FR 40030).

PRELIMINARY STATEMENT

Notice is hereby given of the filing with the hearing clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Texas marketing area, and of the opportunity to file written exceptions thereto. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, on or before 20 days after FEDERAL REGISTER publication. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

The hearing on the record of which the proposed amendments, as herein-after set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Dallas, Tex., on June 13-14, 1978, pursuant to notice thereof which was issued May 26, 1978 (43 FR 23725).

The material issues on the record of the hearing relate to:

1. the "dairy farmer for other markets" provision.
2. Diversions to nonpool plants.
3. Diversions between pool plants.
4. Producer-handler provisions.
5. Classification of shrinkage and products that are dumped and disposed of for animal feed.
6. Partial payments to a cooperative association.

This decision deals only with issues 3 through 6. A previous decision issued September 1, 1978, dealt with issues 1 and 2.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on issues 3 through 6 are based on evidence presented at the hearing and the record thereof:

3. *Diversions between pool plants.* The proposal to revise the producer milk definition to allow diversions of milk between pool distributing plants should be adopted.

Currently, the order permits producer milk to be diverted from pool distributing plants to pool supply plants and to pool balancing plants operated by cooperative associations.

A handler who operates 2 distributing plants in Dallas (zone 1) and a distributing plant at Tyler, Tex. (zone 2) proposed the change, which was not opposed. The handler indicated that he prefers to assign his producers to a particular plant and use that plant's payroll to make settlement for the monthly milk production of his producers. It has been his experience that the listing of a producer on only one payroll avoids confusion for the producer and the handler's personnel. However, in order to maintain a producer on only one payroll, it has been necessary under the current order provisions for the handler to physically receive the total monthly milk production of the producer at one of his pool plants and then transfer milk of such producer, if needed, to the other two pool plants operated by the handler. This method of operation has resulted in additional expense for the handler since the milk must be unloaded at the plant where the producer has been assigned and then reloaded for delivery to other plants operated by the handler.

The handler pointed out, too, that the location of the producers relative to his three plants is such that it costs about the same for the milk of a producer to be delivered directly from the farm to any of his three plants. The handler proposed, therefore, that he be permitted to associate the milk of his producers with a particular plant and then divert milk from such plant to his other plants as needed.

The order should promote the efficient handling of milk by permitting diversions between pool distributing plants. The change proposed herein will allow the diverting handler to maintain only one payroll in accounting for the total monthly milk production of his producers, irrespective of the plant to which the milk may actually be delivered. In this way a distributing plant operator may avoid unnecessary and costly movements of milk merely for the purpose of associating a producer with a specific distributing plant for payroll purposes.

The pricing point for milk diverted from a pool distributing plant would be the same as currently provided

under the order for milk diverted to any other plant. The milk would be priced at the plant to which diverted.

4. *Producer-handler provisions.* The order should be revised to modify the present limit on fluid milk products that a producer-handler may receive from pool plants by including within the limit not only the products received at his plant but those received at any other point within his distribution system. The proposal that would require a producer-handler to operate the entire distribution system through which he disposes of class I milk should not be adopted.

The present order specifies that a producer-handler is any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than his own farm production and pool plants. Any such receipts from pool plants during the month may not exceed the lesser of 5 percent of his class I disposition during the month or 10,000 pounds. A producer-handler may not dispose of any other source milk in the form of a fluid milk product except through the addition of nonfat milk solids to fortify fluid milk products received from his own farm or from pool plants. To qualify as a producer-handler, such person must provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

A handler who operates regulated distributing plants in the market proposed that the milk distribution system of a producer-handler, as well as the dairy farm and processing plant, be the personal enterprise and risk of the same person. The handler's proposal also would require a producer-handler to treat any product received within his distribution system as though it were received at his plant in determining whether or not his receipts from pool plants exceeded the allowable limits contained in the order.

Proponent claimed that the intent of this proposal was to prevent the possibility of a producer-handler circumventing the present order provisions pertaining to the restrictions on receipts of milk supplies from sources other than his own farm. This proposal and the testimony given by the proponent were supported by the cooperative association that represents a majority of the producers who supply the Texas market.

A producer under the order who plans to qualify as a producer-handler at some future date opposed the proposal at the hearing. Opposition was

expressed also by a producer-handler in his posthearing brief. These persons claimed that no evidence was presented on the record to support imposing further restrictions on producer-handlers. Opponents held that the proposal was based only on speculation and predictions. The producer claimed that adoption of the proposal would prevent him from obtaining producer-handler status. The producer-handler alleged that the proposed change would likely put him out of business. Both claimed it would be impractical to own their entire distribution system and distribute only milk products from their own farm.

To assure that the exemption of producer-handlers from the pooling and pricing provisions of the order does not have an adverse impact on the market, the present order provisions were drafted to require such persons to operate basically in a self-sufficient manner. However, as indicated, producer-handlers may receive limited quantities of fluid milk products from pool plants. Under the present application of the order provisions, the limitation has applied only to fluid milk products actually received at the producer-handler's processing plant. Thus, a producer-handler who operates his own distribution routes could pick up packaged fluid milk products at pool plants or distribution depots of other handlers and distribute these products, presumably along with those from his own plant, without bringing them into his plant. In this manner, he could circumvent the present limitation on the amount of milk that may be obtained from pool plants.

To effectively carry out the intent of the limitation on purchases of milk from pool plants, the order should preclude the opportunity to circumvent this limitation. Accordingly, the order should specify that the limit on receipts of fluid milk products from pool plants shall include such products which a producer-handler obtains at a location other than his processing plant for distribution on his routes. Although there was no indication that producer-handlers are circumventing the current limitation on receipts from pool plants, this order change is proper since it merely carries out the initial intent of the limitation.

It is not necessary on the basis of this record to require a producer-handler to operate the distribution system through which all his route disposition in the marketing area is made. There is no indication that producer-handlers are causing any disorderly marketing conditions that would warrant the adoption of the proposal. The proponent handler provided no evidence concerning the actual operations of producer-handlers in the market and their competitive impact

on regulated handlers. Also, there was no testimony by other witnesses that suggested any need for the proposal. Accordingly, the proposal is denied.

5. *Classification of shrinkage and products that are dumped or disposed of for animal feed.* The proposal to combine certain plant shrinkage, animal feed, and dumped products into a single use category and to permit up to 3 percent of a plant's receipts of bulk fluid milk products and bulk fluid cream products claimed in such use to be classified as class III milk should not be adopted.

The order presently classifies as class III milk any fluid milk products, fluid cream products, eggnog, yogurt, or similar filled products that are dumped by a handler or disposed of for animal feed. In the case of shrinkage, the order permits up to 2 percent of a plant's receipts of producer milk to be classified as class III milk. If the plant's receipts are from a cooperative association in its capacity as a handler on bulk tank milk, then the 2 percent allowance is divided between the cooperative and the plant operator, with the cooperative receiving a 0.5 percent allowance and the plant operator receiving 1.5 percent. However, if the plant operator buys the milk on the basis of farm weights and tests, he gets the full 2 percent allowance. One and one-half percent of receipts also is the maximum allowable shrinkage that can be assigned to class III with respect to receipts of bulk milk from other plants. To the extent that the quantity of shrinkage in these cases exceeds the specified limits on class III uses, the order provides that the excess shall be classified as class I milk. All shrinkage assigned to receipts of other source milk for which class II or class III uses is requested is classified as class III milk.

A handler who operates a pool distributing plant proposed that plant shrinkage now subject to the 2-percent limit, animal feed, and dumped fluid milk products be combined into a single use classification. He would then allow up to 3 percent of a plant's receipts in such use category to be classified as class III milk. Proponent claimed that his objective in proposing the revision is to simplify the procedures and reduce the costs on the part of the market administrator and handlers in accounting for animal feed and dumped products. He pointed out that his proposal would minimize delays in disposing of route returns that can not be salvaged and thereby reduce the health hazards associated with disposing of such products. Proponent modified his proposal at the hearing to recognize circumstances in which a handler may need to dispose of a large quantity of receipts due to an unusual situation. In such circum-

stance, he would permit the handler to dump such milk and classify such loss as class III milk without limit provided that the market administrator is notified of the handler's intention to dump the milk and is given an opportunity to verify such dumpage.

A handler who operates three pool distributing plants opposed the proposal. Opponent claimed that combining shrinkage, animal feed and dumped products into a single classification would not simplify the accounting for such products. The plant operator also maintained that animal feed and dumped products are distinct utilizations which can be measured, tested and verified. He pointed out that shrinkage, on the other hand, is a residual figure and is a loss that cannot be measured, tested or verified.

The principal cooperative association supplying handlers in the Texas market also opposed any change in the current method of classifying shrinkage, animal feed, and dumped milk products. The cooperative contended that the amount of skim milk that could be classified as class III milk under proponent's proposal is greater than is justified by the record evidence. In that connection, the cooperative contended that handlers would receive an increase in the amount of milk that can be classified as class III by not maintaining adequate records of accountability. In addition, the cooperative contended that the amount of time required by the market administrator's office to audit the books and records of handlers would not be reduced since the same auditing procedures now used would have to be continued. Also, under proponent's proposal the market administrator's employees would still be required to monitor the dumping of milk in those situations where a large quantity of milk must be dumped.

Handlers normally experience some shrinkage losses in milk processing operations and, occasionally, must dispose of spoiled products either by dumping the products or disposing of them for animal feed. Because a handler's costs are affected by the quantities of these products that are priced as class I and class III milk, proponent's proposal to combine these three categories of milk use into a single classification and allow up to 3 percent of the handler's receipts in such uses to be classified as class III milk would have varying impacts on the cost of milk to the various handlers in the market. The proposal could reduce the cost for those handlers who otherwise would have excess shrinkage. This could occur in situations where a handler has little or no dumped products or animal feed but has shrinkage that exceeds the present allowable limits for class III use. Other handlers who

otherwise would have all of their shrinkage, animal feed usage and dumped products classified as class III milk could have some of such usages classified as class I milk in the event the quantity of dumped products and animal feed uses exceeds 1 percent of producer receipts at such plant.

An analysis of data for the market reveals that the adoption of proponent's proposal would be to the disadvantage of a number of pool plant operators. An examination of data for May 1977 reveals that as many as one-third of the pool plant operators could be disadvantaged.

For example, 16 of the 44 pool plants regulated by the Texas milk order disposed of more than one percent of their receipts as animal feed, whereas proponent would have limited a handler's uses for animal feed and dumped products (excluding unusual losses) to 1 percent of receipts. Three of the sixteen plants had animal feed disposition in excess of 1.5 percent while two plants disposed of more than 2 percent of their receipts as animal feed. On the basis of data for November 1977, 9 of the 44 pool plants disposed of more than 1 percent of their receipts of skim milk or butterfat as animal feed. Three of the nine pool plants disposed of more than 1.5 percent of their receipts in such uses.

An analysis of data submitted by proponent with respect to his plant's operation reveals that the percentage of his plant's receipts disposed of as animal feed and dumped milk products during some months of the year also exceeded the limit that he proposed. While proponent is willing to accept a class I classification for milk that exceeds the limits he has proposed, there is no reason to deny other handlers a class III classification for milk for which they can produce records substantiating the use of milk receipts as either animal feed disposition or as dumped milk products.

The reasons set forth by proponent for adopting his proposal are not compelling reasons for changing the current classification provisions as they relate to shrinkage, animal feed and dumped products. Accordingly, the proposal is denied.

6. *Partial payments to a cooperative association.* The order should be revised to allow a handler to elect whether or not to adjust the announced class III price for the preceding month by the butterfat differential to reflect the butterfat content of bulk fluid milk products received from a cooperative's pool plant in making partial payment for such milk. There was no opposition expressed at the hearing to the proposed change.

The order currently provides that a handler who receives bulk fluid milk products from a pool plant operated

by a cooperative association shall make two payments during the month to the market administrator in settlement for such purchases. The handler must make a partial payment on or before the 26th day of the month for those products received during the first 18 days of the month at the class III price for the preceding month adjusted by the butterfat differential. On or before the 16 day after the end of each month, the handler must make payment for all bulk fluid milk products received during the month from a cooperative's pool plant at the applicable class prices adjusted by the butterfat differential, less the amount of the payment made on or before the 26th day of the month.

For producer milk and milk received from a cooperative association in its capacity as a handler on farm bulk tank milk, the order provides that the handler, in making a partial payment for the milk, shall pay the previous month's class III price without adjustment for the butterfat content of the milk received.

Some proprietary handlers in the Texas market receive whole milk from a cooperative association in its capacity as a handler on farm bulk tank milk and on occasion from the same cooperative's pool plant as well. In making partial payments, these handlers have tended to pay the previous month's announced class III price without adjustment for butterfat for both the bulk tank milk and the plant milk. In some instances, the butterfat content of the milk received from the cooperative's plant has been above 3.5 percent and, as a consequence, the handler's payment has been less than the value of such milk. Usually, the amount of the underpayment has been relatively insignificant. However, such underpayment violates the order's provisions and subjects the handler to a late payment charge on the amount of the underpayment.

It is not necessary for the orderly marketing of milk to require handlers to adjust the previous month's class III price to reflect the butterfat content in making partial payments for bulk milk received from a cooperative's pool plant. The value of the milk, including any added value due to the butterfat content exceeding 3.5 percent, is reflected in the handler's final payment to the cooperative association. For that reason, handlers should be permitted to make partial payments at the previous month's class III price without adjustment for butterfat for milk that is received from a cooperative's pool plant.

The order should provide, however, that the buying handler may adjust the class III price to reflect the butterfat content if he desires to do so. This option will benefit handlers who re-

ceive skim milk from a cooperative's pool plant. In such situations, payment at the announced class III price would result in a payment in excess of the classified use value of such milk. At the time of final payment, the handler then would be due a credit from the cooperative association. This unnecessary additional transaction can be avoided by allowing a handler to adjust his partial payment to reflect the butterfat content of milk purchased from a cooperative's pool plant.

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

The following findings and determinations supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they conflict with those set forth below.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Texas marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Section 1126.10(c) is revised as follows:

§ 1126.10 Producer-handler.

(c) Whose receipts of fluid milk products (including such products which he obtains at a location other than his processing plant for distribution on his routes) during the month from pool plants do not exceed the lesser of 5 percent of his class I disposition during the month or 10,000 pounds;

2. Section 1126.13(d) is revised as follows:

§ 1126.13 Producer milk.

(d) Diverted from a pool plant described in § 1126.7(a) for the account of the handler operating such plant to another pool plant, except that milk diverted to a plant operated by a cooperative association may not be milk of the cooperative association's members. Milk so diverted shall be priced at the plant to which diverted; or

3. Section 1126.73(g)(1) is revised as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(g)
(1) On or before the 26th day of each month, an amount determined by multiplying such receipts during the first 18 days of the month by the class III price for the preceding month. If the handler so elects, such price may be adjusted by the butterfat differential specified in § 1126.74 for the preceding month; and

Signed at Washington, D.C., on October 11, 1978.

JAMES E. SPRINGFIELD,
Acting Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-29167 Filed 10-13-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-15220; File No. S7-654]

SECURITIES CONFIRMATIONS

Proposed Rulemaking

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is proposing two related rulemaking actions that would require disclosure on the customer's confirmation of the amount of any markup, markdown or similar remuneration received (1) by any broker or dealer effecting a "riskless" principal transaction in a nonmunicipal debt security with a customer, and (2) by any broker, dealer or municipal securities dealer effecting a "riskless" principal transaction in a municipal security with a customer. The proposals would extend to transactions in debt securities the confirmation disclosure requirements applicable to "riskless" principal transactions in equity securities adopted by the Commission today in amendments to the existing confirmation delivery and disclosure requirements.

DATES: Comments must be received on or before December 1, 1978.

ADDRESSES: All comments should refer to File No. S7-654 and should be sent in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All submissions will be made available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Steele, Esq., Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 202-755-7587.

SUPPLEMENTARY INFORMATION: The Commission today announced a proposal to amend Rule 10b-10 (17 CFR 240.10b-10) under the Securities Exchange Act of 1934 (the "Act")¹ and to adopt Rule 15c2-12 (17 CFR 240.15c2-12) under the Act.

¹ 15 U.S.C. 78a et seq.

The proposed amendment to Rule 10b-10 would make it unlawful for any broker or dealer (other than a market maker) trading as principal for its own account to effect a transaction in a non-municipal debt security² with a customer unless the broker or dealer, at or before completion of the transaction, gives or sends to the customer written notification disclosing the amount of any markup, markdown, or similar remuneration received if, after having received an order to buy from the customer, he purchased the security from another person to offset a contemporaneous sale to the customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from the customer.³ Transactions effected in the manner described above have been generally referred to as "riskless" principal transactions.

Proposed Rule 15c2-12 would require comparable disclosure in the case of transactions of the same type in a municipal security effected by a broker, dealer, or municipal securities dealer.

The amendment to Rule 10b-10 is proposed to be adopted pursuant to the Act, and particularly Sections 3, 10, 11, 15, 17, and 23 thereof (15 U.S.C. 78c, 78j, 78k, 78o, 78q and 78w). Rule 15c2-12 is proposed to be adopted pursuant to the Act, and particularly Sections 3, 10, 11, 15, 15B, 17, and 23 thereof (15 U.S.C. 78c, 78j, 78k, 78o, 78o-4, 78q, and 78w).

BACKGROUND

In a separate release, the Commission today announced the adoption of amendments to Rule 10b-10.⁴ That rule generally requires brokers and dealers to give or send to customers written confirmation of transactions in securities other than U.S. Savings

² The proposed amendment would amend paragraph (a)(5)(i) of Rule 10b-10 by deleting the phrase "in a transaction in an equity security" which currently causes that paragraph to apply only to transactions in equity securities.

³ That requirement would apply regardless of variations in mechanical techniques for structuring and sequencing transactions that are designed to offset one another. For example, a dealer filling a customer's purchase order would not avoid the requirement by effecting a sale to his customer immediately before purchasing the security from another person instead of first purchasing the security from the other person for resale to the customer and then selling it to the customer. Similarly, a dealer would not avoid the requirement in filling a customer's sale order by first purchasing the security from the customer for resale to another person and then selling it to the other person instead of first selling it to the other person and then purchasing it from his customer.

⁴ See Securities Exchange Act Release No. 15219 (Oct. 6, 1978).

Bonds or municipal securities. As amended, Rule 10b-10 requires brokers and dealers (except market makers) trading for their own account with customers to disclose markups and markdowns in "riskless" principal transactions in equity securities.⁵ With the exception of certain paragraphs that became effective on June 1, 1977, Rule 10b-10, as amended, becomes effective on December 18, 1978.

As originally proposed in September 1976, Rule 10b-10 would have required disclosure of markups and markdowns in "riskless" principal transactions in all equity and debt securities, including municipal securities.⁶ When the Commission adopted Rule 10b-10 in May 1977, however, it provided that Rule 10b-10 would not apply to municipal securities.⁷ At the same time, it determined to revise and republish for further public comment the "riskless" principal markup disclosure provision. The proposed requirement, as revised, would have applied to both equity securities and nonmunicipal debt securities.⁸

Shortly thereafter, the Municipal Securities Rulemaking Board (the "MSRB") undertook to determine whether confirmation disclosure of markups and markdowns should be required in the case of municipal securities.⁹ On August 3, 1977, the MSRB solicited public comment on that question, and it later held two public meetings in October 1977. On November 16, 1977, the MSRB sent to the Commission a letter summarizing arguments made by commentators opposed to disclosure of markups and markdowns. On February 10, 1978, the MSRB sent to the Commission a second letter in which it stated its conclusion that "the imposition of a requirement to disclosure remuneration in principal transactions in municipal securities is unnecessary and inappropriate."

⁵Id.

⁶See Securities Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (Sept. 22, 1976).

⁷See Securities Exchange Act Release No. 13508 (May 5, 1977), 42 FR 25313 (May 17, 1977).

⁸See Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33343 (June 30, 1977). When the Commission proposed the amendments to Rule 10b-10, it stated at n. 7 that "[s]hould the [MSRB] not resolve to develop such adaptations as may be necessary in the application of the 'riskless' principal requirement, the Commission plans to revisit the question of including municipal securities transactions generally under Rule 10b-10 * * *."

⁹The MSRB has adopted MSRB rule G-15 imposing confirmation delivery and disclosure requirements for municipal securities transactions. MSRB Manual (CCH) [3571]. See also Securities Exchange Act Release [13942] (Sept. 9, 1977).

BASIS AND PURPOSE

In Securities Exchange Act Release No. 15219, published today, the Commission has discussed at length its reasons for adopting a provision in Rule 10b-10 that requires disclosure of markups and markdowns in "riskless" principal transactions in equity securities. The Commission has determined that it is important for customers to be provided with the opportunity, to the extent practicable, to make their own assessments of the reasonableness of transaction costs incurred in effecting transactions in equity securities, regardless of technical variations employed by broker-dealers in structuring such transactions. While the Commission has received a number of comment letters opposing the imposition of a "riskless" principal disclosure requirement for debt securities, it has not determined on the basis of those comments that application of a requirement to debt securities would necessarily be inappropriate.

"Riskless" principal transactions in equity securities became a source of concern and controversy in 1963, when the Commission's Special Study of Securities Markets recommended that such transactions be prohibited.¹⁰ The issue of "riskless" principal transactions in nonmunicipal debt securities and municipal securities was not specifically considered in the special study and has not received much public attention until recently. In addition, many of those who previously commented on the "riskless" principal provision in rule 10b-10 focused primarily on the application of that requirement to equity securities and did not separately consider debt securities. The Commission has concluded, therefore, that it would be advisable to solicit further comment on the matter before reaching a final decision, and, accordingly, has issued the proposals set forth in this release.

Previous comments. The Commission has received the views of the MSRB and other commentators to the effect that it would be unnecessary and inappropriate to require disclosure of markups and markdowns in "riskless" principal transactions in municipal securities and other debt securities.¹¹ Some of those commentators have asserted that the structural and transactional differences between the debt markets and the equity markets are sufficiently important that the Commission should not require disclosure of markups and markdowns for

¹⁰Securities and Exchange Commission, Report of Special Study of Securities Markets, H.R. Doc. No. 95, pt. 2, 88th Cong., 1st sess. 676 (1963).

¹¹See, e.g., comment letters of the Securities Industry Association.

"riskless" principal transactions in debt securities.

Commentators noted that in the debt markets broker-dealers customarily effect transactions on a principal rather than an agency basis, that there is far greater variety in the types of debt securities than in equity securities, that execution of transactions in debt securities is rarely mechanical and requires special judgment and expertise, that many debt instruments are traded primarily among purchasers and sellers who are very sophisticated, that the absence of a centralized clearing facility increases the risks broker-dealers incur if customers fail to deliver funds or securities to the broker-dealer in connection with a transaction, and that, because debt securities are traded on the basis of yield and are priced in relation to developments in the money markets, there are important constraints on the pricing of debt securities.

Evaluation of comments. The Commission recognizes that the markets for debt and equity securities differ in many important respects. It is not currently clear to the Commission, however, that such differences warrant nondisclosure of markups and markdowns in "riskless" principal transactions in debt securities. The fact that most transactions in debt securities may be effected on either a risk principal or "riskless" principal basis does not necessarily answer the question whether disclosure of transaction costs in at least "riskless" transactions should be required. If it may be assumed that comparatively fewer transactions in the debt markets, by comparison to the equity markets, are currently structured on an agency (as opposed to a "riskless" principal) basis, that might be thought to underscore the need for the "riskless" principal disclosure requirement in order to permit investors in debt securities to become aware of possible differences in the level of transaction costs among various markets when they evaluate the benefits and costs of one investment as opposed to another.¹² Inves-

¹²The Commission also recognizes that there are some business risks associated with effecting transactions in every class of security and that those risks may be greater for securities traded in the absence of centralized market facilities. Nevertheless, the Commission does not propose to base a decision concerning the "riskless" principal disclosure requirement on any belief that "riskless" principal transactions indeed are totally free of business risks. The term "riskless" has been applied to principal transactions where a dealer essentially performs the functions of an agent and is, of course, only a trade term used to describe a type of securities transaction. While the level of business risks associated with the execution of agency transactions for different

Footnotes continued on next page

tors in equity securities are accustomed to receiving disclosure of agency commissions (and will receive disclosure of "riskless" principal compensation upon the effectiveness of rule 10b-10, as amended). Such investors, and particularly retail investors, may be misled or uncertain as to whether any such compensation is being paid on transactions in debt securities.

Similarly, the fact that the execution of "riskless" principal transactions in debt securities may often involve the exercise of special judgment and expertise does not demonstrate that disclosure of transactions costs would necessarily be inappropriate. One might expect that more difficult and time-consuming transactions would involve higher transaction costs than comparatively simpler executions, but it is not clear why investors in debt securities should not be furnished with information concerning those costs in order to enable them to weigh that factor in reaching investment decisions.

Arguments have also been made that the amount of compensation a dealer receives on a "riskless" principal transaction in debt securities is not material information to the investor.¹³ Those arguments have been predicated on the fact the debt securities are generally priced on the basis of yield (even if prices are also expressed in dollar amounts) and that a dealer's remuneration in "riskless" principal transactions generally represents a small percentage of the dollar value of transactions. Retail customers are generally not aware of the amount of markups and markdowns and, it was suggested, are interested only in current not yield and yield to maturity or call rather than the dollar price of a security.¹⁴

Footnotes continued from last page

ent types of securities varies, presumably transaction costs take those risks into account to some extent. In any event, it does not currently appear that the presence of business risks in either agency transactions or "riskless" principal transactions warrants nondisclosure to customers of transaction costs.

¹³See MSRB letter of Nov. 16, 1977, summarizing the views of persons commenting to the MSRB in response to its solicitation of views regarding the development of a "riskless" principal disclosure requirement for municipal securities, Securities and Exchange Commission File No. S7-654.

¹⁴Some commentators have suggested that transactions with institutional investors should be exempted from the "riskless" principal disclosure requirement. Although many institutional investors may have adequate means to make fully informed investment decisions, a decision to exempt certain classes of institutional transactions on the basis of a presumed level of expertise and sophistication among institutional investors

The Commission recognizes the importance of yield in the pricing of debt securities and that most investors in debt securities have some knowledge of prevailing yields on various types of debt instruments. Accordingly, even comparatively unsophisticated investors might refuse to purchase a security that was priced at a level that caused its yield to be noticeably outside the range of prevailing yields for similar securities.

Yield is, of course, affected by various factors in addition to prevailing interest rates. Maturity date, quality, source of the security interest being pledged, marketability, and special features, such as callability, affect yield. While bond ratings have some bearing on yield, debt securities having the same rating and maturity (including call features) may nevertheless be priced contemporaneously at different levels, in part because bond ratings represent only an approximate guide as to the quality of the bonds.

Transaction costs, such as markups and markdowns in "riskless" principal transactions, also directly affect the yield to maturity that the customer realizes. The effect on yield to maturity of a transaction charge of specified size would be greater for a short-term security than it would be for a longer term security. As a result, a markup or markdown on short-term securities must be relatively modest in order not to have a noticeable effect on yield to maturity but can be substantially larger for long-term securities.

The Commission understands that, in both corporate and municipal securities, dealers' spreads, as well as markups, markdowns, and concessions, are generally calculated on a basis that reflects yield to maturity. The dollar amount of spreads, concessions, markups, and markdowns is generally greater on long-term securities than on short-term securities. In the case of risk principal transactions, the differential in spreads between short- and long-term debt securities reflects, in part, the fact that long-term debt securities are more volatile in price for a given variation in prevailing interest rates than are short-term debt securities and that, as a result, the risk attendant to carrying long-term securities in a dealer's inventory is greater than the risk for short-term securities.

The Commission understands, however, that the amount of markups and markdowns in "riskless" transactions is greater for long-term securities than for short-term securities even though

would involve predictive judgments that may not be justified in all cases. Also, many institutional investors are acting in a fiduciary capacity. Disclosure documents, such as confirmations, can provide an important source of information concerning the performance of fiduciary duty.

the risks of market fluctuation attendant to "riskless" transactions are generally conceded to be substantially less than those attendant to maintaining a bona fide inventory. At the same time, it has not been suggested that the costs incurred by broker-dealers in principal transactions vary in accordance with the maturity of securities being purchased and sold in that fashion. Also, while yield to maturity may apply substantial controls on the dollar amount of markups and markdowns for short-term securities, those controls are much less significant in the case of long-term securities. Accordingly, it is not clear that yield to maturity provides any means for comparing transaction costs, particularly between securities of differing maturities.¹⁵ In addition, since various factors, including the amount of a markup or markdown, can affect yield even on securities of the same maturity, it is not clear why investors should not receive specific information concerning the amount of any markup or markdown charged in a "riskless" principal transaction.¹⁶

¹⁵The MSRB has suggested that a markup policy such as that of the National Association of Securities Dealers, Inc. would be inappropriate for municipal securities since, among other things, published quotations in municipal securities show only the offer side of the market and in some instances it may be extremely difficult to ascertain a representative market price against which to measure the markup. MSRB, Statement on Form 19b-4A (concerning proposed MSRB rule G-30), at 27 (File No. SR-MSRB-77-12), Securities Exchange Act Release No. 13987 (Sept. 22, 1977), 42 FR 49856 (Sept. 28, 1977). As a result, it may be particularly important in the case of municipal securities to place greater reliance on disclosure than on more direct forms of regulation as a means of reducing the opportunity for abuse.

¹⁶One additional problem with undisclosed "riskless" principal markups is the inducement that may be afforded to an unscrupulous dealer to gain high markups by passing off low quality securities to unsophisticated customers at yields that resemble yields generally characteristic of higher quality securities. While it might take substantial capital to undertake such an operation on a risk principal basis, the "riskless" principal transaction does not require any similar capital commitment. Although the MSRB has proposed rules of fair practice which would require dealers to deal fairly with their customers and to charge customers only net prices that are fair and reasonable, the existence of such rules alone does not prevent fraudulent conduct. The confirmation rule, together with the recordkeeping rules, can have a further deterrent effect. It is doubtful whether the practice referred to above would withstand disclosure. At the same time, if disclosure were required, a failure to disclose such markups and to retain appropriate records, once discovered, would provide a predicate for administrative or judicial sanction.

SOLICITATION OF FURTHER COMMENT

The Commission concluded, in adopting a "riskless" principal requirement for transactions in equity securities, that such a requirement would be appropriate for that class of securities. The Commission's reasons for reaching that conclusion are set forth in Securities Exchange Act Release No. 15219 (Oct. 6, 1978).

At the same time, the Commission noted that the MSRB had earlier concluded that a "riskless" principal disclosure requirement was not necessary or appropriate for municipal securities, and the Commission also noted that other commentators had not focused specifically on the application of such a requirement to nonmunicipal debt securities. Accordingly, the Commission believed it should solicit further comment on that matter before reaching a final decision. Commentators are specifically invited to consider and to provide data, views and arguments concerning the following questions:

(1) In view of the Commission's reasons for adopting a "riskless" principal disclosure requirement for transactions in equity securities, and the discussion of previous comments set forth above in this release, should such disclosure nevertheless not be required for transactions in debt securities?

(2) Would it be appropriate for the Commission to require "riskless" principal disclosure for certain classes of debt securities but not for others? In particular, should a different result be reached for municipal securities than for U.S. Government or corporate debt securities?

(3) Would the proposed amendment to Rule 10b-10 or proposed Rule 15c2-12 impose any burden on competition and, if so, would that burden be necessary or appropriate in furtherance of the purposes of the Act?

Commentators may also wish to take note of one difference between proposed Rule 15c2-12 and paragraph (a)(5)(i) of Rule 10b-10, which contains the "riskless" principal remuneration provision in that rule for equity securities (and, as proposed to be amended, for nonmunicipal debt securities). Largely because of the problems in determining which transactions should be covered by the "riskless" principal disclosure requirement in the case of a market maker quoting a two-sided market in an equity security,

and certain features of block positioning in equity securities, Rule 10b-10 contains an exemption for transactions in which a broker-dealer is a market maker in the security being purchased or sold. The proposed amendment to Rule 10b-10 would preserve the market maker exemption for nonmunicipal debt securities to the extent dealers in such securities act as market makers in those securities. This exemption has not been included in proposed Rule 15c2-12 dealing with municipal securities because the Commission understands that the term "market maker," as defined in section 3(a)(38) of the Act,¹⁷ has little or no application to transactions in municipal securities because of differences between municipal securities and other types of securities.¹⁸ Commentators may wish to consider whether compliance problems, similar to those faced by equity market makers, or considerations similar to those identified for block positioners in equity securities,¹⁹ may nevertheless make it appropriate to extend this or a similar exemption to municipal securities transactions or whether it would be more appropriate to eliminate any exemption for nonmunicipal debt securities as well as for municipal securities.

The Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations as follows:

1. By revising paragraph (a)(5)(i) of § 240.10b-10 to read as follows ("[]" indicates material to be deleted):

¹⁷ 15 U.S.C. 78c(a)(38).

¹⁸ See MSRB letter to the Commission, November 16, 1977 (Securities and Exchange Commission File No. S7-654), in which the MSRB stated:

Securities professionals ordinarily do not make two-sided markets in municipal securities, principally because the nonfungible, serial nature of most municipal securities would make it extremely difficult to cover short positions. There are also considerations relating to the tax status of municipal securities sold short. However, many municipal securities professionals stand ready and willing to bid for securities of issues in their region. Although they do not make two-sided markets, and may not have an inventory position in certain maturities of certain issues of a particular issuer, many commentators have suggested that municipal securities professionals are market makers in a broad sense and that transactions effected by them in the issues in which they make markets should be exempt from a [riskless principal] disclosure requirement.

¹⁹ See Securities Exchange Act Release No. 15219 (Oct. 6, 1978).

§ 240.10b-10 Confirmation of transactions.

(a) * * *

(5) * * *

(i) The amount of any markup, markdown, or similar remuneration received [in a transaction in an equity security] if he is not a market maker in that security and if, after having received an order to buy from such customer, he purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from such customer; and

2. By adopting § 240.15c2-12 to read as follows:

§ 240.15c2-12 Confirmation of municipal securities transactions.

(a) It shall be unlawful for any broker, dealer, or municipal securities dealer, acting as principal for its own account, to effect with the account of a customer any transaction in any municipal security unless the broker, dealer, or municipal securities dealer, at or before completion of the transaction, gives or sends to the customer written notification disclosing the amount of any markup, markdown, or similar remuneration received if, after having received an order to buy from the customer, he purchased the security from another person to offset a contemporaneous sale to the customer or, after having received an order to sell from the customer, he sold the security to another person to offset a contemporaneous purchase from the customer.

(b) For the purposes of this rule,

(1) "Customer" shall not include a broker, dealer or municipal securities dealer; and

(2) "Completion of the transaction" shall have the meaning provided in § 240.15c1-1.

All interested persons are invited to submit three copies of written data, views, and arguments on the proposed amendment to Rule 10b-10 and on proposed Rule 15c2-12 to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than December 1, 1978. Reference should be made to File No. S7-654. All submissions will be made available for public inspection at the Commission's Public Reference

Room, Room 6101, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 16, 1978.

[FR Doc. 78-29124 Filed 10-13-78; 8:45 am]

[8010-01-M]

[17 CFR Part 270]

[Release No. IC-10420, File No. S7-578]

**SALES LOAD VARIATION WITH RESPECT TO
PURCHASES OF ADDITIONAL SHARES BY
MUTUAL FUND SHAREHOLDERS**

Withdrawal of Proposal

AGENCY: Securities and Exchange Commission

ACTION: Withdrawal of proposed rule.

SUMMARY: The Securities and Exchange Commission is withdrawing a proposed rule which would have established conditions under which open-end investment companies could have sold shares to their existing shareholders without a sales load or at a load lower than that charged new shareholders. The Commission has concluded that pertinent statutory provisions permit offerings similar to those contemplated by the proposed rule and that the particular conditions contained in that proposed rule are neither necessary nor appropriate. In a separate release the Commission is issuing an interpretation clarifying that offerings of this type may be made subject only to the terms of the pertinent statutory provisions.

EFFECTIVE DATE: October 4, 1978.

**FOR FURTHER INFORMATION
CONTACT:**

Richard W. Grant, Esq. Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-0242.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is withdrawing proposed Rule 22d-4 under the Investment Company Act of 1940 ("act") (15 U.S.C. 80a et seq.). The rule, which was proposed in Securities Act of 1933 Release No. 5607, Investment Company Act Release No. 8894 (August 19, 1975) (40 FR 40555, September 3, 1975), would have exempted from certain provisions of section 22(d) of the act, subject to certain conditions, investment companies, underwriters, and dealers with respect to sales of redeemable securities issued by a registered investment company to persons who were shareholders of that company or of another investment company offering redeemable securities whose

shares were underwritten by the same underwriter. The rule would have permitted such sales to be made, under certain conditions, at a price reflecting reduction or elimination of the sales load charged to other investors.

The Commission has concluded that to fashion conditions adequate to protect investors under all circumstances with regard to sales of this type would result in an unduly complicated and inflexible rule.

However, in re-examining this area, the Commission has determined that it is appropriate to interpret section 22(d) as permitting, under some circumstances, reduced-load or no-load sales to existing shareholders of a mutual fund at the same time shares are sold to new shareholders at the regular sales load, although such sales would be subject to certain limitations which would not have been provided for in proposed Rule 22d-4. In this regard, reference is made to Securities Act Release No. 5985, also published today.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 4, 1978.

[FR Doc. 78-29099 Filed 10-13-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 1]

[Docket No. RM78-221]

**REVISION OF RULES OF PRACTICE AND
PROCEDURE**

Extension of Time for Comments

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of extension of time.

SUMMARY: Pursuant to requests from various persons, and extension of time for the filing of comments in docket No. RM78-22, Revision of part I, Title 18, Code of Federal Regulations, rules of practice and procedure, was granted to and including November 13, 1978. The request for comments in this proceeding was issued August 25, 1978 (43 FR 39122, September 1, 1978) with the Commission asking for suggestions on the revision of its rules of practice and procedure.

DATES: Comments due on or before November 13, 1978.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION
CONTACT:

Kenneth F. Plumb, Secretary, 202-275-4166.

SEPTEMBER 20, 1978.

Several motions have been filed requesting an extension of time within which to submit comments in this matter pursuant to the request for comments issued on August 25, 1978. The requested extensions range from 30 to 60 days.

Upon consideration, notice is hereby given that the time within which comments may be filed in this matter is extended to and including November 13, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-29160 Filed 10-13-78; 8:45 am]

[6740-02-M]

[18 CFR Ch. I]

[Docket No. RM78-2; Formerly ICC Docket Ex Parte No. 308]

VALUATION OF COMMON CARRIER PIPELINES

Oral Argument: Change in Date

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice changing date of oral argument.

SUMMARY: Pursuant to a request of the Association of Oil Pipe Lines in docket RM 78-2 (formerly ICC docket No. Ex Parte 308), the Commission changed the date for oral argument from October 16 and 17, 1978, to October 23 and 24, 1978. The order which set the oral argument was issued September 21, 1978 (43 FR 43728) and stated that participants are free to discuss any topic relating to the Commission's oil pipeline responsibilities as well as the topics of rate of return and rate base.

DATES: Oral argument to be held on October 23 and 24, 1978.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION
CONTACT:

Kenneth F. Plumb, Secretary, 202-275-4166.

Valuation of common carrier pipe lines (ICC docket Ex Parte No. 308), docket No. RM78-2, notice changing date of oral argument.

SEPTEMBER 22, 1978.

On September 21, 1978, the Association of Oil Pipe Lines filed a motion requesting that the dates of the oral argument established by order issued

¹Interstate Natural Gas Association of America & American Gas Association; Edison Electric Institute; and the Federal Energy Bar Association.

September 21, 1978, be changed to a date no earlier than October 23, 1978.

Upon consideration, notice is hereby given that the oral argument in the above-designated matter will be held on October 23 and October 24, 1978. All other provisions of the order issued September 21, 1978, remain unchanged.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-27785 Filed 9-29-78; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 141]

IMPORTATION OF CERTAIN STEEL ARTICLES

Proposed Amendment to Customs Regulations
Relating to Documents and Information

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: It is proposed to amend the Customs Regulations regarding the Special Summary Steel Invoice ("SSSI") which must be presented to Customs for each shipment of certain articles of steel having an aggregate price over \$2,500. The proposed amendment would modify the SSSI to require the name of the producer and the price paid for the articles covered by the invoice by the initial and each subsequent purchaser in every case.

It also is proposed to modify the existing instructions for preparation of the SSSI to reflect this amendment and to clarify existing instructions relating to freight charges incurred after importation of the merchandise into the United States and to the submission of information concerning commissions. The additional information provided will be used in connection with the administration of the "trigger price mechanism" ("TPM") under the Antidumping Act, 1921, as amended.

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

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Peter D. Ehrenhaft, Deputy Assistant Secretary and Special Counsel (Tariff Affairs), Department of the Treasury, Washington, D.C. 20220, 202-566-2806.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 13, 1978, a final rule published in the *FEDERAL REGISTER* (43 FR 6065) amended the Customs Regulations to require that a Special Summary Steel Invoice ("SSSI") be presented to Customs for each shipment of certain articles of steel having an aggregate purchase price over \$2,500. The information provided by the SSSI is used in the administration of the Antidumping Act, 1921, as amended.

In addition, the notice of proposed rulemaking on this matter, published in the *FEDERAL REGISTER* on December 30, 1977 (42 FR 65214), announced that the Secretary of the Treasury would implement a "trigger price mechanism" ("TPM"), as recommended to and approved by the President, as a part of the program to monitor steel imports. The notice also stated that "trigger prices" established for certain steel mill products would provide the basis upon which imports of such products would be monitored for the purpose of determining whether investigations under the Antidumping Act, 1921, as amended, would be appropriate.

Sections 141.86 and 141.89, Customs Regulations (19 CFR 141.86, 141.89), set forth the invoicing requirements for the Special Summary Steel Invoice, Customs Form 5520. The instructions for preparation of the SSSI implement the regulatory requirements. They were published as part of the final rule in the *FEDERAL REGISTER* on February 13, 1978 (43 FR 6065).

Since implementation of the TPM and adoption of the SSSI, a number of problems have arisen in administering the program which indicate that some information presently required is not being provided and certain information not presently required is needed to administer the program effectively. The three specific areas in which enhanced data is needed concern foreign affiliations of producers and importers, freight charges incurred after the merchandise is imported into the United States, and buying commissions.

PRODUCER INFORMATION

From the SSSI's received during the past six months, it appears that steel is occasionally sold to exporters unrelated to the producer of the steel rather than directly to a U.S. buyer. Some of these exporters are or may be controlled by a U.S. buyer. This situation has given rise to allegations that a U.S. buyer can evade the trigger price monitoring system through the use of foreign buying agents. Although no specific cases of such evasion have been identified, it has been argued

that a U.S. importer or purchaser of steel can buy steel below the trigger price through a foreign buying agent and then have that agent export it to the United States at or above the trigger price. However, it is argued that such a transaction should not be considered to be at or above the trigger price as interpreted under the Antidumping Act, because the relevant price for comparison with the "trigger price" is the price at which the steel is purchased by the foreign agent.

To assure collection of the data needed to prevent evasion of the trigger price mechanism, it is proposed to modify the SSSI by adding a new section 1a, titled "Producer If Other Than Seller (Name, Address, and Relationship to Seller)". Present section 19 would be redesignated section 19b, and a new section 19a, titled "Mill Price", would be added.

In order to provide for this modification to the SSSI, it is proposed to amend § 141.89, Customs Regulations (19 CFR 141.89), by adding a new subparagraph (E) which would require that the name of the producer, plus the price paid by the initial and each subsequent purchaser of the steel, be included on the SSSI in every case.

This information will enable the Treasury Department to determine whether it is appropriate to initiate an antidumping proceeding under the trigger price mechanism. Generally the policy of the Department is not to self-initiate an investigation if the ex-mill price is equal to, or more than, the trigger price minus the actual importation charges if included in the price.

COMMISSIONS AND FREIGHT CHARGES

Although sections 9 and 26 of the SSSI specifically require information relating to commissions, information concerning buying commissions is not always provided. Accordingly, it is proposed to modify section 12, the "Declaration of the Seller/Shipper, or Agent" and the instructions for that section to require the identification of any commissions paid or allowed on exportation as buying or selling commissions, and an itemization of all such payments. This information will be used to make appropriate adjustments in the invoice price before a comparison is made to the trigger prices if it is determined that a U.S. consumer of steel has an interest directly or indirectly through a foreign subsidiary in the export sales transaction.

Similarly, although section 26 of the SSSI requires all charges and fees, including freight charges, to be identified separately by name and amount, charges for freight in the United States paid by the exporter are not always identified specifically. To facil-

PROPOSED RULES

tate the necessary adjustment in the invoice price to take account of such charges before a comparison is made to the trigger price, it is proposed to add a new section 26a, titled "Freight from U.S. Point of Importation."

EDITORIAL CHANGES

Because the title to section 23, "Domestic Freight Charges" apparently has not been understood, and because of the addition of new section 26a, it is proposed to change the title of section 23 to "Transportation Costs to Point of Exportation". It also is proposed to modify section 24 to read "Ocean, Air, or International Freight".

The Department has been requested to modify the format of the SSSI by placing sections 10 through 12 and 22 through 26 below section 13 through 21. It was suggested that this change would expedite preparation and conform the document to the format of other international trade documents, including the Special Customs Invoice, Customs Form 5515. It is proposed to modify the format as outlined.

The instructions for completing present section 19 (redesignated section 19b), "Home Market" unit price, also are being changed to clarify the intent of this section.

PROPOSED MODIFIED SSSI

The proposed modified SSSI and instructions are set forth below:

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
1. SELLER

SPECIAL SUMMARY STEEL INVOICE

(Prepare in Duplicate)

FORM APPROVED,
O.M.B. No. 48-R0547

ADDITIONAL SPACE FOR EXTRAS SHOWN
IN BOX 11.

2. DOCUMENT NR.		3. INVOICE NR. AND DATE	
4. REFERENCES			
6. BUYER (if other than consignee)			
7. ORIGIN OF GOODS			
9. TERMS OF SALE, PAYMENTS AND DISCOUNTS			

13. MARKS AND NUMBERS	14. AISI Category	15. DESCRIPTION OF GOODS (INCLUDE SPECIFICATIONS)	16. QUANTITY	17. BASE PRICE	18. WIDTH	19. LENGTH	20. OTHER* d. \$	21. MILL PRICE	22. UNIT PRICE 195 HOME MARKET	23. INVOICE TOTALS
-----------------------	-------------------	---	--------------	----------------	-----------	------------	------------------	----------------	--------------------------------	--------------------

10. ☐ If the production of these goods involved furnishing goods or services to the seller (e.g., assists such as dies, molds, tools, engineering work) and the value is not included in the invoice price, check box (10.) and explain above.										
12. DECLARATION OF SELLER/SHIPPER (OR AGENT)										
I declare: (A) ☐ If there are any commission, rebates, drawbacks or bounties allowed upon the exportation of goods, I have checked Box (A) and itemized separately above. (B) ☐ If any unrelated incentives or reimbursements of dumping duties, or other inducements not reflected in this invoice have been, or will be, paid or granted, I have checked Box B and explained above.										
I further declare that there is no other invoice differing from this one (unless otherwise described below) and that all statements contained in this invoice and declaration are true and correct.										

11. CODE FOR OTHER EXTRAS*		23. TRANSPORTATION COSTS TO POINT OF EXPORTATION	
a. Edging		24. OCEAN, AIR, OR INTERNATIONAL FREIGHT	
b. Quality (commercial deep drawing)		25. INSURANCE COSTS	
c. Heat treating		26. OTHER COSTS (Specify Above)	
d. Coating		26a. FREIGHT FROM U.S. POINT OF IMPORTATION	
e. Inspection and testing			
f. Surface treatments			
g. Other (specify)			
22. PACKING COSTS			



U.S. CUSTOMS SERVICE

INSTRUCTIONS FOR PREPARATION OF SPECIAL SUMMARY STEEL INVOICE

(Required for all shipments of steel over \$2,500)

NOTE.—Where this summary invoice covers several types of merchandise priced in different ways, each should be shown separately. Prepare in duplicate.

Sections 1, 2-7, 8b, 9, 10, 13, 16, 20-22, and 24-26 may be completed in the same manner as the equivalent sections on Special Customs Invoice, Customs Form 5515.

Section 1a. Producer if Other Than Seller: Show here the producer's name, address, and relationship to seller. If producer is the same as seller, so indicate in this section.

Section 8a. Date Price Terms Agreed: Show here the date on which the final sales price for this shipment was agreed.

Section 11. Codes for Extras: This section refers to the additional price charged for extras (other than width and length, which are provided for in 18a and 18b). The code(s) for the extras shown should be reflected in section 18c, and the amount for each extra should be shown in 18d. The extras listed are expressed in terms as now understood in the U.S. market.

Section 12. Declaration of Seller/Shipper: Complete and explain if any buying or selling commission, payment or other element of value, other than shown on this invoice, has been or will be made or granted.

Section 14. AISI Category: This column should be completed with the appropriate category number from the following list.

Section 15. Description of Goods: In addition to the full description of goods as usually required on the Special Customs Invoice, steel specifications which this merchandise meets must be shown.

Section 17. Base Price: Show here for each steel category the price per unit, exclusive of extras, on which the total sales price was based.

Section 18. Extras. Show here the charge for each category of any extra added to the base price. Use appropriate codes from section 11 where appropriate.

Section 19a. Mill Price: In all cases where the exporter is other than the producer, show here the unit price paid by the initial and each subsequent purchaser. If the producer is selling directly to the U.S. buyer, this section need not be completed.

Section 19b. Home Market Unit Price: State the unit price in home market currency at which such or similar goods were sold or offered for sale and consumption in the home market at the date nearest to the date shown in section 8a.

Section 23. Transportation Costs to Point of Exportation: Show here the cost of transporting the goods from the mill or factory to the point of exportation, that is, the foreign inland freight charge.

Section 26a. Freight from U.S. Point of Importation: Show here the cost of transporting the goods from the point of importation in the U.S. if these costs are borne by the exporter or a party related to the exporter. If these costs cannot be determined prior to entry, provide the contract terms stating the exporter's liability.

CATEGORY NO. AND PRODUCTS

1. Ingots, blooms, billets, slabs, etc.
2. Wire rods.
3. Structural shapes—plain 3 inches and over.

4. Sheet piling.
5. Plates.
6. Rail and track accessories.
7. Wheels and axles.
8. Concrete reinforcing bars.
9. Bar shapes under 3 inches.
10. Bars—hot rolled—carbon.
11. Bars—hot rolled—alloy.
12. Bars—cold finished.
13. Hollow drill steel.
14. Welded pipe and tubing.
15. Other pipe and tubing.
16. Round and shaped wire.
17. Flat wire.
18. Bale ties.
19. Galvanized wire fencing.
20. Wire nails.
21. Barbed wire.
22. Black plate.
23. Tin plate.
24. Terne plate.
25. Sheets—hot rolled.
26. Sheets—cold rolled.
27. Sheets—coated (including galvanized).
28. Sheets—coated—alloy.
29. Strip—hot rolled.
30. Strip—cold rolled.
31. Strip—hot and cold rolled—alloy.
32. Sheets other—electric coated.

AUTHORITY

The authority for the proposed amendments is R.S. 251, as amended (19 U.S.C. 66), section 407, 42 Stat. 18 (19 U.S.C. 173), sections 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 1481, 1484, 1624), 77A Stat. 14, Tariff Schedules of the United States (19 U.S.C. 1202, General Headnote 11).

COMMENTS

The Customs Service invites written comments, preferably in triplicate, on the proposed amendments from all interested parties. Comments submitted will be available for public inspection in accordance with section 103.8(b) of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations and Legal Publications Division, U.S. Customs Service. However, other personnel in the Customs Service and the Department of the Treasury assisted in its development.

PROPOSED AMENDMENT

1. It is proposed to amend § 141.89(b)(1), Customs Regulations, (19 CFR 141.89(b)(1)), by adding a new subparagraph (E) to read as follows:

§ 141.89 Additional information for certain classes of merchandise.

(b) Special summary steel invoice.
(1) * * *

(E) The name of the producer and the price paid by the initial and each subsequent purchaser. One or more continuation sheets may be used to supply this information, if necessary.

R. E. CHASEN,
Commissioner of Customs.

Approved: October 10, 1978.

ROBERT H. MUNDHEIM,
General Counsel.

[FR Doc. 78-29073 Filed 10-13-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR PART 1917]

[Docket No. FI-4447]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the city of Holstad, Norman County, Minn.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 43 FR 38720 of the FEDERAL REGISTER of August 30, 1978.

EFFECTIVE DATE: August 30, 1978.

FOR FURTHER INFORMATION CONTACT:

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

The following:

Source of Flooding	Location	Elevation in feet (national geodetic vertical datum)
Red River of the North.	At northern corporate limit.	867
	At southern corporate limit.	867

Should be corrected to read:

Source of Flooding	Location	Elevation in feet (national geodetic vertical datum)
Red River of the North.	Intersection of Lake St. and 4th St.	867
	Intersection of Main St. and 5th St.	867

Source of Flooding	Location	Depth in feet (above-ground level)
Red River of the North.	Intersection of northern corporate limit and U.S. Highway 75.	3
	Intersection of 5th St. and U.S. Highway 75.	3
	Intersection of 2nd Ave. and 5th St.	3

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28656 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4448]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Perley, Norman County, Minn.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 43 FR 38720 of the FEDERAL REGISTER of August 30, 1978.

EFFECTIVE DATE: August 30, 1978.

FOR FURTHER INFORMATION CONTACT:

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

The following:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Red River of the North.	Entire Community.....	876

Should be corrected to read:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Red River of the North.	West of U.S. Highway 75.	876

Source of Flooding	Location	Depth in feet, above-ground level
Red River of the North.	East of U.S. Highway 75	1

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28657 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4584]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Preston, Fillmore County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Preston, Fillmore County, Minn. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Preston, Minn. Send comments to: the Honorable Richard Nelson, Mayor, City of Preston, Preston City Hall, Preston, Minn. 55965.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Preston, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).)

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
South Branch Root River.	East corporate limit.....	932
	Just upstream of Fillmore St. near Bluff St.	937
	Just upstream of Preston City Rd.	952
	Western corporate limit.	955

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

Issued: September 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28658 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-45851]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for
the City of Bella Villa, St. Louis County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Bella Villa, St. Louis County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Bella Villa, Mo. Send comments to: The Honorable George J. Appel, Mayor, City of Bella Villa, City Hall, Bella Villa, Mo. 63125.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Bella Villa, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).)

These elevations, together with the flood plain management measures required by § 1910.3 of the program reg-

ulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gravois Creek.....	Northeast corporate limits.	431
	Northwest corporate limits.	431

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator..
[FR Doc. 78-28659 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-45861]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for
the City of Berkeley, St. Louis County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Berkeley, St. Louis County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed

rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Berkeley, Mo. Send comments to: Mr. Larry Arft, City Manager, City of Berkeley, City Hall, Berkeley, Mo. 63134.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Berkeley, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).)

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Maline Creek	Northeastern corporate limits.	516
	Just downstream from Interstate 70.	519
	Just upstream from Interstate 70.	526
	Southern corporate limits.	528

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's dele-

gation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 14, 1978

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28660 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4587]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Sarcosie, Jasper County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Sarcosie, Jasper County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Sarcosie, Mo. Send comments to: The Honorable Nelson Brown, Mayor, City of Sarcosie, City Hall, Sarcosie, Mo. 64862.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Sarcosie, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).)

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Swift Creek	1,040 ft downstream of business Interstate 44.	1,083
	450 ft downstream of business Interstate 44.	1,083
	150 ft upstream of business Interstate 44.	1,084
	Just downstream of Center St.	1,091
	Just downstream of Joplin St.	1,100
	1,150 ft upstream of Joplin St.	1,107
	1,700 ft upstream of Joplin St. at southern corporate limit.	1,108
Center Creek	1,075 ft downstream of business Interstate 44.	1,083
	930 ft upstream of business Interstate 44.	1,086

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

Issued: September 19, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28661 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4588]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of St. Ann, St. Louis County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations

listed below for selected locations in the city of St. Ann, St. Louis County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, 10405 St. Charles Rock Road, St. Ann, Mo. Send comments to: The Honorable Clarence G. Tlemeyer, Mayor, City of St. Ann, City Hall, 10405 St. Charles Rock Road, St. Ann, Mo. 63704.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of St. Ann, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).)

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Coldwater Creek	Northwest corporate limits	540
	Just downstream from footbridge No. 3	543
	750 ft downstream from Wright Rd.	546
	100 ft upstream from Wright Rd.	550
	Eastern corporate limits	555
Dawson Creek	Confluence with Coldwater Creek	548
	250 ft downstream from St. Charles Rock Rd.	550
	Just downstream from St. Charles Rock Rd.	552
	Just upstream from St. Charles Rock Rd.	557

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

Issued: September 19, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28662 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4589]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Steele, Pemiscot County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Steele, Pemiscot County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 115 South Walnut Street, Steele, Mo. Send comments to: Hon. Ed Aumon,

Mayor, City of Steele, City Hall, 115 South Walnut Street, Steele, Mo. 63877.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Steele, Mo., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Main ditch 6	Kelly St.—100 ft*	259
	Walnut St.—100 ft*	259
Lateral A	Steele Auxiliary Airfield	258

*Upstream of centerline.

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28663 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4590]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Belleville, Essex County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Belleville, Essex County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Belleville City Hall, 152 Washington Avenue, Belleville, N.J. 07109. Send comments to: Mr. Eugene Varnet, Town Clerk of Belleville, 152 Washington Avenue, Belleville, N.J. 07109.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Belleville, Essex County, N.J., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 930, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more

stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Passaic River	Confluence of Second River.	10.1
	Belleville Turnpike	10.5
Second River.....	Confluence with Passaic River.	10.1
	McCarter Highway.....	11.4
	ConRail	18.4
	Summer Ave.....	33.7
	Union St.....	41.9
	Park Dr	53.1
	Franklin Ave	76.5
	Upstream corporate limits.	99.5
Third River	Downstream corporate limits.	75.0
	Joralemon St.....	81.3
	Upstream corporate limits.	82.0

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28664 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4591]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Eastampton, Burlington County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Eastampton, Burlington County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being

already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Township Hall, Smithfield Road, Mount Holly, N.J. Send comments to: Hon. Michael Feinberg, Mayor, Township of Eastampton, township Hall, Smithfield Road, Mount Holly, N.J. 08060.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Eastampton, N.J., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North Branch	Smithville Dam—60 ft*	22
Rancocas Creek.	Smithville Dam—40 ft**	25
	U.S. Route 206—50 ft*	29

* Downstream of centerline.
** Upstream of centerline.

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28665 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4592]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Tonawanda, Erie County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Tonawanda, Erie County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Tonawanda City Hall, 200 Niagara Street, Tonawanda, N.Y. 14150. Send comments to: Hon. G. Delwin Hervey, Mayor of Tonawanda, 200 Niagara Street, Tonawanda, N.Y. 14150.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street

SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Tonawanda, Erie County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tonawanda Creek	Railroad spur	571
	River Rd.	571
	Main St.	571
Ellicott Creek	East Niagara	571
	Delaware St.	571
	Fremont St.	571
	Conrail	571
	Young St.	571
Niagara River	Corporate limits (upstream)	572
	Lasalle Yacht Club	568
	Confluence with Tonawanda Creek	571
	Huntley Station	571

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28666 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4593]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Town of Wales, Erie County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Wales, Erie County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the office of Mr. Edward Holt, Building Inspector, 13237 Big Tree Road, East Aurora, N.Y. 14052. Send comments to: Mr. Adrian Keem, Supervisor of Wales, Wales Town Hall, Wales Center, N.Y. 14169.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Wales, Erie County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more

stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Buffalo Creek	Big Tree Rd. (State Route 20A)	889
	Confluence of Hunter Creek	898
	Strykersville Rd.	901
	Confluence of Stony Bottom Creek	903
	Merian Rd. (State Route 386)	918
	East Creed Rd. (State Route 387)	931
	Wales Creek Rd. (State Route 540)	938
Hunter Creek	Confluence with Buffalo Creek	898
	Strykersville Rd. (upstream side)	903
	Holland Rd.	911
East Branch Cazenovia Creek	Downstream town boundary	923
	State Route 16	927
	Upstream town boundary	944

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28667 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4594]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Hebron, Morton County, N. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Hebron, Morton County, N. Dak. These base (100-year) flood elevations are the basis for the flood

plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Fire Hall, 620 Washington Avenue, Hebron, N. Dak. Send comments to: Hon. Anthony L. Kovarik, Mayor, City of Hebron, Hebron, N. Dak. 58638.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Hebron, N. Dak., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Little Knife River.	Main Ave.—50 ft*	2,150
	Fulton Ave.—50 ft*	2,159
	Elk St.—50 ft*	2,163
	Lincoln Ave.—50 ft*	2,170
	2d crossing Burlington Northern RR—20 ft*	2,174

* Upstream of centerline.

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28668 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4595]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Borough of Briar Creek, Columbia County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Briar Creek, Columbia County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of Mayor Oscar Welsh, 2606 West Front Street, Berwick, Pa. 17603. Send comments to: Hon. Oscar Welsh, Mayor of Briar Creek, 2606 West Front Street, Berwick, Pa. 17603.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Ad-

ministrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Briar Creek, Columbia County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Confluence with Briar Creek.	492
Briar Creek	ConRall (upstream)	495
	Rittenhouse Rd. (upstream).	506
East Branch Briar Creek.	State Route 93 (upstream).	507

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28669 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-45961]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Cleveland, Columbia County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Cleveland, Columbia County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Cleveland Township Municipal Building, Fishersdale, Pa. Send comments to: Mr. Richard H. Hornberger, Chairman of Cleveland, Rural Delivery 1, Elysburg, Pa. 17824.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Cleveland, Columbia County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change

any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Roaring Creek	Covered bridge No. 10 (upstream).	621
	Bridge No. 11 (upstream).	645
	Bridge No. 12 (upstream).	692
South branch Roaring Creek.	Confluence with Mugser Run.	613
	Bridge No. 31 (upstream).	647
	Bridge No. 32 (upstream).	661
Mugser Run	Confluence with South Branch Roaring Creek.	613
	Township Route 316 (upstream).	632
	Johnson covered bridge (upstream).	663

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28670 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-45971]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Borough of Coudersport, Potter County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Coudersport, Potter County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being

already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Coudersport Borough Building, 201 South West Street, Coudersport, Pa. 16915. Send comments to: Mr. Robert Mitchell, President of the Council of Coudersport, Coudersport Borough Building, Coudersport, Pa. 16915.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Coudersport, Potter County, Pa. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Dingman Run.....	Abandoned railroad bridge 412 ft upstream from U.S. Route 6 (upstream).	16,34
	Abandoned railroad bridge 267 ft upstream from U.S. Route 6 (upstream).	1,632
	U.S. Route 6 (upstream)	1,631
	Confluence of Allegheny River.	1,631
North Hollow Run	U.S. Route 6 (upstream)	1,714
	Confluence of Mill Creek.	1,709
Allegheny River....	Upstream corporate limits.	1,700
	Reese Hollow Run (upstream).	1,686
	Abandoned railroad 3,696 ft downstream from Reese Hollow Rd. (upstream).	1,678
	7th St. (upstream).....	1,660
	4th St. (upstream).....	1,657
	2d St. (upstream).....	1,653
	Confluence with Mill Creek.	1,646
	Main St. (upstream).....	1,644
	Chestnut St. (upstream)	1,640
	Confluence with Dingman Run.	1,631
	Toles Hollow Rd. (upstream).	1,628
Mill Creek	Buffalo St. (upstream) ...	1,710
	Driveway 5,000 ft downstream from Buffalo St. (upstream).	1,682
	Driveway 1,520 ft upstream from Mill St. (upstream).	1,665
	Footbridge 335 ft upstream from Mill St. (upstream).	1,654
	Mill St. (upstream).....	1,652
	Borle St. (upstream).....	1,647

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28671 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4598]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Franklin, Columbia County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in

the township of Franklin, Columbia County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of Mr. Richard Petterman, R.D. 2, Catawissa, Pa. 17820. Send comments to: Mr. Frank Getty, Chairman of Franklin, Rural Delivery 2, Catawissa, Pa. 17820.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Franklin, Columbia County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Confluence with Roaring Creek limits.	467
	Upstream corporate limits.	473
Roaring Creek	ConRail	467
	Old concrete dam (upstream).	481
	Covered bridge No. 6 (upstream).	552
	Bridge No. 7 (upstream 100 ft).	567
	State Route 487 (upstream 100 ft).	596
	Upstream corporate limits.	620
South Branch	Bridge No. 24 (upstream).	573
Roaring Creek	Bridge No. 25 (upstream).	600

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28672 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4599]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Halifax, Dauphin County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Halifax, Dauphin County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Halifax Borough Building, Second and Arm-

strong Streets, Halifax, Pa. 17032. Send comments to: Mr. Allen Kinsinger, President of the Council of Halifax, Highland Lane, Halifax, Pa. 17032.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Halifax, Dauphin, County, Pa. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Corporate limits extended (downstream).	371
	Rise St. (upstream).....	372
	Corporate limits extended (upstream).	372

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28673 Filed 10-13-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4615]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Hemlock, Columbia County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Hemlock, Columbia County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of Mr. Herman Ikeler, Chairman of Hemlock, Rural Delivery 2, Bloomsburg, Pa. 17815. Send comments to: Mr. Herman Ikeler, Chairman of Hemlock, Rural Delivery 2, Bloomsburg, Pa. 17815.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Hemlock, Columbia County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968

(Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fishing Creek	State Route 44 (upstream).	478
	Railroad St. (upstream).	485
	Interstate Route 80 (upstream).	497
Hemlock Creek	Legislative Route 19100 (upstream).	478
	State Route 2 (upstream).	492
	Interstate Route 80 (upstream).	543
Little Fishing Creek.	Legislative Route 239 (upstream).	501
	Dam	519
	Township Rd. 519 (upstream).	549
	Upstream corporate limits.	552

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28625 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4616]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Herndon, Northumberland County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Herndon, Northumberland County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Municipal Building, Main Street, Herndon, Pa. 17870. Send comments to: Hon. Lewis Knoedler, Mayor of Herndon, Main Street, Herndon, Pa. 17870.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Herndon, Northumberland County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Downstream corporate limits.	422
	Pine St. (extended)	423
	Confluence of Mahanoy Creek.	426

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28626 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4617]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Township of Locust, Columbia County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Locust, Columbia County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the RCV Elementary School, Route 42, Numidia, Pa. Send comments to: Mr. Aldon G. Mensch, Chairman of Locust, Rural Delivery 3, Catawissa, Pa. 17820.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Ad-

ministrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Locust, Columbia County, Pa. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Roaring Creek	State Route 42 (upstream).	726
	LR 19086 (upstream)	758
	LR 19005 (upstream)	786
	Covered bridge No. 17 (upstream).	798
	Covered bridge No. 19 (upstream).	850
Mill Creek	LR 19009 (upstream)	878
	Confluence of tributary No. 16 to Roaring Creek.	916
	Confluence with Roaring Creek.	853

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28627 Filed 10-13-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4618]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Lower Augusta, Northumberland County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Lower Augusta, Northumberland County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Lower Augusta Township Building, Hollowing Run Road, Lower Augusta, Pa. 17801. Send comments to: Mr. Talmadge Johnson, Chairman of Lower Augusta, Rural Delivery 3, Sunberry, Pa. 17801.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Lower Augusta, Northumberland County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are re-

quired by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Downstream corporate limits.	429
	Confluence of Boile Run	431
	ConRail	438
Boile Run	Confluence of Susquehanna River.	431
	State Route 147	431
	Legislative Route 49023	451
	Snyder Rd.	466
	Butler Rd.	478
	Footbridge (950 ft upstream of Butler Rd.)	488
	Wooden bridge (1,340 ft upstream of Butler Rd.)	493
	Legislative Route 49023	519
	Township Route 390	559
	Township Route 394	579
	Legislative Route 49023	601
	Unnamed road (1,100 ft upstream of Legislative Route 49023)	616
	Legislative Route 49023	633
	Fetterman Rd.	657
	Township Route 396	692
	Legislative Route 49023	722

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

Issued: September 20, 1978.

GLORIA M. JIMENEZ

Federal Insurance Administrator.

[FR Doc. 78-28628 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4619]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Montour, Columbia County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Montour, Columbia County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Montour Township Municipal Building, Route 42, Rupert, Pa.

Send comments to: Mr. Albert Wirt, Chairman of Montour, 341 Valley Road, Bloomsburg, Pa. 17815.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Montour, Columbia County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings

and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	State Route 42 (upstream).	474
	Confluence with Fishing Creek.	476
Fishing Creek	Covered bridge No. 65.....	477
	ConRail	477
	State Route 42 (upstream).	478
Hemlock Creek	Legislative Route 19100 (upstream).	478
	Legislative Route 19119 (upstream).	497

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28629 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-46201]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Orange, Columbia County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Orange, Columbia County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of Mrs. Suzanne Moore, Rural Delivery 2, Orangeville, Pa. 17859. Send comments to: Mr. Clyde Bartholomew, Chairman of Orange, Rural Delivery 2, Orangeville, Pa. 17859.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Orange, Columbia County, Pa. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fishing Creek	Confluence with Stony Brook.	538
	Confluence with Deer Lick Run.	558
	Legislative Route 19031 (upstream).	564
	State Route 487 (downstream).	583
	State Route 487 (upstream).	588

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Upstream corporate limits.	612
Green Creek	Confluence with Fishing Creek.	569
	Legislative Route 19030 (upstream).	580
	Covered bridge No. 12 (upstream).	597
	Upstream corporate limits.	606

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

Issued: September 20, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28630 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-46211]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Union, Union County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Union, Union County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of Mr. Harold Bennett, Stein Lane, Winfield, Pa. 17889.

Send comments to: Mr. K. Palmer Felme, Chairman of Union, Route 1, Winfield, Pa. 17889.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Union, Union County, Pa. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West Branch	U.S. Route 11 Bridge	451
Susquehanna River	Confluence of Winfield Creek	456
Winfield Creek	U.S. Route 15	456
	Legislative Route 59047	456
	Township Route 356	501
	Farm road No. 1 (2,320 ft upstream of township Route 356)	513
	Farm road No. 2 (5,325 ft upstream of township Route 356)	537
	Farm road No. 3 (8,450 ft upstream of township Route 356)	558

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

Issued: September 20, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28631 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4622]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Wellsboro, Tioga County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the borough of Wellsboro, Tioga County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Wellsboro Building, 28 Crafton Street, Wellsboro, Pa. 16901. Send comments to: Mr. Robert Russell, Borough Manager of Wellsboro, Wellsboro Borough Building, Wellsboro, Pa. 16901.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the borough of Wellsboro, Tioga County, Pa. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more

stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Marsh Creek	ConRail (90 ft from downstream Corporate limits) upstream side	1,248
	ConRail (1,370 ft from downstream Corporate limits) downstream side	1,263
	ConRail (2,170 ft from downstream Corporate limits) downstream side	1,272
	Confluence with Charleston Creek	1,283
Charleston Creek ..	Confluence with Marsh Creek	1,283
	Bacon St. (upstream side)	1,294
	ConRail (upstream side)	1,298
	Jackson St. (upstream side)	1,306
	Dam No. 61 (upstream side)	1,315
Tributary No. 1 to Charleston Creek ..	Confluence with Charleston Creek	1,313
	Unnamed Road No. 1 (upstream side)	1,323
Morris Branch	Confluence with Charleston Creek	1,283
	Charleston St. (upstream side)	1,289
	Bradley St. (upstream side)	1,305
	Grant St. (upstream side)	1,321
	Morris Lane (upstream side)	1,323
	Footbridge (upstream side)	1,330
	Central Ave. (upstream side)	1,363
	Upstream corporate limits	1,427
Kelsey Creek	Main St. (upstream side)	1,285
	Riberolle St. (upstream side)	1,289
	Queen St. (upstream side)	1,298
	West Water St. (upstream side)	1,306
	Norris St. (upstream side)	1,313
	King St. (upstream side)	1,319
	West Ave. (upstream side)	1,327
	Confluence with Boyden Brook	1,355
	715 ft upstream of confluence with Boyden Brook	1,365
	1,275 ft upstream of confluence with Boyden Brook	1,375
Hoover Brook	Unnamed Road No. 1 (upstream side)	1,321
	Unnamed Road No. 2 (upstream side)	1,326

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Unnamed Road No. 3 (downstream side).	1,333
	Eberenz St. (upstream side).	1,347
	West Water St. (upstream side).	1,356
	Stickley St. (upstream side).	1,361
	870 ft upstream of Stickley St.	1,372
	1,210 ft upstream of Stickley St.	1,386
Boyden Brook.....	Confluence with Kelsey Creek.	1,355
	Kelsey St. (upstream side).	1,375
	490 ft upstream of Kelsey St.	1,385
	870 ft upstream of Kelsey St.	1,395
	1,370 ft upstream of Kelsey St.	1,405
	Greenwood St. (upstream side).	1,420

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28632 Filed 10-18-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4623]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for
the City of Norfolk, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Norfolk, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the pro-

posed base (100-year) flood elevations are available for review at the Norfolk City Hall Building, Norfolk, Va. 23501. Send comments to: Mr. Julian F. Hirst, City Manager of Norfolk, 1101 City Hall Building, Norfolk, Va. 23501.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Norfolk, Va., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Chesapeake Bay and Hampton Roads.	Entire reach	9
Willoughby Bay	do.....	9
Little Creek	Shore Dr	9
	Cape View Ave	9
Lake Whitehurst.....	Shore Dr	9
	Azalea Garden Rd.....	9
Lake Taylor	Kempville Rd	9
Elizabeth River	Entire reach	9
Eastern branch of Elizabeth River	Campostella Rd	9
Broad Creek	Military Rd	9
Lafayette River	Virginia Beach Blvd.....	9
North branch of Lafayette River	Hampton Blvd.....	9
Wayne Creek	Norfolk & Western RR..	9
Smith Creek	Tidewater Dr	9
Mason Creek	Brambleton Ave.....	9
Oats Creek	Granby St	7
	do.....	7

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

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28633 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4624]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for
the Town of Warrenton, Fauquier County, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Warrenton, Fauquier County, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Engineer's Office, Municipal Building, Warrenton, Va. 22186. Send comments to: Mr. Edward Brower, Town Manager of Warrenton, 18 Court Street, P.O. Drawer 341, Warrenton, Va. 22186.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Warrenton, Fauquier County, Va., in accordance with section 110 of the Flood Disaster Pro-

tection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cemetery Run	State Route 211	480
	Private road	498
	Garrett St.	512
	Moffet St.	536
Creek Run	Von Rollen St.	490
	Waterloo Rd.	497
White Mills Branch	Alexandria St.	435
	Blackwell Rd.	460
	Winchester St.	502

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

Issued: September 15, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28634 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4625]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Kennewick, Benton County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in

the city of Kennewick, Benton County, Wash.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 210 West 6th Avenue, Kennewick, Wash. Send comments to: Hon. Donald Kuhns, mayor, city of Kennewick, P.O. Box 6108, Kennewick, Wash. 99336.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Kennewick, Wash., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Zintel Canyon	Tacoma St.—50 ft*	433
	Vancouver St.—60 ft*	443
	Upstream corporate limits.	472
Source of flooding	Location	Depth in feet
Zintel Canyon	Intersection of West Kennewick Ave. and South Quincy St. (shallow flooding).	2
	Intersection of West 6th Ave. and South Rainier St. (shallow flooding).	2
Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Zintel Canyon	Intersection of East 10th Ave. and South Garfield St.	391

*Upstream of centerline.

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

Issued: September 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28635 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4626]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Parsons, Tucker County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Parsons, Tucker County, W. Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the

second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Parsons mayor's office, 222 Water Street, Parsons, W. Va. 26287. Send comments to: Hon. Charles W. Rowsenau, mayor of Parsons, 222 Water Street, Parsons, W. Va. 26287.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Parsons, Tucker County, W. Va. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic, vertical datum
Shavers Fork of the Cheat River.	Downstream corporate limits.	1,640
	1st St.	1,648
	Whitmer St.	1,652
	Upstream corporate limits.	1,660
Mill Race	Downstream corporate limits.	1,641
	Magnolia St.	1,646
	Upstream corporate limits.	1,654

Source of flooding	Location	Elevation in feet, national geodetic, vertical datum
Black Fork of the Cheat River.	Downstream corporate limits.	1,642
	Magnolia St. (extended).	1,646
	Pennsylvania Ave. (U.S. 219).	1,654
	Upstream corporate limits.	1,654

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

Issued: August 31, 1978.

GLORIA M. JIMINEZ,
Federal Insurance Administrator.

[FR Doc. 78-28636 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4627]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Laramie, Albany County, Wyo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Laramie, Albany County, Wyo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at city manager's office, 203 South Fourth Street, Laramie, Wyo. Send comments to: Hon. Norman E. Roberts, mayor, city of Laramie, P.O. Box C, Laramie, Wyo. 82070

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance,

Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Laramie, Wyo., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic, vertical datum
Laramie	Curtis St.—1,160 ft*	7,130
	Curtis St.—460 ft**	7,132
	New Wyoming State Highway 130-230-940 ft**	7,137
	Interstate Highway 80—at centerline.	7,141
	Spring Creek	7,139
	Confluence with Laramie River.	7,143
	Pine St. (approximately 1,308 ft upstream of confluence with Laramie River)—12 ft**.	7,152
Spring Creek	2d St.—150 ft**	7,167
	9th St.—50 ft**	7,167
	13th St.—60 ft**	7,174
	17th St.—595 ft**	7,186
	Corthell Rd.—80 ft**	7,195
	Grand Ave.—90 ft**	7,249
	Corporate limit 6,520 ft upstream of centerline of Grand Ave., 20 ft downstream of that corporate limit.	7,332
Spring Creek Overflow.	Steele St.—at centerline.	7,182
	26th St.—70 ft**	7,221

*Downstream of centerline.

**Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development

Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 21, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28637 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4650]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Buckeye, Maricopa County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Buckeye, Maricopa County, Ariz. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, Buckeye, Ariz. Send comments to: Mr. Steven L. Thompson, town manager of Buckeye, P.O. Box 157, Buckeye, Ariz. 85326.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Buckeye, Maricopa County, Ariz. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and

Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Buckeye Canal.....	North of canal.....	'1
	South of canal.....	'2
Southern-Pacific RR.	North of railroad.....	'891
'AO depth.		
'AH elevations.		

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

Issued: September 29, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28915 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4041]

NATIONAL FLOOD INSURANCE PROGRAM

Revision of Proposed Flood Elevation Determination for the Town of Goodyear, Maricopa County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Goodyear, Maricopa County, Ariz. Due to recent engineering analysis, this proposed rule revises

the proposed determinations of base (100-year) flood elevations published in the FEDERAL REGISTER, vol. 43 FR, page 16747 on April 20, 1978.

DATE: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the office of the town manager, 119 North Litchfield Road, Goodyear, Ariz. Send comments to: Mr. E. W. Kleinschmidt, town manager of Goodyear, 119 North Litchfield Road, Goodyear, Ariz. 85338.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the town of Goodyear, Maricopa County, Ariz., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gila River.....	Reams Rd. extended.....	911
	Bullard Ave	919
	Confluence with Agua Fria River.	924
Agua Fria River	Southern Ave. extended.	924
	Broadway Rd.....	934

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gila River	Reams Rd	915
Breakout at	Confluence with Gila	918
Buckeye Canal.	River.	

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

Issued: September 26, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 78-28916 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4651]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for Maricopa County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Maricopa County, Ariz. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Administration Building, Maricopa County, Ariz. Send comments to: Mr. George Campbell, Chairman of the Board of Supervisors of Maricopa County, 603 Administration Building, 111 South Third Avenue, Phoenix, Ariz. 85003.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Maricopa County, Ariz., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gila River.....	323d Ave. (extended)	777
	Brunner Rd. (extended).....	807
	Wilson Rd. (extended).....	816
	U.S. Route 80	826
	Miller Rd. (extended).....	838
	Watson Rd. (extended).....	854
	Dean Rd. (extended).....	862
	Airport Rd.	869
	Jackrabbit Rd	878
	Citrus Rd. (extended).....	890
	Cotton Lane (extended).....	895
	Sarival Ave. (extended).....	904
	Reems Rd. (extended).....	911
	Bullard Ave.....	918
	Litchfield Rd.	926
	(extended).....	
	Dysart Rd. (extended).....	931
	El Mirage Rd.....	939
	115th Ave	947
Salt River	do	949
	107th Ave. (extended).....	952
	99th Ave. (extended).....	959
	83d Ave. (extended).....	976
	79th Ave	981
	75th Ave	989
	67th Ave	994
	59th Ave. (extended).....	1,007
	51st Avenue Bridge	1,015
	35th Avenue Bridge	1,035
	Scottsdale Rd	1,164
	Hayden Rd.....	1,173
	Pima Rd. (extended).....	1,182
Hassayampa River	Atchison, Topeka & Santa Fe RR (downstream side).	1,845
	Atchison, Topeka & Santa Fe RR (upstream side).	1,854
	0.5 mi above AT & SF RR.	1,862
	1.0 mi above AT & SF RR.	1,868

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	1.5 mi above AT & SF RR.	1,879
	2.0 mi above AT & SF RR.	1,893
	2.5 mi above AT & SF RR.	1,908
	3.0 mi above AT & SF RR.	1,924
	3.5 mi above AT & SF RR.	1,932
	4.0 mi above AT & SF RR.	1,947
	4.5 mi above AT & SF RR.	1,961
	5.0 mi above AT & SF RR.	1,975
	5.5 mi above AT & SF RR.	1,986
	6.0 mi above AT & SF RR.	2,000
	6.5 mi above AT & SF RR.	2,016
	7.0 mi above AT & SF RR.	2,028
	7.5 mi above AT & SF RR.	2,041
	8.0 mi above AT & SF RR.	2,054
	8.5 mi above AT & SF RR.	2,067
	9.0 mi above AT & SF RR.	2,078
	9.5 mi above AT & SF RR.	2,092
	County boundary	2,104
Agua Fria River	Southern Ave. (extended).	924
	Broadway Rd. extension	934
	Lower Buckeye Rd	948
	U.S. Route 80 (Buckeye Rd.).	963
	Van Buren St	974
	McDowell Rd.....	986
	Thomas Rd	999
	Indian School Rd	1,010
	Camel Back Rd	1,026
	Luke Air Force Base— Glendale Rd.	1,049
	Northern Ave	1,067
	Olive Ave.....	1,081
	Peoria Ave.....	1,094
	Cactus Rd. (extension)...	1,111
	Atchison, Topeka & Santa Fe RR.	1,127
	Greenway Rd	1,139
	Bell Rd	1,162
	Pinnacle Peak Rd. (extension).	1,220
New River.....	Bethany Home Rd. (extension).	1,042
	Glendale Ave.....	1,065
	Northern Ave	1,080
	Olive Ave.....	1,093
	Peoria Ave	1,112
	Grand Ave	1,136
	Thunderbird Ave.....	1,154
	Confluence of Skunk Creek.	1,167
	Bell Rd	1,204
	Union Hills Rd.....	1,230
	Beardsley Rd	1,253
	Deer Valley Rd	1,282
	Pinnacle Peak Rd	1,311
Skunk Creek	83d Avenue	1,179
	Greenway Rd	1,184
	Bell Rd	1,221
	67th Ave.....	1,235
	59th Ave	1,270
	51st Ave. (extended)	1,298
	Beardsley Rd.....	1,329
	Deer Valley Rd. (extended).	1,362
	Pinnacle Peak Rd.....	1,394
	Happy Valley Rd.....	1,432
	Black Canyon Highway..	1,471

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	2 mi above Black Canyon Highway.....	1,545
	Carefree Highway.....	1,678
Scatter Wash.....	35th St.....	1,353
	Deer Valley Dr.....	1,375
	27th Ave.....	1,395
Scatter Wash East	Confluence with Scatter Wash.....	1,363
	27th Ave.....	1,390

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

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28917 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4652]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Santa Cruz County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Santa Cruz County, Ariz. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at County Planners Office, Santa Cruz Courthouse, Nogales, Ariz. Send comments to: Mr. William G. Baffert, Chairman, Board of Supervisors, Santa Cruz County, Santa Cruz County Courthouse, Nogales, Ariz. 85621.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Ad-

ministrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Santa Cruz County, Ariz., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sonoita Creek.....	Pendleton Dr.....	3,439
	Unimproved road.....	3,523
	Confluence with Fresno Canyon.....	3,561
Josephine Canyon	Southern Pacific RR.....	3,299
	Jeep Trail (most downstream crossing).....	3,361
	Jeep Trail (most upstream crossing).....	3,531
Ephriam Canyon...	State Highway 189 and confluence with Mariposa Canyon.....	3,798
	State Highway 189, Southbound Lane-85 ft upstream from centerline.....	4,003
Mariposa Canyon (Tributary No. 2).	State Highway 189, access road.....	3,802
	Trailer Park Rd.....	3,815
Mariposa Canyon (Tributary No. 1).	Headwall Interstate 19 and confluence with Mariposa Canyon.....	3,792
Mariposa Canyon (Valley Profile).	State Highway 189.....	3,881
	Coronado National Forest boundary.....	3,957
Mariposa Canyon (Channel Profile).	Confluence with Nogales Wash.....	3,737
	State Highway 189, 10 ft downstream from centerline (upstream crossing).....	3,880
	Coronado National Forest boundary.....	3,971

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Nogales Wash (flow west of U.S. Highway 89 and/or Southern Pacific RR.)	U.S. Highway 89..... Country Club Rd..... Valle Verde Circle (downstream crossing)..... Valle Verde Circle (upstream crossing).....	3,654 3,661 3,683 3,687
Nogales Wash.....	Confluence with Potrero Creek.....	3,607
	Southern Pacific RR 25 ft upstream from centerline.....	3,694
	Baffert Dr culverts.....	3,734
	Monte Carlo Dr.....	3,745
	Nogales corporate limits (east flood plain).....	3,791
Potrero Creek (tributary No. 1).	Confluence with Potrero Creek.....	3,647
	Interstate 19, northbound Lane.....	3,654
Potrero Creek (flow west of Southern Pacific RR and Sewage Lagoon Levee).	Confluence with Santa Cruz River.....	3,346
	Waste treatment plant road.....	3,478
	Southern Pacific RR branch line (most upstream crossing).....	3,490
Potrero Creek.....	Sewage Logoon Levee.....	3,476
	Pena Blanca Rd.....	3,521
	Navajo St.....	3,625
	Meadow Hills Dr.....	3,678
	Coronado National Forest boundary.....	3,742
Agua Fria Canyon	Rio Rico Dr.....	3,419
	Calle Teruno.....	3,501
	Camino Agua Fria.....	3,522
	Coronado National Forest boundary.....	3,619
Peck Canyon.....	Interstate Highway 19 (northbound Lane).....	3,355
	Interstate Highway 19 (southbound Lane).....	3,358
	Pulido Rd.....	3,369
	Peck Canyon Dr.....	3,437
	Coronado National Forest boundary.....	3,451
Sopori Wash.....	Confluence with Santa Cruz River.....	3,032
	East Frontage Rd.....	3,065
	Confluence with Toros Wash.....	3,110
	Spori Rach Rd.....	3,197
	Confluence with Proctor Wash.....	3,234
	Confluence with Ellas Draw.....	3,298
Sopori Wash (flow north along U.S. Highway 89).	U.S. Highway 89.....	3,070
Santa Cruz River (flow east of Southern Pacific RR).	Gravel Rd.....	3,062
	Kennedy Rd.-50 ft downstream from centerline.....	3,215
	Kenedy RD.-50 ft upstream from centerline.....	3,218
	Santa Gertrudis Lane.....	3,270
	Rio Rico Dr.....	3,410
Santa Cruz River ..	Pima-Santa Cruz County Line.....	3,028
	Amado Rd.....	3,060
	Grebbs Rd.....	3,144
	Williams Rd.....	3,218
	Santa Gertrudis Lane.....	3,267
	Confluence with Deck Canyon.....	3,351
	Rio Rico Dr.-50 ft downstream from centerline.....	3,414
	Rio Rico Rd.-50 ft upstream from centerline.....	3,418
	Penna Blanca Rd.....	3,502
	Confluence with Burro Canyon.....	3,543
	River Rd.....	3,615

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Xavier Way Rd.-55 ft downstream from centerline.	3,666
	Xavier Way Rd.-55 ft upstream from centerline.	3,671
	International boundary-Mexico.	3,727

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

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28918 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4653]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Conway, Faulkner County, Ark.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Conway, Faulkner County, Ark. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, Conway, Ark. 72032. Send comments to: Mayor Jim Hogard or Mr. John Henderson, Administrative Assistant, Municipal Building, Conway, Ark. 72032.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Ad-

ministrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Conway, Faulkner County, Ark., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gold Creek.....	Approximately 200 ft upstream of county road.	278
	Approximately 150 ft upstream of farm road.	282
	Just downstream of Brookfield Dr.	297
Little Creek, main stem.	Approximately 100 ft downstream of Mockingbird Lane.	284
	Approximately 100 ft upstream of U.S. Highway 64.	295
Little Creek, tributary No. 1.	Just downstream of Simon St. (extended).	284
Little Creek, tributary No. 2.	Just upstream of Pamala Lane (extended).	299
	Just upstream of Siebenmorgan Rd.	315
Railroad Creek.....	Just downstream of Robins St.	296
	Just upstream of South Blvd.	299
Stonedam Creek.....	Just upstream of Hillman St. (extended).	294
Tucker Creek.....	Just upstream of Salem Rd.	292
	Just downstream of College Ave.	296

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Approximately 150 ft upstream of Prince St.	309

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

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28919 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4654]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Healdsburg, Sonoma County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Healdsburg, Sonoma County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 126 Matheson Street, Healdsburg, Calif. Send comments to: Mr. Michael McDonald, City Manager, City of Healdsburg, City Hall, 126 Matheson Stree, Healdsburg, Calif. 95448.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Healdsburg, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Russian River	Healdsburg bridge—centerline.	94
Dry Creek	Canal Way—within corporate limits.	96

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

Issued: September 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28920 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4655]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Oakdale, Alameda County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Oakdale, Alameda County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 280 North Third Avenue, Oakdale, Calif. Send comments to: Mr. Carl Hatfield, City Manager, City of Oakdale, P.O. Box 305, Oakdale, Calif. 95361.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Oakdale, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stanislaus River	Corporate limits located 5,200 ft downstream Highway 120.	99
	Highway 120 bridge—50 ft*.	104
	Corporate limits located 4,050 ft upstream Highway 120.	108
	Downstream corporate limits in Kerr Park.	112
	Upstream corporate limits in Kerr Park.	113

*Upstream of centerline.

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

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28921 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4656]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Pinole, Contra Costa County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Pinole, Contra Costa County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 2131 Pear Street, Pinole, Calif. Send comments to: Honorable Thomas Goz-

zano, Mayor, City of Pinole, 2131 Pear Street, Pinole, Calif. 94564.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Pinole, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pinole Creek	Southern Pacific RR	6
	Tennent Avenue Bridge	7
	Atchison, Topeka & Santa Fe RR	11
	San Pablo Avenue Bridge	14
	Pinole Valley Rd. (1st crossing)	20
	Pinole Valley Rd. (2d crossing)	49
	Ramona Ct	54
	Simas Ave	71
	Pinole Valley Rd. (3d crossing)	101
	Pinole Valley Rd. (4th crossing)	122
	Upstream corporate limits (40 ft downstream)	140

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended

(42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28922 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4657]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Lafayette, Boulder County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Lafayette, Boulder County, Colo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 201 East Simpson, Lafayette, Colo. Send comments to: Hon. Roy Roberts, Mayor, City of Lafayette, City Hall, 201 East Simpson, Lafayette, Colo. 80026.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Lafayette, Colo., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

opment Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Coal Creek	South 120th St.—50 ft* ..	5,142
	Burlington Northern RR—100 ft ..	5,147
	U.S. Highway 287	5,187
	Most upstream corporate limits	5,260
Rock Creek	Downstream corporate limits—100 ft upstream ..	5,136
	South 120th St.	5,152
	Upstream corporate limits ..	5,194

*Upstream from centerline.

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

Issued: September 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28923 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4658]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for Clearwater County, Idaho

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in

Clearwater County, Idaho. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Clearwater Courthouse, Orofino, Idaho. Send comments to: Mr. William T. Bird, Chairman, Board of Commissioners, Clearwater County, Clearwater County Courthouse, Orofino, Idaho 83544.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Clearwater County, Idaho, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clearwater River...	100 ft upstream	981
	confluence with North Fork Clearwater River.	
	State Highway 7—50 ft*.	1,013
Orofino Creek.....	Private bridge—50 ft*.....	1,038
	Konkolville bridge—50 ft*.	1,188
	1st crossing county bridge—100 ft*.	1,239
	2d crossing county bridge—10 ft*.	1,329
Whiskey Creek.....	County bridge—40 ft*.....	1,217
	Camas Prairie railroad bridge—60 ft*.	1,229
	1st crossing private bridge—40 ft*.	1,267
	2d crossing private bridge—20 ft*.	1,368
Jim Ford Creek.....	Camas Prairie railroad bridge—40 ft*.	1,042
	County bridge—60 ft*.....	1,058
	80 ft upstream	2,985
	convergence with Grasshopper Creek.	
Grasshopper Creek.	80 ft upstream	2,985
	confluence with Jim Ford Creek.	
Elk Creek.....	Elk River Dam—50 ft*.....	2,823
	Elk Creek Bridge—20 ft*.	2,825

*Upstream of centerline.

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

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28924 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4659]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Village of Hodgkins, Cook County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Hodgkins, Cook County, Ill. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the

second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Hodgkins Village Hall, 8990 Lyons Street, Hodgkins, Ill. 60525. Send comments to: Mr. Leon Cook, President of the Village of Hodgkins, 8990 Lyons Street, Hodgkins, Ill. 60525.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Hodgkins, Cook County, Ill., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
DesPlaines River...	Downstream corporate limit of Willow Springs and Hodgkins.	598
	Interstate 55.....	598
	Upstream corporate limit of Hodgkins and unincorporated Cook County.	599

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

Issued: September 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28925 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4660]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for
the City of Marengo, McHenry County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Marengo, McHenry County, Ill. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Marengo, Ill. Send comments to: The Honorable James Cowan, Mayor, City of Marengo, 120 East Prairie Street, Marengo, Ill. 60152.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Marengo, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood In-

surance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a).)

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Unnamed Creek	Northern corporate limit.	798
	750 ft upstream of northern corporate limit.	800
	1,320 ft downstream from State St.	802
	500 ft downstream of State St.	803
	At State St.....	806
	At Hale St.....	807
	At Page St.....	808
	890 ft upstream of Telegraph Ave.	810
	200 ft upstream of Prospect St.	811
	Eastern corporate limit..	813

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

Issued: September 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28926 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4661]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for
the Village of Mokena, Will County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Mokena, Will County, Ill. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the village clerk's office, Mokena, Ill. Send comments to: the Honorable Robert L. Teske, mayor, village of Mokena, 11004 Carpenter Street, Mokena, Ill. 60448, attention: Mr. Owen Maue, village administrator.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Mokena, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hickory Creek	At westernmost corporate limit.	657
	1,650 ft upstream of westernmost corporate limit.	659
	900 ft downstream of Wolf Rd.	662
	Just downstream of Wolf Rd.	663

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

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28927 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4662]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Jeffersonville, Clark County, Ind.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Jeffersonville, Clark County, Ind. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the city clerk's office, City County Building, Jeffersonville, Ind. Send comments to: The Hon. Richard Vissing, mayor, city of Jeffersonville, 502 Court Avenue, Jeffersonville, Ind. 47130

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Jeffersonville, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ohio River	Just upstream of Interstate 65 bridge.	450
	Upstream corporate limit.	450
Silver Creek	Just upstream of ConRail.	462
Woodland Court tributary.	Downstream corporate limit.	463
	Downstream side of Northside Church Rd.	472
	Upstream side of Northern Church Rd.	475
	Upstream corporate limit.	475
Greenbriar tributary.	Upstream side of Reeds Lane.	454
	Upstream side of Harmony Lane.	456
	Upstream side of 10th St.	457
Hamburg Pike tributary.	Downstream corporate limit.	455
	Downstream side of Hamburg Pike.	464
Mill Creek	Downstream side of Interstate 65 southbound.	442
	Upstream side of Eastern Blvd.	443

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Upstream side of ConRail.	444
	Upstream corporate limit (Hamburg Pike).	446

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

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28928 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4663]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Edgerton, Johnson County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Edgerton, Johnson County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Edgerton, Kans. Send comments to: The Hon. Robert P. Burton, Mayor, City of Edgerton, City Hall, Edgerton, Kans. 66021.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-

755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Edgerton, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Marin Creek.....	Downstream side of Santa Fe RR. at corporate limit.	960
	Upstream side of the second crossing of the Santa Fe RR. over Martin Creek.	964
	500 ft downstream from U.S. Highway 56.	965
Santa Fe Lake tributary.	Eastern corporate limits below Santa Fe Lake Dam.	960
	Downstream side of Santa Fe Lake Dam.	965
	Upstream side of Santa Fe Lake Dam.	969
	Corporate limit 1,600 ft upstream from Santa Fe Lake Dam.	969

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

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28929 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4664]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Hopkinsville, Christian County, Ky.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Hopkinsville, Christian County, Ky. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, 101 North Main Street, Hopkinsville, Ky. 42240. Send comments to: Maor Al Rutland, Municipal Building, 101 North Main Street or Mr. Richard Bernhardt, planning director, Hopkinsville Planning Commission, Courthouse Annex, Hopkinsville, Ky. 42240.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Hopkinsville, Christian County, Ky., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are re-

quired. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North fork of the Little River.	Just downstream of Millbrook Dr.	512
	Just downstream of North Dr.	523
	Just downstream of Virginia St.	527
South fork of the Little River.	Just downstream of Marietta Dr.	519
	Just downstream of Fort Campbell Blvd. (U.S. Highway 41A).	520
	Just downstream of Nashville Rd.	528
Sanderson Creek...	Just downstream of Glass Ave.	526
	Just downstream of Andrew Ave.	540

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

Issued: September 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28930 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4665]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Monroe, Ouachita Parish, La.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Monroe, Ouachita Parish, La. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, P.O. Box 123, Monroe, La. 71201. Send comments to: Mayor W. L. Howard, City Hall, P.O. Box 123, Monroe, La. 71201.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Monroe, Ouachita Parish, La., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Youngs Bayou	Just upstream of Frontage Rd.	69
Railroad Canal	Just upstream of Thomas St.	73
Swayze School Canal.	Just upstream of Frontage Rd, upstream of south bound lane of U.S. 165.	70
West prong Youngs Bayou.	Just upstream of Adams St.	73
	Just upstream of Roselawn Ave.	74
Oliver Rd. Canal ...	Just upstream of DeSiard St.	73
	Just upstream of Louisville Ave.	74
	Just upstream of Forsythe Ave. (downstream crossing).	75
East branch Oliver Rd. Canal.	Just downstream of Missouri Pacific RR.	75
East prong Youngs Bayou.	Just downstream of Calypso St.	72
	Just upstream of Adams St.	73
Rogers St. Canal ...	Just upstream of Renwick St.	72
White St. ditch	Just upstream of Powell St.	74
Airport Canal	Approximately 120 ft downstream of the Missouri Pacific RR.	74
Ouachita River	Just upstream of U.S. Highway 80 bridge.	85

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

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-28931 Filed 10-13-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4666]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Montague, Franklin County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Montague, Franklin County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Clerk, One Avenue A, Turner's Falls, Mass. Send comments to: Chairman, Board of Selectmen, Town of Montague, Town Hall, One Avenue a, Turner's Falls, Mass. 01376.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Montague, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River.	Boston & Maine RR Bridge—100 ft*.	140
	Fifth Street Bridge—100 ft*.	153
	Turner's Falls Bridge—20 ft*.	160
	Turner's Falls Bridge 20 ft*.	207

[6560-01-M]

ENVIRONMENTAL PROTECTION
AGENCY

[40 CFR Part 180]

[PP 7E1953/P92; FRL 987-61]

PROPOSED TOLERANCES FOR THE PESTICIDE
CHEMICAL ALDICARBTolerances and Exemptions From Tolerances
for Pesticide Chemicals in or on Raw Agricultural
CommoditiesAGENCY: Office of Pesticide Pro-
grams, Environmental Protection
Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes that
a tolerance be established for residues
of the insecticide aldicarb on coffee
beans. The proposal was submitted by
Union Carbide Corp. This regulation
would establish a maximum permissi-
ble level for residues of aldicarb on
coffee beans.DATE: Comments must be received on
or before November 15, 1978.ADDRESS COMMENTS TO: Federal
Register Section, Program Support Di-
vision (TS-757), Office of Pesticide
Programs, EPA, Rm. 401, East Tower,
401 M Street SW., Washington, D.C.
20460.FOR FURTHER INFORMATION
CONTACT:Mr. James Rea, Product Manager
(PM) 12, Registration Division (TS-
767), Office of Pesticide Programs,
EPA, 202-755-3915.SUPPLEMENTARY INFORMATION:
Union Carbide Corp., 1730 Pennsylva-
nia Ave. NW., Washington, D.C. 20006,
has submitted a pesticide petition (PP
7E1953) to the EPA. This petition re-
quests that the Administrator propose
that 40 CFR 180.269 be amended by
the establishment of a tolerance for
combined residues of the insecticide
and nematocide aldicarb (2-methyl-2-
(methylthio)propionaldehyde O-
(methylcarbamoyl)oxime) and its cho-
linesterase-inhibiting metabolites 2-
methyl-2-(methylsulfinyl)propionalde-
hyde O-(methylcarbamoyl)oxime and
2-methyl-2-(methylsulfonyl)propional-
dehyde O-(methylcarbamoyl)oxime in
or on the raw agricultural commodity
coffee beans at 0.1 part per million
(ppm).The data submitted in the petition
and other relevant material have been
evaluated. The toxicological data con-
sidered in support of the proposed tol-
erance included two-year rat and dog-
feeding studies with a no-observable-
effect level (NOEL) of 0.3 milligram
(mg)/kilogram (kg) of body weight
(bw)/day and 3.3 ppm respectively; an
18-month mouse feeding study with an
NOEL of 0.7 mg/kg bw; a rat teratol-ogy study (negative at 1 mg/kg bw/
day); a hen neurotoxicity study (nega-
tive at 4.5 mg/kg bw/day); and a
three-generation rat production study
with an NOEL of 0.7 mg/kg bw.Based on the two-year rat feeding
study with an NOEL of 0.3 mg/kg bw/
day and using a 100-fold safety factor,
the acceptable daily intake (ADI) for
man is 0.003 mg/kg bw/day. The theo-
retical maximal residue contribution
(TMRC) in the human diet from the
previously established tolerances and
the proposed tolerances does not
exceed the ADI. (Tolerances have pre-
viously been established for residues
of aldicarb on a variety of raw agricul-
tural commodities at levels ranging
from 1 ppm to 0.002 ppm.)The metabolism of aldicarb is ade-
quately understood, and an adequate
analytical method (gas chromatog-
raphy using a flame photometric de-
tector) is available for enforcement
purposes. No actions are currently
pending against continued registration
of aldicarb, nor are there any other
relevant considerations involved in es-
tablishing the proposed tolerance, nor
are any desirable data lacking from
the petition. There is no reasonable
expectation of residues in eggs, meat,
milk, or poultry.The pesticide is considered useful
for the purpose for which a tolerance
is being sought, and it is concluded
that the tolerance of 0.1 ppm on
coffee beans established by amending
40 CFR 180.269 will protect the public
health. It is proposed, therefore, that
the tolerance be established as set
forth below.Any person who has registered, or
submitted an application for the regis-
tration of a pesticide under the Fed-
eral Insecticide, Fungicide, and Rodenti-
cide Act which contains any of the in-
gredients listed herein may request, on
or before November 15, 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 pro-
posed regulation. The comments must
bear a notation indicating both the
subject and the petition/document
control number, "PP7E1953/P92". All
written comments filed in response to
this notice of proposed rulemaking
will be available for public inspection
in the office of the Federal Register
Section from 8:30 a.m. to 4 p.m.
Monday through Friday.

Dated: October 6, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.(Sec. 408(e), Federal Food, Drug, and Cos-
metic Act (21 U.S.C. 346a(e)).)

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Millers River.....	East Mineral Rd. Bridge—50 ft**..	192
	Bridge Street Bridge— 150 ft**..	216
	Bridge Street Bridge— 50 ft**..	234
	Main Street Bridge—100 ft**..	238
	Breached dam—100 ft**..	250
	Breached dam—50 ft**..	264
	Farm Bridge—50 ft**..	138
	Meadow Rd. Bridge— 100 ft**..	155
Sawmill River.....	Dam located 1,000 ft upstream Meadow Road Bridge..	
	100 ft**..	159
	100 ft**..	171
	Dam located 159 ft downstream Depot Street Bridge..	
	50 ft**..	175
	50 ft**..	192
	Central Street Bridge— 50 ft**..	212
	South Main Street Bridge—100 ft**..	230
	Bridge—50 ft**..	290
	Dam located 900 ft upstream Central Vermont RR Bridge..	
Hatchery Brook	50 ft**..	305
	100 ft**..	313
	Chestnut Hill Rd.—50 ft**..	392
	North Leverett Rd. Bridge—50 ft**..	405
Pond Brook.....	Dam and footBridge—50 feet**..	139
	Dam and footBridge—20 ft**..	148
Pond Brook.....	Beaubiens Rd. Bridge— 20 ft**..	150
	Swamp Rd.—60 ft**..	209
	Swamp Rd.—50 ft**..	214
	Dam located 1,045 ft upstream Swamp Rd.. 80 ft**..	214
	20 ft**..	223

*Upstream of centerline.

**Downstream of centerline.

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

Issued: September 28, 1978.

GLORIA M. JIMINEZ,

Federal Insurance Administrator.

[FR Doc. 78-28932 Filed 10-13-78; 8:45 am]

It is proposed that Part 180, Subpart C, § 180.269 be amended by alphabetically inserting coffee beans at 0.1 ppm in the table to read as follows:

§ 180.269 Aldicarb; tolerances for residues.

Commodity:	Parts per million
Coffee beans.....	0.1

[FR Doc. 78-29112 Filed 10-13-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 63 and 64]

[CC Docket No. 78-219]

REVISION OF PROCESSING POLICIES FOR WAIVERS OF THE TELEPHONE COMPANY-CABLE TELEVISION "CROSS OWNERSHIP RULES"

Order Extending Time for Filing Comments and Reply Comments

Revision of the processing policies for waivers of the telephone company-cable television "cross ownership rules" (CC docket No. 78-219).

AGENCY: Federal Communications Commission.

ACTION: Order granting extension of time for the filing of comments.

SUMMARY: This item grants an extension of time for the filing of comments in CC docket No. 78-219, which proposes to revise the processing policies for waivers of the telephone company-cable television "cross ownership rules," sections 63.54 and 64.601 of the Commission's rules and regulations.

DATES: Comments must be received before October 18, 1978. Reply comments must be received before November 1, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Richard O. Pullen, Common Carrier Bureau, 202-632-6440.

SUPPLEMENTARY INFORMATION:

Adopted: September 15, 1978.

Released: October 11, 1978.

Order. In the matter of revision of the processing policies for waivers of the telephone company-cable television "cross ownership rules," §§ 63.54 and 64.601 of the Commission's rules

and regulations, CC docket No. 78-219.¹

1. The Commission, by the Chief of the Common Carrier Bureau acting pursuant to delegated authority, has before it a request for extension of time filed August 30, 1978, by the National Cable Television Association (NCTA). NCTA asks that the time for filing comments in the above-captioned matter be extended from September 18, 1978, to October 18, 1978. The request is unopposed.

2. NCTA argues that a 30-day extension is required to complete the study necessary to provide the Commission with documentation on the feasibility of independent cable television construction in rural areas.

3. Since this matter is unusually complex, we believe that good cause has been shown for a reasonable extension of time. Accordingly, it is ordered, Pursuant to the delegated authority of § 0.303(c), that NCTA's request for a 30-day extension of time is granted, and that comments will be due on or before October 18, 1978, with reply comments due on or before November 1, 1978.

LARRY F. DARBY,
Acting Chief,
Common Carrier Bureau.

[FR Doc. 78-29131 Filed 10-13-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[Docket No. 21513; RM-2882]

FM BROADCAST STATION IN FREEPORT, TEX.

Request for Supplemental Information

AGENCY: Federal Communications Commission.

ACTION: Request for supplemental information.

SUMMARY: FCC requests information concerning the availability of a transmitter site for an FM facility on class C channel 273 at Freeport, Tex. This action is expected to bring a first FM radio station to Freeport. This channel assignment resulted from a petition filed by Weymar, Inc.

DATES: Comments must be filed on or before December 4, 1978. Reply comments must be filed on or before December 26, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: October 4, 1978.

¹ See 43 FR 36285, Aug. 16, 1978.

Released: October 12, 1978.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Freeport, Tex.), docket No. 21513, RM-2882.¹

1. We have under consideration in this proceeding the comments filed in response to our notice of proposed rulemaking which proposed the assignment of class C channel 273 to Freeport, Tex. (1970 population 11,997), as its first FM assignment.² Comments were filed by Weymar, Inc. ("Weymar"), petitioner in this proceeding and Coastal Broadcasting, Inc. ("Coastal"), licensee of AM station KBRZ, Freeport, Tex., and FM station KGOL, Lake Jackson, Tex.³

2. As stated in the notice, assignment of channel 273 to Freeport requires that the transmitter site be located approximately 21 kilometers (13 miles) southwest of the Freeport post office in order to comply with the minimum distance separation requirements. From such a site it would be able to provide the requisite city coverage to Freeport. Since the required site for the proposed assignment is located on a narrow strip of land abutting the Gulf of Mexico, the petitioner was requested to indicate in its comments the basis upon which it believes that such a transmitter site could be obtained. In response to this request, Weymar conducted what it terms an extensive study of the area in question. Petitioner determined that the area it had designated in its petition as the "permissible site location zone" is situated at the extreme western edge of what presently is part of the San Bernard National Wildlife Refuge which is operated by the U.S. Fish and Wildlife Service ("Service"). According to Weymar, it has had preliminary discussions with representatives of the Regional Director of the Fish and Wildlife Service in Albuquerque, N. Mex., concerning the availability to Weymar of a small tract of land within the western edge of the Refuge for use as a transmitter site.⁴ During

¹ See 43 FR 1511, Jan. 10, 1978.

² No class A channels are available for assignment to Freeport, Tex.

³ A pleading styled as a supplemental pleading by Weymar, although actually a late-filed reply, shall be considered as it is only 1 week late, not prejudicial to the party opposing the proposal, and will assist the Bureau in determining the appropriate action to be taken at this time.

⁴ Petitioner submits that at this outer edge roads and other means of access are available as well as means of bringing to the site necessary utility and other services. In response to Coastal's questions regarding site access, Weymar notes that while access is not via superhighway or even paved roads, it is available and adequate for maintenance. Petitioner submits that if channel 273 is assigned to Freeport, in its application for use of the frequency, it will propose to locate its studio in a more convenient location.

Footnotes continued on next page

these discussions, petitioner was advised that the bird flyways had been mapped with some precision. With this information plotted against the location of petitioner's "permissible zone," Weymar submits that a location for its tower, compatible with the purposes of the Refuge is feasible. Based on its discussion with the Fish and Wildlife Service, petitioner asserts that it is confident that it will be able to obtain approval of its application for obtaining a lease for the site in question which it has submitted to the Service.

3. In opposition to the proposal, Coastal submits that William Fisher of the Regional Office of the Fish and Wildlife Service confirmed receipt of a request for a "permit" to construct a radio station in the San Bernard National Wildlife Refuge and stated that such a request might be granted if it is determined that such a use is consistent with the purposes of the Refuge. However, according to Coastal, Ron Bisbee, manager of the San Bernard National Wildlife Refuge, noted that structures such as antenna towers and their guy wires are a severe hazard to the flight patterns of birds. In Coastal's opinion, it is apparent from its discussion with Mr. Bisbee that a structure such as an antenna tower would be incompatible with a bird sanctuary and refuge.

4. As noted by Coastal, there is a serious question as to whether any transmitter will be allowed in the Refuge area. Thus, it would be premature to assign channel 273 to Freeport, Tex., at this time. As stated in *Pinckneyville, Illinois*, 42 FR 36258, 41 R.R. 2d 69 (1977), in making assignments, we require a reasonable assurance that a transmitter site meeting the applicable Commission requirements would be available. The information presently available to us does not provide a basis for such a conclusion in regard to the Freeport proposal. Thus, Weymar should inform the Commission of the progress of its negotiations with the Fish and Wildlife Service and the likelihood of its obtaining the Refuge site.

5. Authority for the action contained herein appears in section 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules and regulations.

6. Interested parties may file comments on or before December 4, 1978, and reply comments on or before December 26, 1978. All submissions by parties to this proceeding, or persons acting on behalf of such parties, shall be made in written comments, reply comments, or other appropriate pleadings.

Footnotes continued from last page
cations and request Commission authority to operate its transmitter by remote control.

7. In accordance with the provisions of § 1.415 and 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 to the Commission. 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.

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau

[FR Doc. 78-29132 Filed 10-13-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-330; RM-3145]

FM BROADCAST STATION IN PINCONNING, MICH.

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 A FM channel to Pinconning, Mich. The proposal for that community's first FM assignment was made in a petition filed by David C. Schaberg.

DATES: Comments must be filed on or before December 4, 1978. Reply comments must be filed on or before December 26, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: October 5, 1978.

Released: October 11, 1978.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Pinconning, Mich.), BC docket No. 78-330, RM-3145.

1. The Commission has under consideration a petition for rulemaking¹ seeking the amendment of the Commission's rules, the table of FM assignments. The petition was filed by David C. Schaberg ("petitioner"), proposing the assignment of FM channel 265A on a hyphenated basis to the communities of Standish and Pinconning,

Mich. The channel could be assigned in conformity with the minimum distance separation requirements without affecting the present assignments in the FM table. Petitioner states that he will file an application for the proposed channel, if assigned. No responses to the proposal have been received.

2. Standish (population 1,184), seat of Arenac County (population 11,149), is located approximately 45 kilometers (28 miles) north of Bay City, Mich. Pinconning (population 1,320), in Bay County (population 117,339),² is located approximately 14 kilometers (9 miles) south of Standish. There is no local aural broadcast service in either Standish or Pinconning.

3. In support of his proposal, petitioner states that the area is known as the "Garden Spot of Michigan," which processes and produces more and varied kinds of agricultural products in 100 square miles than most States produce. He notes that the area is rapidly becoming a tourist center because of the availability of lake front property on Lake Huron. Petitioner claims the proposed assignment could serve the interests of all residents of the Standish-Pinconning area and would provide for an outlet for the expression of local views.

4. Although petitioner requests assignment of the channel on a hyphenated basis to Standish and Pinconning, no justification has been shown for doing so. Therefore, the assignment will be proposed for Pinconning, the larger of the two communities. However, if the channel is assigned as proposed, it would be available for use at Standish under the provisions of § 73.202(b) of the rules since the communities are separated by less than 16 kilometers (10 miles).

5. Pinconning is located within 402 kilometers (250 miles) of the United States-Canada border and the proposed assignment requires coordination with the Canadian Government before it can be adopted.

6. In view of the foregoing information, and the fact that the proposed FM channel could bring a first local aural broadcast service to Pinconning, the Commission proposes to amend the FM table of assignments, § 73.202(b) of the rules, with respect to Pinconning, Mich., as follows:

City	Channel No.	
	Present	Proposed
Pinconning, Mich.		265A

7. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and

¹Public notice of the petition was given on July 18, 1978, report No. 1134.

²Population figures are taken from the 1970 U.S. Census.

filing requirements are contained in the attached appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the appendix before a channel will be assigned.

8. Interested parties may file comments on or before December 4, 1978, and reply comments on or before December 26, 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)(6) 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 re-submits 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) Counterproposal 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 comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rulemaking 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 §§ 1.145 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before 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. 78-29134 Filed 10-13-78; 8:45 am]

[6712-01-M]

[47 CFR Parts 83 and 91]

[SS Docket No. 78-324; FCC 78-701]

POLLUTION PREVENTION, TO BROADEN PERMISSIBLE COMMUNICATIONS ABOARD VESSELS INVOLVED IN LARGE OIL TRANSFER OPERATIONS

Proposed Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking.

SUMMARY: Amendment of rules in regard to use of frequencies aboard ship (involving both onboard communications (Maritime Services) and low-power (2 watts) Business Radio Service); to permit vessels to comply with pollution prevention rulemaking in progress by the United States Coast Guard; in connection with pollution prevention, to expand and to revise the current uses of frequencies available for on-board communications and to apply those same uses to low-power Business Radio frequencies when used aboard ship.

DATES: Comments must be received on or before November 15, 1978, and reply comments must be received on or before November 27, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Walter E. Weaver, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

Adopted: September 26, 1978.

Released: October 12, 1978.

In the matter of amendment of parts 83 and 91—to aid pollution prevention, to broaden permissible communications aboard vessels involved in large oil transfer operations, SS Docket No. 78-324.

1. The Commission is proposing to amend its rules: (1) To broaden the permissible communications which may be handled on the onboard frequencies aboard vessels involved in large oil transfer operations; and (2) withdraw authority for use of the low-power (2 watts) Business Radio Service frequencies aboard ship.

2. The FEDERAL REGISTER of June 27, 1977 (42 FR 32670), sets forth proposed rule amendments of 33 CFR Parts 154, 155, and 156 released by the United States Coast Guard (USCG) in regard to pollution prevention applicable to vessel and oil transfer facilities. In part, these proposed rules will require that a communication capability be provided between persons located at both ends of a connecting hose through which more than 250 barrels of oil are transferred. It applies to all types of vessels (tanker, dry cargo, barge, lighter, etc.) and whether the oil transferred is cargo or is to be used as fuel (bunkering).

3. The proposed amendment of part 83, § 83.815(a)(2), broadens the usage which may be made of onboard communication channels, to meet the expanded requirement included in the USCG proposed rules. The frequencies which are available for onboard communications are also available under the Business Radio Service rules (part 91). The proposed amendments of part 91 have two objectives (1) to discontinue licensing ship stations to use these frequencies under part 91, and (2) in the future to grant such licenses only under part 83. This action will remove the current inconsistency between parts 91 and 83 and, thereby, will apply uniformly to all ship stations the conditions of use set forth in subpart Z of part 83 of the rules.

4. The proposed amendments to the Commission's rules as set forth below, are issued pursuant to the authority contained in sections 4(i) and 303 (b), (c), (d), (f), (g), and (r) of the Communications Act of 1934, as amended.

5. Pursuant to the applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before November 15, 1978, and reply comments on or before November 27, 1978. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

6. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 5 copies of all statements, briefs, or comments shall be furnished the Commission. All comments received in response to this notice of proposed rulemaking, will be available for public inspection in the Docket Reference Room in the Commission's Offices in Washington, D.C.

FEDERAL COMMUNICATIONS
COMMISSION,

WILLIAM J. TRICARICO,
Secretary.

Parts 83 and 91 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES.

In § 83.815, paragraph (a)(2) is amended to read as follows:

§ 83.815 Points of communication.

(a) * * *

(2) For pollution prevention by spillage, from one ship to another ship, barge, or lighter, and return, or from ship to dock for large (250 barrels or greater) oil transfer operations of cargo vessel fueling (bunkering).

Part 91—INDUSTRIAL RADIO SERVICES

In § 91.554, paragraph (b)(49) is amended and subparagraph (b)(50) is reserved, to read as follows:

§ 91.554 Frequencies available.

(b) * * *

(49) This frequency is used on a shared and cooperative basis with on-board stations in the maritime mobile service. To provide for the uniform usage of this frequency by ship stations in the maritime mobile service, a station license for use aboard ship will be granted only under and subject to the provisions of subpart Z of part 83 of this chapter. Any license to use this frequency granted under this part does not authorize operation aboard a ship.

(50) [Reserved]

[FR Doc. 78-29133 Filed 10-13-78; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 229]

[Docket No. RSGM-1, Notice 2]

LOCOMOTIVES, PASSENGER CARS, AND CABOOSSES

Proposed Minimum Safety Requirement for Glazing Materials Installed in Windows

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to add a new part 229 to establish minimum safety requirements for glazing materials that are installed in the windows of locomotives, passenger cars and cabooses. The intended effect of this regulation is to reduce the risk of death or serious injury for railroad crew members and railroad passengers resulting from such persons being struck by flying objects, such as bullets.

DATES: (1) Written comments must be received on or before December 15, 1978. Comments received after that date will be considered to the extent practicable. (2) A public hearing will be held at 10 a.m. on November 29, 1978. (3) Any person who desires to make an oral statement at the public hearing should notify the FRA Docket Clerk before November 22, 1978.

ADDRESSES: (1) Written comments should identify the docket and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel (RCC-1), Federal Railroad Administration (Trans Point Building), 2100 Second Street SW., Washington, D.C. 20590. All written comments will be available for examination, both before and after the closing date for written comments, during regular business hours in room 4406 of the Trans Point Building at the address listed in this paragraph. (2) A public hearing will be held at 10 a.m. on November 29, 1978 in room 3201, Trans Point Building, 2100 Second Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

PRINCIPAL AUTHORS

Principal Program Person: Rolf Mowatt-Larssen, Office of Standards and Procedures, Federal Railroad Administration, Washington, D.C. 20590. Phone 202-426-0924. Principal Attorney: Lawrence I. Wagner, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590. Phone 202-426-8836.

SUPPLEMENTARY INFORMATION: On September 21, 1978, the Association of American Railroads (AAR) and the Railway Labor Executives Association (RLEA) jointly filed a rulemaking petition requesting that FRA issue a regulation which would require the use of improved glazing materials in the windows of locomotives, passenger cars, and cabooses. The purpose of this notice is to respond to that joint AAR/RLEA request by proposing to adopt minimum safety standards for glazing materials that are used in the windows of railroad rolling equipment.

BACKGROUND

The FRA has been studying the feasibility of using improved glazing materials for some period of time. After completing an initial staff review, FRA sponsored a series of public meetings on this topic during 1976 and 1977. In order to obtain additional information from the public the FRA published an advance notice of proposed rulemaking (ANPRM) on March 10, 1977 (42 FR 13309). The analysis of the responses to that ANPRM was completed just prior to receipt of the AAR/RLEA request.

Although the issuance of this notice is directly related to the prior ANPRM, FRA has decided to reduce the scope of the applicability of the proposed rule. At the time FRA issued the ANPRM, it was believed that any regulation relating to glazing materials should be applicable to all railroad rolling equipment, including that used in rapid transit operations. This notice proposes to exclude equipment used in rapid transit operations from the requirements of this rule since there has been a judicial finding that FRA lacks the legal authority to regulate rapid transit operations. (*Chicago Transit Authority v. Flohr*, 570 F.2d 1305 (7th Cir. 1977)).

In view of the reduced scope of applicability, FRA has omitted from the following summary of the responses to the ANPRM, the views expressed by any party directly related to rapid transit operations. Furthermore, FRA has omitted any views expressed by the AAR and RLEA in view of their recent joint petition for the issuance of a regulation.

In soliciting views and comments, FRA posed a series of seven questions in the ANPRM. The first of these questions inquired whether any party believed that FRA should issue a regulation or whether alternate courses of action could be suggested together with some analysis of the cost and effectiveness involved. The responses to this question generally supported the issuance of a regulation. Responses from the Long Island Railroad (LIRR), the National Railroad Passenger Corporation (Amtrak), the Southeastern Pennsylvania Transportation Authority (SEPTA), the National Transportation Safety Board (NTSB), the State of Washington Utilities and Transportation Commission (W.U. & T.C.), the State of Oregon Public Utility Commission (OPUC), and organizations identified as the Ohio Association of Railroad Passengers (OARP) and the Louis T. Klauder Associates all urged adoption of Federal glazing standards. Two railroads, the Elgin & Joliet and Eastern (E.J. & E.) and the Consolidated Rail Corporation (CONRAIL) indicated that they opposed Federal regulation because they do

not believe the vandalism problem to be of such magnitude as to warrant regulation. Both the E.J. & E. and CONRAIL indicated a belief that a better solution to vandalism would be increased law enforcement activity. Several suppliers of glazing material suggested that "Federal attention" should be given to the issue but generally indicated that "Flexibility" should be given so that the railroads could select materials based on their assessments of the hazards involved.

The second question contained in the ANPRM sought to obtain any data that might be available about the frequency and magnitude of the vandalism problem as it pertained to the issue of glazing. The responses to this question were very limited. The E.J. & E. indicated no record of vandalism problems involving glazing for a period of in excess of 2 years. CONRAIL provided some data both on a system wide basis and on the basis of its commuter operations in the New York City area. In supplying this data, CONRAIL noted that several years ago a program of installing improved glazing materials in the windows of its New York commuter equipment had been instituted and that this program resulted in reduced costs for replacement windows as well as a reduction in personal injuries for passengers.

The third question contained in the ANPRM sought to obtain suggestions for alternate courses of action to the issuance of a Federal regulation. FRA received very limited responses to this question. The use of increased law enforcement activity to deter vandals was the most frequently mentioned alternative. The use of grates or screens over the windows and the installation of fences along railroad rights of way were the other alternatives proposed. No commenter was able to assess the cost or effectiveness of these alternatives.

The fourth question contained in the ANPRM inquired whether a Federal Requirement for glazing should be applicable only to new equipment or whether existing equipment should also have such glazing installed. This question also sought data on the costs of each approach, their effectiveness and the amount of time needed for implementation. Except for the two railroads that voiced opposition to any standards, all parties that responded to this question believed that new equipment should contain improved glazing. These commenters were not in total agreement on the issue of replacing existing materials with one party opposing replacement requirements and another limiting the replacement effort to a need to repair broken or damaged glazing. These parties were unable to provide cost data, other than rough approximations, in the ab-

sence of data about the actual specifications for the new glazing materials.

The fifth question contained in the ANPRM inquired about types of objects and possible velocity for those objects that FRA ought to consider in developing a glazing standard. Most replies suggested that FRA use the prior experience of the railroads to determine the level of impacts and generally implied that the highest necessary level of protection should be required on the basis of that experience. Several commenters suggested that FRA adopt the same standards used in the automotive or aircraft industry.

The sixth question contained in the ANPRM inquired about the availability of material to withstand the impacts noted by FRA in the background data to the notice. The responses to this question generally indicated that glazing was available to meet these proposed impact levels. The manufacturers or suppliers who responded voiced reservations about the data provided by FRA concerning testing methods and criteria. They indicated a need to resolve these data questions before responding fully on the issues of thickness, cost and supply availability.

The last question contained in the ANPRM inquired about the need for specific performance criteria, testing methods to verify that criteria, and the appropriateness of providing variable criteria for different window locations. The parties who responded to this question indicated a need to have FRA established such criteria, except for two commenters who recommended use of existing standards and one commenter who suggested the AAR be allowed to set criteria. All commenters, who responded to the testing methods portion of the question, indicated the need to establish such methods. Likewise, those commenters who responded to the need to vary the criteria by glazing location stated that in their judgement this was a correct way to proceed but one commenter suggested a need to verify the impact energy levels experienced at various locations.

Subsequent to publication of the ANPRM, FRA decided to conduct a series of tests at Aberdeen Proving Grounds to obtain additional data about readily available or "off the shelf" glazing materials. As a part of this test effort, FRA reviewed the available data to determine the actual types and levels of the impacts currently being experienced by virtue of bullets or other objects that are striking the glazing materials. This data indicated the various levels of the impacts to which glazing materials are subjected. Using this spectrum of potential impact levels, FRA began subjecting existing samples of currently

available glazing materials to actual impact testing. On the basis of the data collected through this impact testing, FRA was able to obtain reliable data on possible performance standards for glazing materials.

These potential performance criteria were assessed in terms of the existing FRA regulations, which are contained in §§ 230.229(b) and 230.423(b) of the locomotive inspection regulations (49 CFR 230.229(b), 230.423(b)), and § 231.10 of the safety appliance standards (49 CFR 231.10), as well as in terms of any known State governmental provisions relating to glazing for the railroad rolling equipment. That assessment led FRA to conclude that none of the existing standards requires widespread use of glazing materials designed to meet the impact levels to which such glazing is consistently exposed. This absence of effective regulations, when combined with the general tenor of the responses to the ANPRM and the joint AAR/RLEA petition has led FRA to conclude that it is appropriate to propose minimum Federal requirements for the glazing materials that are utilized in the windows of locomotives, passenger cars and cabooses.

PROPOSED RULE ANALYSIS

The tests conducted at Aberdeen Proving Grounds Demonstrated that in order to provide meaningful performance criteria for glazing materials, it would be necessary to establish penetration resistance levels for a combination of two extremes, mass and velocity. After considering the range of possible penetration resistance levels for glazing materials, FRA selected the level of penetration resistance that it believes will provide the appropriate degree of safety enhancement for the occupants of locomotives, passenger cars or cabooses. The level of penetration resistance selected by FRA is contained in the appendix to the proposed rule.

The proposed level of penetration resistance is expressed in terms of the resistance that a given specimen of glazing material will provide when subjected to the high velocity impact generated by a .22 caliber long rifle bullet and to the massive impact created by a standard cinder block. Although the penetration resistance levels are expressed in this proposal in terms of a specific rifle bullet and a specific large object, glazing materials that survive such impacts will resist impact penetration from other weapons and other large objects under a variety of conditions.

The level of penetration resistance being proposed by FRA is equivalent to that suggested in the AAR/RLEA request. The proposed level of penetration resistance will also provide pro-

tection from virtually all of the impact sources mentioned in response to the ANPRM. However, the level of penetration resistance being proposed will not provide impact protection in all instances since weapons are available that can penetrate even the steel siding of railroad equipment.

It should be noted that the performance criteria being proposed by FRA contain differences for side facing and end facing glazing. In this manner, FRA will require that end facing glazing, that is glazing located so that it faces the end of the equipment (on which the coupler is mounted), will be capable of withstanding the higher impact levels encountered when impacting large suspended objects.

FRA proposes that this improved or "certified" glazing be installed in all windows of newly constructed locomotives, passenger cars and cabooses. This requirement would become mandatory within 6 months of the date that this proposal is adopted as a final rule. FRA believes that builders of railroad equipment will be capable of complying within that time interval since improved glazing is readily available from glazing manufacturers. FRA also believes that if existing equipment is rebuilt, the improved or "certified" glazing should be installed as part of the rebuilding process. This proposal reflects that FRA position and includes a definition of the term rebuilt to provide a clear indication of when that proposed requirement would be applicable.

FRA is also proposing that improved or "certified" glazing be installed in existing railroad equipment. The approach being proposed for existing equipment is more complex than that outlined for new or rebuilt equipment. This complexity reflects the different issues that FRA reconciled in preparing this proposal. These issues included the longstanding practice of some railroads to voluntarily install stronger glazing in recent years; the direct and immediate impact that a retrofitting program, with its attendant out of service time, can have to reduce or limit the capability of a railroad to render effective service; and the available data which suggest that vandalism to equipment operating exclusively within a specific yard is a very limited problem.

In resolving these issues, FRA has decided to adopt the suggestions made by AAR and RLEA since their joint approach, in FRA's judgment, strikes the proper balance among the competing policy considerations. Consequently, FRA proposes to require that only

those locomotives which a railroad intends to have a crew occupy must be fitted with improved glazing. In this way a railroad that seeks to minimize its retrofit program can confine that effort to those locomotives which are designated as lead or controlling units. By assuring that these units are always in the lead or are always the controlling unit occupied by the crew the railroad need not modify its entire fleet of locomotives to comply with this proposal. FRA has also attempted to limit the impact of the locomotive retrofit proposal by excluding from this requirement existing yard locomotives that are used exclusively within the confines of a single yard. Finally, FRA attempted to avoid requiring the retrofit of locomotives that are currently equipped with some of the various types of stronger or "shatterproof" glazing. In what may be referred to as a "grandfather clause", FRA proposes to limit the retrofit of such "shatterproof" glazing to those instances in which that glazing is broken or damaged and needs replacement. To determine whether a specific type of "shatterproof" glazing material was in fact installed in exist-

ing locomotives each railroad will have to ascertain that the installed material is capable of withstanding one of the impact tests provided for in the proposed appendix A. In view of the involvement of the glazing manufacturers in the Aberdeen Proving Grounds test effort, FRA believes this information is readily available to the railroads. However, for convenient reference, FRA has listed below the data that it currently has available about glazing materials that have already been subjected to testing procedures at Aberdeen Proving Grounds and appear to meet the proposed criteria for at least one glazing location. This list is not intended to be all inclusive since FRA is aware of additional testing being conducted by other parties. In furnishing this data, FRA is not certifying or approving these materials. In view of the voluntary submission of the material, FRA cannot fully verify the exact specifications of each material. In some instances, precise designations were not provided by the entity submitting the material, consequently FRA has used the designation I or II to distinguish between samples from the same source.

Source	Description
1. Elcon—National—Triplex (½ in).....	3 layers: glass, plastic, glass.
2. GE—Lexan MR 4000 (½ in).....	Single sheet: plastic.
3. GE—Lexan MR 4000 (½ in).....	Do.
4. Goodyear II (½ in).....	3 layers: glass, plastic, glass.
5. PPG I (½ in).....	3 layers: glass, layer, plastic, layer, glass.
6. Rohm & Haas Tuffak CM (½ in).....	Single sheet: plastic.
7. Rohm & Haas Tuffak CM (½ in).....	Do.
8. Rohm & Haas Tuffak CM (½ in).....	Do.
9. Sierracin RT 3000 (½ in).....	3 layers: glass, plastic, glass.
10. Sierracin RT 5000 (½ in).....	4 layers: glass, plastic, glass, spall shield.
11. Sierracin RT 9000 (½ in).....	6 layers: glass, layer, plastic layer, glass, spall shield.
12. Globe Amerada—Type II (½ in).....	3 layers: glass, glass, glass.

FRA proposes that the retrofit program for existing locomotives, passenger cars and cabooses be completed within 3 years of the date that this proposal is adopted as a final rule. However, this schedule has been modified to require expedited retrofitting of glazing in those locomotives which, as the result of vandalism, have a window damaged or broken. In this manner, FRA believes that immediate attention will be directed toward those areas where the vandalism problem is most acute, thereby more rapidly enhancing safety where it is most needed.

FRA proposes a nearly identical approach for cabooses to that proposed for locomotives. The principal difference being the absence of any provision analogous to the "lead" or "controlling" unit found in the locomotive proposal.

FRA proposes a very similar approach for railroad passenger cars to that proposed for locomotives. The

principal differences being the absence of any provision analogous to the lead or controlling unit found in the locomotive proposal and the addition of a provision relating to emergency release windows, the slightly different approach being proposed for passenger cars reflects the unique impact of this glazing requirement on this segment of the affected group of rolling equipment in the event of an accident. Although there are many different designs for passenger cars, reflecting both the varying vintage of the equipment and its intended service function, when an accident or derailment occurs the emergency escape route for the occupants is frequently through the windows of the passenger car. FRA, in proposing to require the use of glazing that is more difficult to break, is concerned that the difficulty in breaking such materials could hinder people in emergency situations. Consequently, FRA proposes to require the installation of at least four quick release or

emergency opening windows during the retrofitting program.

The FRA proposal for the installation of emergency opening or quick release windows does not contain specific details about the operational design of such windows because of the known wide range of variables present in the existing fleet of passenger cars. FRA, therefore, is proposing only that a minimum of four windows be equipped so that they have the functional capability of rapid and easy removal in an emergency situation. FRA believes that such windows, given appropriate spacing, will provide for passage into or out of passenger cars in the event of an accident or derailment and will overcome possible access problems in a crisis situation. The proposed regulation contains identical language concerning the installation of such emergency windows for new and rebuilt passenger cars.

In addressing the unique aspects of the glazing problem prescribed by passenger cars, FRA has adopted the suggestion of AAR and RLEA that self-propelled equipment capable of multiple unit operation, be treated as passenger cars rather than locomotives. Consequently, FRA proposes to define for the purposes of this regulation only the term "passenger car" so that it includes self-propelled units.

Finally, FRA proposes to require that when a locomotive which is equipped with improved glazing is in a multiple unit consist, it must be used as the lead or controlling unit. This is an interim measure to assure that to achieve maximum safety during the 3 year period for retrofitting existing locomotives. To facilitate this approach, FRA has an additional provision to require the use of a stencil to identify fully equipped units.

REGULATORY IMPACT EVALUATION

This proposal has been evaluated in accordance with the policies for evaluation of regulatory impacts contained in Executive Order 12044 on the matter of "Improving Government Regulations" which was issued March 23, 1978 (43 FR 12661) and the existing and proposed policies of the Department of Transportation discussed in the FEDERAL REGISTER on June 1, 1978 (43 FR 23925). On the basis of that evaluation, FRA has concluded that this proposal constitutes a "non-significant" and "nonmajor" regulatory proposal as those terms are used in the Executive order and departmental policy statements, although the total economic effect of this proposal has been virtually impossible to determine with great precision.

As noted, the responses to the ANPRM indicated that costs could not be determined until more data, particularly data concerning performance

criteria, was available. Having made a preliminary determination on performance criteria, FRA has attempted to establish the resulting cost impacts.

The cost estimates made by FRA have focused on the incremental cost that will be incurred in the initial construction or rebuilding of a single locomotive, passenger car, or caboose and in the retrofitting of each type of equipment. The FRA data indicates that the average estimated incremental cost for installing glazing that complies with this proposal will range between \$800 to \$1,200 for each new or rebuilt locomotive unit. The FRA data acquisition about the costs for cabooses and passenger cars is limited because of the lack of uniformity in caboose and passenger car design requirements and the practice of most railroads to voluntarily specify the use of stronger glazing materials in passenger cars during recent years. Allowing for these variables, FRA data indicates that the average incremental cost for each new or rebuilt caboose will be \$1,100 and for each new or rebuilt passenger car it will be \$600. Assuming that the number of newly constructed locomotives, passenger cars and cabooses for a given calendar year remains constant, FRA believes that the total incremental cost for new equipment will be less than \$2 million annually.

FRA has also attempted to estimate the cost of retrofitting existing equipment. This estimate has been very difficult to obtain because of the number of variables present in the design of existing equipment since railroads are operating rolling equipment that varies from 1930 vintage to 1970 vintage. Allowing for such variables, the FRA data indicates that the retrofitting costs on an average estimated basis are approximately \$900 for a locomotive, \$1,700 for a passenger car and \$1,300 for a caboose. In view of the variables that are contained in the proposal for retrofitting FRA has been unable to accurately determine the total incremental cost for retrofitting existing equipment. Consequently, FRA assumed a worst case basis, that all existing equipment was retrofitted during the 3-year period, and estimates that the average incremental cost for retrofitting during each of those years would be approximately \$15 million. This economic impact data is summarized from a more extensive analysis. A copy of that analysis has been placed in the public docket for this proceeding.

PUBLIC PARTICIPATION

Interested persons are invited to participate in this proceeding by submitting written data, views or comments. All such communications must identify the appropriate docket number for

this proceeding and should be submitted in triplicate to the docket clerk, Office of the Chief Counsel, Federal Railroad Administration (Trans Point Building), 2100 Second Street SW, Washington, D.C. 20590. Communications received before December 15, 1978 will be considered before final action is taken on the proposed amendment. Comments received after that date will be considered as far as practicable. All comments received will be placed in the public docket and will be available for examination by the public during regular business hours in room 4406 of the Trans Point Building, 2100 Second Street SW., Washington, D.C.

In addition, the FRA will conduct a public hearing on November 29, 1978 in room 3201, 2100 Second Street SW., Washington, D.C. at 10 a.m. The hearing will be informal and not a judicial or evidentiary hearing. There will be no cross-examination of persons making statements. A staff member of the FRA will make an opening statement outlining the matter set for the hearing. Interested persons will then have an opportunity to present their oral statements. Additional procedures for conducting the hearing will be announced at the hearing. Any person who wishes to make a statement at the hearing should notify the docket clerk, Office of the Chief Counsel, Federal Railroad Administration, 2100 Second Street SW., Washington, D.C. 20590, phone 202-472-5311 before November 24, 1978, stating the amount of time required for that statement.

The proposals in this notice may be changed in light of the written comments received in response to this notice or the oral statements made at the public hearing.

In consideration of the foregoing, it is proposed to add part 229 to title 49 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., on October 6, 1978.

JOHN M. SULLIVAN,
Administrator.

Subpart A—General

- Sec.
- 229.1 Purpose.
- 229.3 Application.
- 229.5 Definitions.
- 229.7 Waivers.
- 229.9 Civil penalty.
- 229.11 Requirements for new or rebuilt equipment.
- 229.13 Requirements for existing locomotives.
- 229.15 Requirements for existing cabooses.
- 229.17 Requirements for existing passenger cars.
- 229.19 Identification of equipped locomotives and cabooses.
- 229.21 Interim utilization of equipped locomotives.
- Appendix A—Certification of glazing materials.

AUTHORITY: Sec. 202, 84 Stat. 971 (45 U.S.C. 431); Sec. 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

Subpart A—General

§ 229.1 Purpose.

This part provides minimum requirements for glazing materials in order to protect railroad employees and railroad passengers from injury as a result of objects striking the windows of locomotives, cabooses and passenger cars.

§ 229.3 Application.

(a) This part applies to railroads that are operating rolling equipment on standard gage track which is a part of the general railroad system of transportation.

(b) This part does not apply to—

(1) Locomotives, cabooses, and passenger cars that operate only on track inside an installation which is not part of the general railroad system of transportation;

(2) A rapid transit railroad that operates only on track used exclusively for short haul rapid transit passenger service in a metropolitan or suburban area; and

(3) Locomotives, passenger cars and cabooses that are operated only in trains consisting of historical or antiquated equipment which are used for excursion, educational, or recreational purposes.

§ 229.5 Definitions.

As used in this part ***

(a) "Locomotive" means a self-propelled unit of equipment designed primarily for moving other equipment while occupied by an operating crew. It does not include self-propelled passenger cars and if a multiple unit consist is operated only the controlling unit shall be considered the locomotive."

(b) "Caboose" means a car in a freight train intended to provide transportation for crew members while occupied by an operating crew.

(c) "Passenger car" means a unit of rolling equipment intended to provide transportation for members of the general public and include self-propelled units designed to carry baggage, mail, express and passengers.

(d) "Yard" is a system of auxiliary tracks used exclusively for the classification of passenger or freight cars according to commodity or destination; assembling of cars for train movement; storage of cars; and movement for loading, unloading or repair.

(e) "Yard locomotive" means a locomotive that is operated only to perform switching functions within a single yard.

(f) "Yard caboose" means a caboose that is used exclusively in a single yard.

(g) "Rebuilt locomotive, caboose or passenger car" means a locomotive, caboose or passenger car that has undergone overhaul which has been identified by the railroad as a capital expense under Interstate Commerce Commission accounting standards.

(h) "Windshield" means the combination of individual units of glazing material of the locomotive, passenger car, or caboose that are positioned in an end facing glazing location.

(i) "End facing glazing location" means any location where a line perpendicular to the plane of the glazing material makes an angle of 50 degrees or less with the centerline of the locomotive, caboose, or passenger car. Any location which due to curvature of the glazing material can meet the criteria for either a front facing location or a side facing location will be considered a front facing location.

(j) "Side facing glazing location" means any location where a line perpendicular to the plane of the glazing material makes an angle of more than 50 degrees with the centerline of the locomotive caboose or passenger car.

(k) "Certified glazing" means a glazing material which has been tested and has met the requirements set forth in appendix A of this part for use in an end facing glazing location or in a side glazing location.

(l) "Emergency opening window" means that segment of a side facing glazing location which has been designed to permit rapid and easy removal during a crisis situation.

§ 229.7 Waivers.

(a) A railroad may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this part.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

§ 229.9 Civil penalty.

Each railroad to which this part applies that violates any requirement prescribed by this part is liable to a civil penalty of at least \$250, but not more than \$2,500 for each violation.

§ 229.11 Requirement for new or rebuilt equipment.

(a) Locomotives, including yard locomotives, built or rebuilt after (6 months from issuance of the final rule) must be equipped with certified glazing in all windows.

(b) Cabooses, including yard cabooses, built or rebuilt after (6 months from issuance of the final rule) must be equipped with certified glazing in all windows.

(c) Passenger cars, including self-propelled passenger cars, built or rebuilt after (6 months from issuance of the final rule) must be equipped with certified glazing in all windows and at least four emergency opening windows.

§ 229.13 Requirement for existing locomotives.

(a) Locomotives, other than yard locomotives, built or rebuilt prior to (6 months from issuance of the final rule), which are equipped in the forward and rearward end facing glazing locations of the windshield with a glazing material that meets the criteria for either portion of the impact testing required for a type I test under the provisions of appendix A of this part, will not require the installation of certified glazing in the windshield location until that windshield glazing material is broken or damaged.

(b) Locomotives, other than yard locomotives, built or rebuilt prior to (6 months from issuance of the final rule), which are equipped in all side facing glazing locations with a glazing material that meets the criteria for either portion of the impact testing required for a type II test under the provisions of appendix A of this part, will not require the installation of certified glazing in the sidefacing glazing locations until that sidefacing glazing material is broken or damaged.

(c) Except for yard locomotives and locomotives equipped as described in paragraphs (a) and (b) of this section, locomotives built or rebuilt prior to (6 months from the issuance of the final rule) shall be equipped with certified glazing in all windows after (3 years from issuance of the final rule).

(d) Each locomotive subject to the provisions of paragraph (c) of this section which, as a result of an act of vandalism has a window that is broken or damaged so that the window fails to permit good visibility the locomotive shall be equipped with certified glazing in the following manner:

(1) If the broken or damaged window is a part of the windshield all of the forward and rearward end facing glazing locations must be replaced immediately with certified glazing.

(2) If the broken or damaged window is a part of the sidefacing window all of the sidefacing glazing locations must be replaced immediately with certified glazing.

§ 229.15 Requirements for existing cabooses.

(a) Cabooses, other than yard cabooses, built or rebuilt prior to (6 months from issuance of the final rule), which are equipped in the forward and rearward end facing glazing locations, of the windshield with a glazing material that meets the criteria

ria for either portion of the impact testing required for a type I test under the provisions of appendix A of this part, will not require the installation of certified glazing in the windshield location until that windshield glazing material is broken or damaged.

(b) Caboosees, other than yard caboosees, built or rebuilt prior to (6 months from issuance of the final rule) which are equipped in all side facing glazing locations with a glazing material that meets the criteria for either portion of the impact testing required for a type II test under the provisions of appendix A of this part will not require the installation of certified glazing in the sidefacing glazing locations until that sidefacing glazing material is broken or damaged.

(c) Except for yard caboosees and caboosees equipped as described in paragraphs (a) and (b) of this section, caboosees built or rebuilt prior to (6 months from the issuance of the final rule) shall be equipped with certified glazing in all windows after (3 years from issuance of the final rule).

(d) Each caboose subject to the provisions of paragraph (c) of this section which, as a result of an act of vandalism has a window that is broken or damaged so that the window fails to permit good visibility, the caboose shall be equipped with certified glazing in the following manner:

(1) If the broken or damaged window is a part of the windshield all of the forward and rearward end facing glazing locations must be replaced immediately with certified glazing.

(2) If the broken or damaged window is a part of the sidefacing window all of the sidefacing glazing locations must be replaced immediately with certified glazing.

§ 229.17 Requirements for existing passenger cars.

(a) Passenger cars built or rebuilt prior to (6 months from issuance of the final rule), which are equipped in the forward and rearward end facing glazing locations of the windshield with a glazing material that meets the criteria for either portion of the impact testing required for a type I test under the provisions of appendix A of this part will not require the installation of certified glazing in the windshield location until that windshield glazing material is broken or damaged.

(b) Passenger cars built or rebuilt prior to (6 months from issuance of the final rule), which are equipped in the sidefacing glazing locations with a glazing material that meets the criteria for either portion of the impact testing required for a type II test under the provisions of appendix A of this part, will not require the installation of certified glazing until that side-

facing glazing material is broken or damaged.

(c) Except for passenger cars described in paragraphs (a) and (b) of this section, passenger cars built or rebuilt prior to (6 months from issuance of the final rule) shall be equipped with certified glazing in all windows and a minimum of four emergency windows after (3 years from issuance of the final rule).

(d) Each passenger car subject to the provisions of paragraph (c) of this section which, as a result of an act of vandalism, has a window that is broken or damaged so that the window fails to permit good visibility the passenger car shall be equipped with certified glazing in the following manner:

(1) When the broken or damaged window is a part of the windshield all of the forward and rearward end facing glazing locations must be replaced with certified glazing.

(2) When the broken or damaged window is a part of the sidefacing window the individual portion sidefacing glazing location that was broken shall be replaced with certified glazing.

§ 229.19 Identification of equipped locomotive and cabooses.

All locomotives and cabooses that are fully equipped with certified glazing shall be stenciled on an interior wall of the locomotive cab or caboose. "Fully equipped FRA Part 229 glazing" or similar words conveying that meaning in letters at least 1" in height.

§ 229.21 Interim utilization of equipped locomotives.

After (60 days from issuance of the final rule), when a fully equipped locomotive is assigned to a multiple unit consist, that locomotive shall be the controlling locomotive and located in the "lead" or "head end" position in the train.

APPENDIX A—CERTIFICATION OF GLAZING MATERIAL

As provided in this part, glazing materials installed in locomotives, passenger cars, or cabooses after (6 months from issuance of the final rule) must be certified by the glazing manufacturer in accordance with the following procedures:

a. General requirements.

(1) Each railroad that installs glazing materials as required by this part, shall obtain from the manufacturer of that glazing material a written certification verifying that the glazing material has been tested in accordance with this appendix and test verification data is available upon request by the railroad or the Federal Railroad Administration.

(2) The test verification data shall contain all pertinent original data logs and documentation that the selection of material samples, test setups, test measuring devices, and test procedures were performed by qualified personnel using recognized and ac-

ceptable practices and in accordance with this appendix.

(3) Glazing material which has been tested and has successfully met the requirements set forth in this appendix shall be marked on each individual unit prior to installation in the following manner:

(i) Glazing material which has successfully passed the type I testing for use in end or side facing locations will be permanently marked with a 1-inch diameter blue circle.

(ii) Glazing material which has successfully passed the type II testing for use in side facing locations only will be permanently marked with a 1-inch blue square.

b. Testing requirements.

(1) The material to be tested (target material) shall be a full scale sample of the largest dimension intended to be produced and installed.

(2) The target material shall be representative of production material and shall be selected on documented random choice basis.

(3) The target material shall be securely and rigidly attached in a fixture so that the fixture own characteristics will not induce test errors.

(4) The target material so selected and attached shall constitute a test specimen.

(5) The test specimen will then be equipped with a witness plate that shall be mounted parallel to and at a distance of 6 inches in back of the target material. The witness plate shall have at least an area which will cover the full map of the target material.

(6) The witness plate shall be an unbacked sheet of maximum 0.002 inch 2024-T3 or T4 aluminum alloy stretched within the perimeter of a suitable frame to provide a taut surface.

(7) The test specimen will be positioned so that the defined projectile impacts it at an angle of 90 degrees to the test specimen surface.

(8) The point of impact of the defined projectile will be within a radius of 3" of the centroid of the target material.

(9) Velocity screens or other suitable velocity measuring devices will be positioned so as to measure the impact velocity of the defined projectile within a 10 percent accuracy tolerance; with test modifications made to guarantee that the stipulated minimum velocity requirements are met.

(10) The test specimen for glazing material that is intended for use in end facing glazing locations shall be subjected to a type I test regimen consisting of the following tests:

(i) Ballistic impact in which a standard 22 caliber long rifle lead bullet of 40 grams in weight impacts at a minimum of 960 feet per second velocity.

(ii) Large object impact in which a cinder block of 24 lbs minimum weight with dimensions of 8 inches by 8 inches by 16 inches nominally impacts at the corner of the block at a minimum of 44 feet per second velocity. The cinder block must be of the composition referenced in American Society for Testing and Materials (ASTM) specifications C33L or ASTM C90.

(11) The test specimen for glazing material that is intended for use only in side facing glazing locations shall be subjected to a type II test regimen consisting of the following tests:

(i) Ballistic impact in which a standard 22 caliber long rifle lead bullet of 40 grams in

weight impacts at a minimum of 960 feet per second velocity.

(ii) Large object impact in which a cinder block of 24 lbs minimum weight with dimensions of 8 inches by 8 inches by 16 inches nominally impacts at the corner of the block at a minimum of 29 feet per second velocity. The cinder block must be of the composition referenced in ASTM C33L or ASTM C90.

(12) Three different test specimens must be subjected to the ballistic impact portion of these tests.

(13) Two different test specimens must be subjected to the large object impact portion of these tests.

(14) A material so tested must perform so that

(i) There shall be no penetration of the back surfaces (side closest to witness plate) of the target material by the projectile. Partial penetration of the impact (front) sur-

face of the target material does not constitute a failure and;

(ii) There shall be no penetration of particles from the back side of the target material through the back side of the prescribed witness plate.

(15) Test specimens must consecutively pass the required number of tests at the required minimum velocities. Individual tests resulting in failures at greater than the required minimum velocities may be repeated but a failure of an individual test at less than the minimum velocity shall result in termination of the total test and failure of the material.

(16) After successful completion of the prescribed set of required consecutive tests a manufacturer may certify in writing that a particular glazing material meets the requirements of these standards.

[FR Doc. 78-29200 Filed 10-13-78; 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.

[6110-01-M]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON AGENCY ORGANIZATION AND PERSONNEL

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Agency Organization and Personnel of the Administrative Conference of the United States, to be held at 10:30 a.m., Wednesday, November 1, 1978, in the Conference's library, 2120 L Street NW., Suite 500, Washington, D.C.

The Committee will meet to review the status of two Committee projects: a newly commissioned project by Prof. Thomas D. Morgan, Standards for Deciding When Participation in a Matter before an Agency by a Former Agency Attorney or His Associate is Inappropriate, and Prof. Michael Cardozo's study of agency experience under the Federal Advisory Committee Act.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least 2 days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during, or after the meeting.

For further information concerning this meeting contact Richard K. Berg, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

OCTOBER 10, 1978.

[FR Doc. 78-29074 Filed 10-13-78; 8:45 am]

[6110-01-M]

COMMITTEE ON AGENCY DECISIONAL PROCESSES

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Agency Decisional Processes of the Administrative Conference of the United States, to be held at 10 a.m., Tuesday, October 31, 1978,

in the office of Ginsburg, Feldman, and Bress, 1700 Pennsylvania Avenue NW., Suite 300, Washington, D.C.

The Committee will meet to discuss its draft recommendation based on Professor Michael Baram's study of the use of cost-benefit analysis in Federal regulation.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least 2 days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact David M. Pritzker, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

OCTOBER 10, 1978.

[FR Doc. 78-29075 Filed 10-13-78; 8:45 am]

[3410-22-M]

DEPARTMENT OF AGRICULTURE

Science and Education Administration

ANIMAL HEALTH SCIENCE RESEARCH ADVISORY BOARD

Meeting

According to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92-463, the Science and Education Administration announces the following meeting:

ANIMAL HEALTH SCIENCE RESEARCH ADVISORY BOARD

Date: October 26-27, 1978.

Time: 9 a.m.

Place: Room 3109, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, D.C. 20250.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will consult with and advise the Secretary of Agriculture on implementing animal health and disease research programs. Recommendations will be made also on priorities of research in these programs.

Board names and agenda: Available from contact person below.

Contact person: Dr. Anson R. Bertrand, Director of Science and Education, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-5923.

Done at Washington, D.C., this 11th day of October 1978.

ANSON R. BERTRAND,
*Director,
Science and Education.*

[FR Doc. 78-29169 Filed 10-13-78; 8:45 am]

[3410-16-M]

Soil Conservation Service

HURRICANE ROAD CRITICAL AREA TREATMENT RC&D MEASURE, NEW YORK

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 Hurricane Road Critical Area Treatment RC&D Measure, Essex County, N.Y.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert L. Hilliard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include sloping and vegetating 655 linear feet of critically eroding roadbank. The present roadbank slope of 1.2:1.0 will be altered to 2.0:1.0 and seeded.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, Room 771, U.S.

Courthouse and Federal Building, 100 South Clinton Street, Syracuse, N.Y. 13260, telephone 315-423-5493. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until November 15, 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: October 5, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs,
Soil Conservation Service.

[FR Doc. 78-29076 Filed 10-13-78; 8:45 am]

[3410-16-M]

RIVER ROAD PARK WATER-BASED RECREATION RC&D MEASURE, ALABAMA

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 River Road Park Water-Based Recreation RC&D Measure, Tuscaloosa County, Ala.

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 B. Lingle, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project measure concerns a plan for developing a 21.2 acre water-based day-use recreational area. The planned measure includes facilities for picnicking, nature enjoyment, parking, and sanitation.

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 B. Lingle, State Conservationist, Soil Conservation Service, 138 South Gay

Street, Auburn, Ala. 36830, telephone 205-821-8070. 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 November 15, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, (16 U.S.C. 590-f, q).)

Dated: October 5, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs,
Soil Conservation Service.

[FR Doc. 78-29077 Filed 10-13-78; 8:45 am]

[3410-16-M]

SOUTH NATCHITOCHES FLOOD PREVENTION AND AGRICULTURAL LAND DRAINAGE RC&D MEASURE, LOUISIANA

Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the South Natchitoches Flood Prevention and Agricultural Land Drainage RC&D Measure, Natchitoches Parish, La.

The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Alton Mangum, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The measure concerns a plan for flood prevention and agricultural land drainage. The planned works of improvement include the installation of 10 miles of channels and appurtenant structures for erosion control.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Alton Mangum, State Conservationist, Soil Conserva-

tion Service, 3737 Government Street, Alexandria, La. 71301, telephone 318-448-3421.

(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: October 5, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs,
Soil Conservation Service.

[FR Doc. 78-29078 Filed 10-13-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket No. 32994; Order 78-10-32]

ALLEGHENY AIRLINES, INC.

Order Granting Exemption and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of October 1978.

On July 6, 1978, Allegheny applied for an exemption to permit it to provide nonstop service in the Charleston, West Virginia-Pittsburgh market, in which it has a one-stop restriction. Allegheny also requested the grant of such other authority or relief as the Board may conclude is in the public interest, including grant of relief by means of show-cause procedure.

In support of its request, Allegheny states that it will offer new competitive service between Charleston and Pittsburgh, a United monopoly market generating 60,000 passengers per year and served by United's three nonstop flights¹; that its two proposed Charleston-Pittsburgh round trips will convenience 50,000 passengers (25,000 in the Charleston-Pittsburgh market and additional 25,000 beyond Pittsburgh) while the elimination of its Charleston-Baltimore service (two round trips) will cause only minimal inconvenience to the 25,000 passengers in that market, because of the availability of numerous on-line connections at Pittsburgh; that its proposed Pittsburgh service, in lieu of Baltimore, will provide the Charleston passengers with much greater on-line connecting possibilities because Pittsburgh is Allegheny's largest traffic hub; that its proposed change will produce a net earnings improvement of more than \$500,000; that the Pittsburgh service offers Allegheny that best opportunity to serve Charleston

¹Allegheny Commuter also serves the Charleston-Pittsburgh market with four one-stop flights. According to Allegheny very little Charleston-Pittsburgh traffic is carried on the commuter flights and grant of nonstop authority to Allegheny will have virtually no impact on the Allegheny Commuter.

on an economical basis; that even if its estimates are overstated, it should be permitted to operate the new service since the Board no longer requires a definite showing of first year profitability (Order 78-4-69); and finally that the removal of the one-stop restriction will not have any sizeable diversionary impact on United, which does not need protection in any event.

The Charleston Regional Chamber of Commerce and Development filed an answer supporting Allegheny's application. Piedmont Airlines submitted and answer in opposition to the exemption request. However, Piedmont subsequently withdrew this answer when it determined not to prosecute its own exemption application.

On review of the application we have decided to grant the exemption and have tentatively decided to remove the one-stop restriction permanently through the use of show-cause procedures.

On the basis of the following considerations, we find that it would be in the public interest to exempt Allegheny from the terms, conditions, and limitations of its certificate for Route 97 so as to authorize it to operate non-stop between Charleston and Pittsburgh. We find that the proposed service is of limited nature; it involves only two daily round trips on an 164-mile segment for a temporary period, i.e., until the Board's final action in the certificate amendment proceeding in Docket 32994, and requires simply removing a stop restriction in a market in which Allegheny is already authorized. Accordingly we find that enforcement of section 401 of the act and the terms, conditions, and limitations of Allegheny's certificate for Route 97, to the extent that they would otherwise prevent it from providing nonstop service on two daily Charleston-Pittsburgh round trips, would be an undue burden on it by reason of the limited extent of its operations and would not be in the public interest.²

Grant of the requested exemption authority will result in immediate benefits to Allegheny and the traveling public. However, as pointed out by the applicant, its pleading contains enough data in support of not only temporary exemption but also permanent certification. And certification is the norm under the act. We conclude

²Since this exemption will be temporary and authorize only two nonstop roundtrips, in a market in which the applicant is already free to provide one-stop service at any time, our action here does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the national Environmental Policy Act, and will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975 as defined in § 313.4(a)(1) of the Board's Regulations.

therefore that the public convenience and necessity require the removal of Allegheny's one-stop restriction in the Charleston-Pittsburgh market. We also conclude tentatively that a hearing is not necessary. No competing applications have been filed to date, and no party objects to the restriction removal.³

Our conclusions are supported by the tentative findings below.⁴

Amendment of Allegheny's certificate to permit it to provide non-stop service between Charleston and Pittsburgh will enable it to adjust its Charleston flight patterns and initiate competitive service so as to serve the Charleston passenger traffic to and through the Pittsburgh gateway more effectively than at Baltimore, and on a viable basis.⁵ It will also benefit the carrier by affording it greater operating flexibility on its entire system.

In our view Allegheny's one-stop restriction in the Charleston-Pittsburgh market is inherently wasteful and inconvenient to the traveling public and should be removed unless there are affirmative reasons for retaining it. Certainly, United cannot claim any significant diversionary impact on a system basis, and it has not.

Also, as we have stated before, even if the additional nonstop service should prove uneconomic this would not dissuade us from our decision. We need not find that the proposed operations will be profitable in order to find that they will be in the public interest. It is up to carrier management, responding to market forces, to determine the level of service which will maximize its net revenue. Since Allegheny's authority will be permissive, it will be able to discontinue nonstop service if it finds uneconomic. We also do not believe that the authorization of a second carrier will result in either conducting uneconomic operations. In fact, it may actually stimulate the market through the introduction of competitive service benefits such as lower fares and new price/quality options.

³Allegheny's pleading included and alternate request for relief by means of show-cause procedures, to which interested parties could have responded.

⁴Furthermore, we find tentatively that Allegheny is a citizen of the United States within the meaning of the Act, and is fit, willing, and able to perform properly the transportation proposed here and to conform to the provision of the Act and the Board's rules.

⁵Allegheny estimates that its Charleston-Pittsburgh service will benefit 50,000 local and connecting passengers and result in a net economic gain of \$260,000. At Pittsburgh, Charleston passengers will have excellent and numerous connections. Although Charleston-Baltimore passengers will lose single-plane service, they will have numerous connections available at Pittsburgh, as well as service through the Washington National Airport.

Allegheny has requested a waiver of the requirement to file an environmental evaluation. We shall grant it. Allegheny is replacing two Charleston-Baltimore round trips with two Charleston-Pittsburgh round trips. The environment at Charleston will not be affected. At Baltimore the environmental effect will be positive. The impact on Pittsburgh will be unnoticeable since Allegheny already operates nearly 400 daily arrivals and departures at that airport. In any event Allegheny is free to operate one-stop service between Charleston and Pittsburgh. Such a one-stop operation would have a greater environmental impact than would nonstop. Allegheny is also free to add service at both Charleston and Pittsburgh without Board approval. Taking into account the above considerations we find that the proposed service does not constitute a major action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of The National Environment Act of 1969.

Interested persons will be given 30 days following the date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to support their objections, if any with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If a full evidentiary hearing is requested, the objector should state in detail what he would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly, 1. We exempt Allegheny Airlines temporarily from the provisions of section 401 of the act and the terms, conditions, and limitations of its certificate of public convenience and necessity for Route 97 to the extent necessary to permit it to provide nonstop service between Charleston, W. Va., and Pittsburgh, Pa., on no more than two daily round trips;

2. We shall make the authority granted in paragraph 1 effective on the date of service of this order and it shall continue until 60 days after final decision in Docket 32994;

3. We may amend or revoke the exemption authority granted in this order at any time in the discretion of the Board without a hearing;

4. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending Allegheny's certi-

cate for Route 97 so as to remove its one-stop restriction in the Charleston-Pittsburgh market;

5. We require any interested person having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendments no later than November 9, 1978, to file with the Board and serve upon all persons listed in paragraph 8 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support its objections; answers to objections shall be filed by November 19, 1978.*

6. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised before further action is taken;

7. If no one files objections to any part of this order, we will consider all further procedural steps relating to such part or parts waived, and the case submitted to us for further action; and

8. We will serve a copy of this order upon all persons named in the service list of Docket 32994.

We shall publish this order in the **FEDERAL REGISTER**.

By the Civil Aeronautics Board.⁷

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-29185 Filed 10-13-78; 8:45 am]

[6320-01-M]

[Docket Nos. 33216, etc.; Order 78-10-12]

ALLEGHENY AIRLINES, INC., ET AL

Order on Motions to Consolidate Applications

Issued under delegated authority, October 4, 1978.

Louisville-Kansas City Nonstop Route Investigation, Docket 33216; Applications of Allegheny Airlines, Inc., Dockets 31581; Braniff Airways, Inc., 33342; Continental Air Lines, Inc., 33497; Eastern Air Lines, Inc., 33503; North Central Airlines, Inc., 33507; Piedmont Aviation, Inc., 33470; Texas International Airlines, Inc., 33430.

Order 78-8-94, served August 22, 1978, instituted as Docket 33216 an investigation to determine whether the public convenience and necessity require the grant of new nonstop authority in the Louisville-Kansas City market.

Order 78-8-94 consolidated into this proceeding the applications of Frontier Airlines in Docket 28183, and Ozark Air Lines in Docket 31678. The same order delegated "to the presiding Administrative Law Judge the authority to consolidate by order any applica-

tions which conform to the scope of the proceeding".¹ That delegation implicitly includes the authority to dismiss without prejudice any motion to consolidate to the extent consolidation is not granted. 14 CFR 302.12(d).

Applications, and motions to consolidate them, were timely filed by Allegheny, Braniff, Continental, Eastern, North Central, Piedmont and Texas International. No answers to these motions to consolidate have been filed. Moreover, all applications do conform to the scope of this investigation. None seek other than nonstop authority in the Louisville-Kansas City market.

Consolidation of these applications to the extent they are within the scope of this proceeding is in the public interest, conducive to the proper dispatch of the Board's business and the ends of justice, and will not unduly delay the proceeding. They will, therefore, be consolidated into Docket 33216.

Accordingly, it is ordered: That: 1. The motions to consolidate the applications of Allegheny Airlines, Inc. in Docket 31581, Braniff Airways, Inc., in Docket 33342, Continental Air Lines, Inc. in Docket 33497, Eastern Air Lines, Inc., in Docket 33503, North Central Airlines, Inc., in Docket 33507, Piedmont Aviation, Inc. in Docket 33470, and Texas International Airlines, Inc., in Docket 33430, into the investigation in Docket 33216 are granted to the extent that they conform to the scope of the investigation into the need for new nonstop authority in the market specified in Order 78-8-94, and such applications are otherwise dismissed.

2. The following are made parties to the proceeding in Docket 33216: Allegheny Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Eastern Air Lines, Inc., North Central Airlines, Inc., Piedmont Aviation, Inc., and Texas International Airlines, Inc.

Persons entitled to petition the Board for review of this order pursuant to Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the **FEDERAL REGISTER**.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-29184 Filed 10-13-78; 8:45 am]

¹Order 78-8-94, Fn.2.

[6320-01-M]

[Docket Nos. 33275, etc.; Order 78-10-19]

AMERICAN AIRLINES, ET AL.

Order on Motions to Consolidate

Issued under delegated authority October 5, 1978.

New Orleans-West Service Investigation, Docket 33275; Motions of American Airlines, Inc., Dockets 33436; Eastern Air Lines, Inc., 33445; Frontier Airlines, Inc., 33423; Hughes Air Corp. d.b.a. Hughes Airwest, 33402; North Central Airlines, Inc., 33455; Northwest Airlines, Inc., 33420; Southern Airways, Inc., 33424; Western Air Lines, Inc., 33433; Braniff Airways, Inc., 31699; Continental Air Lines, Inc., 33439; Delta Air Lines, Inc., 33447; Ozark Air Lines, Inc., 33415; Texas International Airlines, Inc., 33431.

By Order 78-8-122, served August 25, 1978 (and later corrected), the Board instituted this investigation to consider "whether the public convenience and necessity require new or additional service between New Orleans, on the one hand, and Amarillo, Lubbock, Oklahoma City, Portland, Seattle, and Wichita, on the other hand." Thus, as instituted, the order contemplates investigation of the need for additional nonstop service in seven New Orleans markets.

Five petitions have been filed requesting reconsideration of Order 78-8-122 and expansion of the scope of the proceeding. The petitioners would add 10 more markets for a total of 17 nonstop markets; or, if Delta's petition were granted to change the scope to service "between and among" the points, a total of 153 markets would be under investigation. Even if no new markets were added, service "between and among" the points currently included in the investigation would result in 28 markets rather than 7 and would move the focus of the investigation away from New Orleans.

Of the 13 carriers who have filed timely applications and motions to consolidate, 8 request authority within the current scope of the investigation. Those 8 motions will be granted.

With a range of possibilities between 7 and 153 markets to investigate, it would obviously be futile to call a pre-hearing conference before the Board acts on the petitions for reconsideration.¹ Nor would it be productive to separate out at this time those por-

¹That it is a waste of the time of all interested persons to attempt to proceed with a case before the Board acts on petitions for reconsideration is apparent from two recent cases in which procedural dates previously set had to be indefinitely postponed, in one case a few days before direct exhibits were to be filed. See orders of the Judge dated September 11, 1978, in Docket 32708, and September 18, 1978, in Docket 32711.

*Since provision is made for filing objections, we will not entertain petitions for reconsideration.

⁷All Members concurred except Member Schaffer who did not participate.

tions of the five remaining applications which conform to the present scope of the investigation. Therefore, the judge will take no further action until after the Board decides what it wants to be heard and any further applications are filed as a result of the Board's order.

Accordingly, pursuant to authority delegated by the Board in Order 78-8-122,

It is ordered, That: 1. The motions to consolidate the applications of American Airlines, Inc., in Docket 33436, Eastern Air Lines, Inc., in Docket 33445, Frontier Airlines, Inc., in Docket 33423, Hughes Air Corp. d.b.a. Hughes Airwest, in Docket 33402, North Central Airlines, Inc., in Docket 33455, Northwest Airlines, Inc., in Docket 33420, Southern Airways, Inc., in Docket 33424, and Western Air Lines, Inc., in Docket 33433 into the investigation in Docket 33275 are granted.

2. Action on the motions to consolidate Amendment No. 2 to the application of Braniff Airways, Inc., in Docket 31699, and the applications of Continental Air Lines, Inc., in Docket 33439, Delta Air Lines, Inc., in Docket 33447, Ozark Air Lines, Inc., in Docket 33415, and Texas International Airlines, Inc., in Docket 33431, in the investigation in Docket 33275 is deferred.

3. The following are made parties to the proceeding in Docket 33275: American Airlines, Inc., Eastern Air Lines, Inc., Frontier Airlines, Inc., Hughes Air Corp. d.b.a. Hughes Airwest, North Central Airlines, Inc., Southern Airways, Inc., and Western Air Lines, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-29186 Filed 10-13-78; 8:45 am]

[6320-01-M]

[Docket Nos. 28457 etc.; Order 78-10-25]

**BRANIFF AIRWAYS, INC., AND TEXAS
INTERNATIONAL AIRLINES, INC.**

Order To Show Cause

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

D.C., on the 5th day of October 6, 1978.

Petition of the Cities and Chambers of Commerce of Midland and Odessa, Tex., for an investigation of air service to the east, Docket 28457; application of Braniff Airways, Inc., for amendment of its certificate of public convenience and necessity for Route 9, Docket 29136; application of Texas International Airlines, Inc., for amendment of its certificate of public convenience and necessity for Route 82, Docket 32954.

On May 12, 1978, the Midland/Odessa Parties¹ filed a petition for an order to show cause why Midland/Odessa should not be added to the certificate of Braniff Airways for Route 9, and they requested that the Board grant Braniff a temporary exemption to provide service between Dallas/Fort Worth and Midland/Odessa pending completion of the show-cause procedures.

In support of their petition and request for exemption, the Midland/Odessa Parties state that Continental Air Lines advised them that effective June 1, 1978, it would reduce its service in the Midland/Odessa-Dallas market from three round trips to one morning round trip and that by the end of the summer it would eliminate its service in the market entirely; that Continental also intended to eliminate its round-trip service between Midland/Odessa and Oklahoma City and Tulsa; that they turned to Braniff Airways for assistance because the withdrawal of Continental's service would create a serious transportation emergency; that there is ample precedent for granting Braniff an exemption and issuing a show-cause order as the Parties request;² that grant of the relief sought will not harm any other carrier; that 73 percent of Midland's O. & D. traffic in the year ended June 30, 1977, was exchanged with points on Braniff's existing system; and that immediate action is required to fill the void created by Continental's reduction in service. The Parties further request that Continental be required to obtain Board authority before resuming Midland/Odessa-Dallas/Fort Worth service in order to avoid destructive competition against Braniff's new services.

Texas International Airlines (TXI) filed a motion to dismiss the petition of Midland/Odessa to the extent that it requests an emergency exemption for Braniff in the Midland/Odessa-Dallas/Fort Worth market, contend-

ing that it does not meet any of the criteria for grant of such relief. Braniff opposed TXI's motion to dismiss, stating that Continental's withdrawal from the market would indeed create an emergency since that carrier carried 60 percent of the single-carrier traffic for the year ended September 30, 1977.

On June 15, 1978, Braniff filed an answer to Midland's petition for an order to show cause,³ in which it provided economic and operating data upon which it expects the Board to rely in granting the petition.⁴ It plans to operate three daily round trips with the flights continuing on beyond Dallas/Fort Worth to Chicago, New York and New Orleans. For the forecast year 1980, Braniff expects to benefit over 150,000 passengers. It contends that an award to it would do no more than insure that competition continues between Dallas/Fort Worth and Midland/Odessa.

On June 16, 1978, Continental filed an answer to Midland's petition, stating that it has no objection to Braniff's entering the primary market, but it does object to Midland's request that Midland/Odessa should be added to Braniff's certificate without hearing. It contends that the petition is not clear as to what new authority Braniff would gain in other Midland markets. Finally, Continental objects to any restriction on its own services between Dallas and Midland, which it contends it is not planning to eliminate entirely in any event.

The Midland Parties filed a motion for leave to file an otherwise unauthorized document, to which were appended copies of numerous letters supporting the addition of Braniff's services at Midland.⁵

On June 30, 1978, TXI filed three documents—an application in Docket 32954 for amendment of its certificate for Route 82 to add a new segment between Dallas/Fort Worth and Oklahoma City, a motion to consolidate the application with any proceeding instituted by the Board in response to Midland's petition in Docket 28457, and a third pleading which contained (1) an answer to Midland's petition and (2) a motion for an order to show cause why the authority sought in Docket 32954 should not be granted without a hearing. In its answer, TXI contends that there is no emergency regarding service in the Dallas/Fort Worth-Midland/Odessa market because TXI has increased its service by one daily

¹The date on which answers were due was extended to June 30.

²Braniff's original application involved a new segment from El Paso through Midland/Odessa and Dallas/Fort Worth to the northeast; it now proposes to add only a Midland/Odessa-Dallas/Fort Worth segment.

³We will grant the motion.

⁴The cities and chambers of commerce of Midland and Odessa, Tex.

⁵Midland cited the award to Piedmont of Charleston-Miami authority when National terminated its services (Order 78-4-129) and the Board's order to show cause why Boston should not be added to Piedmont's route (78-4-69).

round trip and will add another if the need exists; that it is in an excellent position to provide whatever new or improved services Midland/Odessa needs;⁶ that the request to grant Braniff improved authority by show-cause procedures should be denied since the basis for the showing of need no longer exists; that the single-plane services Braniff proposes to the East may not last because of lack of available traffic; and that Braniff will not offer significant fare reductions as are already available on TXI and Southwest. In support of its motion for an order to show cause, TXI states that if the Board decides to act favorably on Midland's petition, TXI's request to serve the Oklahoma City-Midland/Odessa market one-stop via Dallas/Fort Worth should be given equal consideration, since Continental is abandoning that market altogether.

Braniff filed separate answers to TXI's motion to consolidate and petition for an order to show cause. Braniff contends that TXI's application involves the entirely new market Dallas/Fort Worth-Oklahoma City, which is not the subject of Midland's petition; that it would add parties and issues to the Midland proceeding; and that it would delay an otherwise simple case. Braniff further argues that TXI's motion for show cause is legally and procedurally deficient; that it lacks an economic forecast, and the certificate of service does not indicate that carriers serving Oklahoma City were served; and that Braniff will be able to serve the Midland/Odessa-Oklahoma City market on the same basis as would TXI under the proposed one-stop authority.

On August 14, 1978, TXI filed economic data in support of its motion to show cause.

We have decided to issue an order to show cause which proposes to add a new segment to Braniff's certificate for Route 9 to authorize permissive nonstop service between Midland/Odessa and Dallas/Fort Worth. We will deny Midland's motion for an interim exemption to Braniff pending completion of the show-cause procedures.

We tentatively conclude that the public convenience and necessity require the amendment of Braniff's certificate for Route 9 so as to add the nonstop segment Midland/Odessa-

Dallas/Fort Worth. In support of our conclusion, we make the following tentative findings. Midland/Odessa is located in the center of the Permian Basin, which contains a significant percentage of this country's ore reserves. Its location midway between Dallas and El Paso makes it isolated from the major air transportation centers and creates a high demand for air service. Furthermore, the number of passengers generated at the city has grown tremendously during the past 5 years, to 511,000 in 1977, up 62 percent from 1972. The Dallas-Midland market has grown to 222,420 O. & D. plus connecting passengers, up 69.5 percent from 1972. This does not include the passengers using Southwest Airlines' extensive intrastate services.

In the primary market, Braniff will offer three daily round trips with B-727-200 equipment, and will make available its super-saver and home-free fares. It forecasts carrying 176,175 passengers over the segment in 1980 and realizing an operating profit of \$415,000. Nearly half of the passengers it will carry are in markets in which Braniff will offer first single-plane or first single-carrier service. It proposes to offer direct service between Midland/Odessa and Chicago, New Orleans, and New York, points which do not now receive single-plane service. Thus, our award here will not only benefit the Midland-Dallas market but will provide significant beyond-market benefits as well.

We also tentatively conclude that the proposed certificate amendment should be unrestricted. All Braniff services at Midland will be required to operate via Dallas/Fort Worth, and we find that further restrictions on its Midland flights will not serve any useful purpose. TXI's authority at Midland is basically unrestricted,⁷ and Continental will have unrestricted authority in all of its Midland markets as soon as its route is realigned.⁸ Therefore, Braniff will not receive any competitive advantage at Midland as a result of our action here.⁹

We further find that Braniff is a citizen of the United States within the meaning of the Act, and is fit, willing, and able to perform properly the air

transportation proposed here, and to conform to the provisions of the Act and the Board's rules, regulations and requirements; that the certificate action we propose here will not constitute a major Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act of 1969; and that it is not a "major regulatory action" as the Board has defined that term for purposes of complying with the Energy Policy and Conservation Act.

We cannot conclude, however, that the parties have made a sufficient showing to warrant the grant of interim exemption authority. There are 11 daily round trips being offered between Dallas and Midland by TXI and Southwest,¹⁰ and therefore no emergency exists which requires the immediate grant of new authority. Further, show-cause procedures we are using here can be concluded rapidly. Under these circumstances, we will deny Midland's motion for an emergency exemption to Braniff.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due 10 days later. We expect those persons to direct their objections, if any, to specific matters dealt with here, and to support their objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

We will deny TXI's motion to consolidate its certificate amendment application in Docket 32954 with this proceeding. The time for answers to its pleadings has just recently passed. We can see no reason to delay issuing this order while the application is being processed. We will therefore handle it on its own merits in a later order. We wish to emphasize, however, that we will act on TXI's request as expeditiously as possible.

Accordingly: 1. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending Braniff's certificate for Route 9 by adding the segment Midland/Odessa, Tex.-Dallas/Fort Worth, Tex.;

2. We direct any interested persons having objections to the issuance of an

⁶TXI states that it currently provides convenient single-plane or on-line connecting service from Midland/Odessa over Dallas/Fort Worth to the major points of Houston, Kansas City, Little Rock, Memphis and New Orleans. In addition, it indicates that it is involved in route proceedings which hold the prospect of improved easterly service over Dallas/Fort Worth or Houston to Minneapolis/St. Paul, Philadelphia, Baltimore/Washington, the Bahamas, Miami, Fort Lauderdale, Tampa and Orlando.

⁷In the Midland-New Orleans market, TXI has a restriction allowing nonstop service on flights serving Denver or Salt Lake City (but otherwise requiring one intermediate stop).

⁸See Order 78-7-91, July 21, 1978.

⁹We will in no way limit Continental's discretion on what level of service to operate in the Midland-Dallas/Fort Worth market. Apart from the question of how we could legally place such limits, we have recently and often stated our belief in the positive role of dormant authority in keeping operating carriers responsive to the traveling public. See, e.g., Order 78-4-121. We have been shown no reason to believe that there will be destructive competition in the market at issue.

¹⁰TXI reduced its service from five round trips to four on September 5, 1978.

order making final the proposed findings, conclusions and certificate amendments set forth here to file with the Board, no later than November 9, 1978, and serve upon all persons listed in paragraph 10 below, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; interested persons shall file answers to objections no later than November 20, 1978;

3. If timely and properly supported objections are filed, we will give full consideration to the matters or issues raised before we take further action;¹¹

4. In the event no objections are filed to any part of this order, we will eliminate all further procedural steps relating to such part or parts and we will proceed to enter an order in accordance with the tentative findings and conclusions set forth in this order;

5. We will grant the petition of Midland/Odessa for an order to show cause;

6. We will deny the motion of Texas International Airlines to consolidate its application in Docket 32954 with Docket 28457;

7. We will deny the motion of Texas International Airlines to dismiss the petition of Midland/Odessa for emergency exemption;

8. We will grant the motion of Midland/Odessa for leave to file an unauthorized document;

9. We will deny the request of Midland/Odessa for an emergency exemption; and

10. We shall serve this order on Braniff Airways, Inc.; Texas International Airlines, Inc.; the Midland/Odessa Parties; the Texas Aeronautics Commission; Continental Air Lines, Inc.; the Dallas/Fort Worth Parties; the City of Oklahoma City; American Airlines, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Frontier Airlines, Inc.; Ozark Air Lines, Inc.; Trans World Airlines, Inc.; North Central Airlines, Inc.; Northwest Airlines, Inc.; and Western Air Lines, Inc.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,¹²
Secretary.

[FR Doc. 78-29188 Filed 10-13-78; 8:45 am]

¹¹ We direct that all motions and/or petitions for reconsideration be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

¹² All Members concurred.

[6320-01-M]

[Docket No. 31808]

CHICAGO-ALBANY/SYRACUSE-BOSTON COMPETITIVE SERVICE INVESTIGATION

Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Greer M. Murphy to Administrative Law Judge Richard J. Murphy.

Dated at Washington, D.C., October 6, 1978.

NAHUM LITT,

Chief Administrative Law Judge.

[FR Doc. 78-29193 Filed 10-13-78; 8:45 am]

[6320-01-M]

[Docket Nos. 32696, 32697; Order 78-9-150]

ORDER TO SHOW CAUSE

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of September 1978.

On May 18, 1978, Frontier Airlines filed an application for an amendment of its certificate of public convenience and necessity for Route 73, extending segment 2 (Denver-Sacramento) to include the terminal point Redding, California.¹ Concurrently, Frontier filed, in Docket 32697, an application for exemption authority to provide one daily Redding-Sacramento-Denver round trip on a subsidy ineligible basis for a period of two years or until 90 days after Board action in Docket 32696.

Subsequently, on July 11, 1978, Frontier filed a petition, requesting that the Board issue an order to show cause why its certificate application for Sacramento-Redding authority in Docket 32696 should not be granted, rather than issuing exemption authority under 416(b) of the Act. The carrier indicates that its change of procedural preference is occasioned by a letter from the California Public Utilities Commission stating its position that CAB exemption authority does not supplant the need for California authority for the transportation of interstate passengers.

Frontier's service proposal consists of one daily round trip, Redding-Sacramento-Denver. In support of its application, it claims that the authority will permit it to provide Redding passengers with their first direct access to the Midwest, Southwest, and Eastern portions of the country.² It projects that 27,420 passengers will benefit from the service in 1979 and that it

¹ No motion for hearing or petition for an order to show cause was filed at that time.

² Airwest, the only certificated carrier now serving Redding, provides service between Redding and San Francisco/Portland.

will provide a \$433,000 profit over and above taxes. Diversion from other carriers is estimated to be minimal.

A number of parties have filed answers to Frontier's applications and petition. The County of Sacramento and the City of Redding support Frontier's proposed service. Hughes Airwest does not object to the two-year exemption request limited to one daily round-trip, but opposes certificate authority unless it is both conditioned to expire in two years and to require that all flights serving Redding must also serve both Sacramento and Denver.³ The purpose of the conditions is to protect both existing and prospective Airwest service from diversion.

Eureka Aero Industries, a commuter carrier that received Redding-Sacramento authority from the California PUC on July 26, 1978, opposes any Frontier authority to serve the Redding-Sacramento market.

We tentatively conclude, on the basis of the findings below, that the public convenience and necessity require the amendment of Frontier's certificate for Route 73 so as to authorize service between Redding and Sacramento/Denver. We also tentatively find that Frontier is fit, willing and able properly to perform the air transportation it proposes and to conform to the provisions of the Act and the Board's rules, and, on the basis of the environmental evaluation submitted by Frontier, that our proposed action would not be a major Federal action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 or a major regulatory action under the Energy Policy and Conservation Act of 1975.

Frontier's certificate application, parallel to Piedmont's Boston entry proposal,⁴ falls within the class of cases that can be handled by show-cause procedures, because of the absence of any material, determinative issue of fact requiring resolution in a formal evidentiary proceeding.

We find that the implementation of Frontier's service proposal would significantly benefit the traveling public in many Redding markets, by providing first certificated nonstop service between Redding and Sacramento, first single-plane service between Redding and Denver and first single-carrier service between Redding and major destinations beyond Denver.⁵ Frontier will be able to offer these benefits by means of a short extension of existing

³ In its petition, Frontier expressed a willingness to accept reasonable certificate restrictions.

⁴ Order 78-4-89.

⁵ Denver is the hub of Frontier's system. On-line connections would be available with flights serving Dallas/Ft. Worth, St. Louis, and Kansas City, as well as other cities.

flights, thereby attracting new passengers to its Sacramento-Denver flights and increasing revenues through relatively minor increases in costs. Further, we find that the authority we are considering will not threaten the ability of any carrier to perform its certificate obligations or result in the termination of essential services that could not be replaced by other carriers.⁶ Finally, we find that the public convenience and necessity require that the authority we propose to grant Frontier be permissive, so that its management can have flexibility to gear its service to the demands of the market. It will be Category II subsidy ineligible.

With regard to Eureka Aero's opposition, we have consistently rejected granting commuters route protection from competition from certificated carriers,⁷ and the idea is even more anomalous in light of our general policy of promoting more competition in the certificated system.

Airwest indicates it would not oppose authority to Frontier limited to a two-year period and conditioned to require that all Redding flights also serve both Sacramento and Denver. We find that such restrictions would unreasonably restrict the carrier's flexibility and constitute an unnecessary denial of prospective public benefits.

Our decision to grant the certificate sought by Frontier is based exclusively on the findings above and by no means reflects acquiescence in California's apparent view that an exemption under Section 416 of the Federal Aviation Act has different of less preemptive force than a certificate under section 401. As we said in Order 78-2-22 (February 1, 1978), "[w]hether the Board issues a certificate or an exemption does not change the fact that federal operating authority is conferred." Like a certificate, an exemption is an affirmative federal authorization to engage in the operations covered by the Federal Aviation Act.⁸ It follows

that the considerations applicable to State interference with certificated operations apply with equal force to operations conducted under authority of an exemption. See, e.g., *Pioneer Airways v. City of Kearney*, 256 N.W. 2d 324 (S. Ct. Neb., 1977). In other words, a carrier with an exemption to carry interstate traffic between two points within a state may do so regardless of whether it has authority from the State.⁹

Interested persons will be given 30 days following the date of service of this order to show cause why these tentative findings and conclusions should not be made final. Answers will be due within ten days after the expiration of that period. We expect that objections will be supported by detailed economic or legal arguments. If an oral evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

Accordingly, 1. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending Frontier's certificate for Route 73 so as to add Redding, Calif., as a terminal point to Segment 2;

2. Any interested person having objections to the issuance of an order making final the proposed findings, conclusions and certificate amendment set forth here shall no later than November 9, 1978 file with the Board and serve upon all persons listed in paragraph 7 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support its objections; answers to objections shall be filed no later than November 20, 1978;

3. If timely and properly supported objections are filed, we will fully consider the matters or issues raised before taking further action;¹⁰

⁶In Order 78-2-22 we declined to consider the certification of a helicopter operator using and intending to use only aircraft within the size limitations of Part 298. We found that it already had all the operating authority it needed under Part 298. Under the circumstances, we concluded that we should not invoke our certificate procedures to bring the carrier within the interpretation of a state law that recognizes the preemptive nature only of a federal certificate. The situation here is completely distinguishable. We would be inclined to grant Frontier's application on its merits whether or not the impetus to press its 401 application in preference to its exemption request was the policy of the California PUC.

¹⁰Since provision is made for filing objections, no petitions for reconsideration will be entertained.

4. In the event no objections are filed to any part of this order, we will consider all further procedural steps relating to such part or parts to have been waived, and the case will be submitted to the Board for further action;

5. We dismiss Frontier's application for exemption authority in Docket 32697;

6. We grant Eureka Aero's motion for leave to file late; and

7. We shall serve a copy of this order upon all persons named in the service list of Dockets 32696 and 32697.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,¹¹

Secretary.

[FR Doc. 78-29187 Filed 10-13-78; 8:45 am]

[6320-01-M]

[Docket No. 32708; Order 78-10-34]

FRONTIER AIRLINES, INC.

Houston-Phoenix/Tucson Case; Order Naming Party

Issued under delegated authority October 6, 1978.

By Order 78-9-85, dated September 19, 1978, the Board reversed the judge's ruling and granted the motion of Frontier Airlines, Inc. to consolidate its application in Docket 33078 into this proceeding. The Board did not, however, make Frontier a party to Docket 32708. In order that Frontier may participate fully in this investigation, this order will rectify that oversight.

Accordingly, pursuant to authority delegated by the Board in its Regulations, 14 CFR 385.11, to grant intervention.

It is ordered, That Frontier Airlines, Inc., is made a party to Docket 32708.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motions.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-29192 Filed 10-13-78; 8:45 am]

¹¹All Members concurred.

⁶Airwest claims that diversion of Redding traffic potential could erode the economics of its feeder services in small southern Oregon and northern California markets, but provided no specific showing of diversion.

⁷The *Baltimore-Norfolk Service Case*, Order 76-6-53, June 9, 1976; *Great Lakes Local Service Investigation*, 31 C.A.B. 442 (1960); *TAG Airlines, Detroit-Cleveland Certificate*, 52 C.A.B. 579 1969.

⁸This reality is underscored by two simple and irrefutable conclusions. The first is that authority from the Board is essential to lawful interstate operations since the states are powerless to confer it. Cf. *Castle v. Hayes Freight Lines*, 348 U.S. 61, 63 (1954). The second is that operation under authority of an exemption is "as legal and proper as is the operation of certificated carriers." *Seaboard & Western Airlines v. CAB*, 181 F.2d 515, 518 (C.A.D.C. 1949), cert. denied, 339 U.S. 963.

[6320-01-M]

[Docket Nos. 33019, etc.; Order 78-10-40]

NORTH CENTRAL AIRLINES, INC. ET AL.

Order on Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of October 1978.

Chicago-Midway Expanded Service Proceeding, Docket 33019; applications of North Central Airlines, Inc., Docket 33108; Alaska Airlines, Inc., Docket 33116; Ozark Air Lines, Inc., Docket 33117; Frontier Airlines, Inc., Docket 33118; Southern Airways, Inc., Docket 33122; Midway Airlines, Inc., Docket 33123; Allegheny Airlines, Inc., Docket 33129; DHL Airways, Inc. & DHL Corp., Docket 33132; Northwest Airlines, Inc., Docket 33135; Continental Air Lines, Inc., Docket 33138; Eastern Air Lines, Inc., Docket 33140; Western Air Lines, Inc., Docket 33144; Braniff Airways, Inc., Docket 33146; Texas International Airlines, Inc., Docket 33147; Federal Express Corp., Docket 33148; American Airlines, Inc., Docket 33149; National Airlines, Inc., Docket 33152; Midway (Southwest) Airway Co., Docket 33153; Piedmont Aviation, Inc., Docket 33154; Trans World Airlines, Inc., Docket 33156; Evergreen International Airlines, Inc., Docket 33157; Wien Air Alaska, Inc., Docket 33178.

By Order 78-7-41, served July 14, 1978, the Board instituted the *Chicago-Midway Expanded Service Proceeding* ("Midway II") and called for applications, motions to consolidate, interventions and petitions for reconsideration within 21 days. In addition to those pleadings, we received from Administrative Law Judge Ronnie A. Yoder a certification of certain questions affecting the case which Judge Yoder wants resolved before the hearing. This order will dispose of motions to consolidate, petitions for reconsideration and Judge Yoder's certified questions; he will rule on interventions separately under delegated authority.

Petitions for reconsideration or clarification were filed by American Airlines, Midway (Southwest) Airway Co., Trans World Airlines, Western Air Lines, the Bureau of Pricing & Domestic Aviation (BPDA) and civic parties representing the Quad Cities, Niagara Falls, Peoria, Lincoln, Houston, Rockford, and Nashville.¹ Answers supporting or opposing the petitions were filed by American, Midway Airlines, Midway (Southwest), Northwest Airlines, United Air Lines, and Columbus, Ohio, parties.

The petitions of American, Midway (Southwest), TWA, and BPDA and the

answers of American, Midway Airlines, and United raise two points in need of clarification: (1) Did the Board intend to allow carriers to propose to serve two or more of the 17 cities in issue without serving Midway Airport as an intermediate point, and if so, are traffic rights between and among the 17 cities in issue; and (2) did the Board want to preclude traditional carrier selection? Midway (Southwest) argues that we should consider granting local traffic rights, without a Midway stop, among the 17 points subject to the condition that all flights serve Midway Airport. This would afford carriers more operating flexibility and might allow them to offer more service than they otherwise would in some of the smaller markets. American, Midway Airlines, and United claim that inclusion of that question would delay and complicate the case, would divert its focus from Midway's service needs and would be inconsistent with the purpose of the case which is to supplement what we did in the *Chicago-Midway Low-Fare Route Proceeding*, Orders 78-7-40 and 78-8-203. On the second point, TWA does not want us to preclude traditional carrier selection while BPDA asks us to confirm that that is precisely what we want to do.

Judge Yoder's certification is, as he acknowledges, unusual and not specifically provided for in our Rules of Practice; nevertheless, it is a useful expedient for resolving procedural issues at this stage to avoid complications at the later substantive stages of the case. His questions are:

1. Did the Board intend tentatively to determine in Order 78-7-40 (*Midway I*) that the public convenience and necessity require the certification of all fit, willing and able carriers (i.e., multiple permissive authority) to serve markets at issue in this proceeding, but not at issue in *Midway I*, where some service is found to be otherwise required in the public interest?

2. If so, did the Board intend to conclude that the Board has the constitutional power to determine in *Midway I* public convenience and necessity (PC&N) as to multiple permissive entry for markets at issue in *Midway I* but not at issue in *Midway I*?

3. Does Order 78-7-41 contemplate commencement of any *Midway II* hearing or prehearing submissions before a final determination of multiple permissive entry policy questions in *Oakland* and *Midway I*?

It is our intention that this case proceed on the same principles as the *Oakland Service Case*, Order 78-4-121, but use slightly different procedures. In instituting *Midway II*, we have made a policy decision that the public convenience and necessity require permissive certification of all fit, willing,

and able applicants in each market in which a need for additional authority is found (see Order 78-4-121 at 19-56 for a complete explication of the rationale). We reached that conclusion in light of our analysis in *Midway I* of what it would take to revitalize Midway Airport, and it was not specific to the six markets in issue there.² Hence, we are not proposing, as Judge Yoder suggests, to bind anyone who was not a party to *Midway I* to any findings or conclusions peculiar to the six markets in that case. We are confirming, however, our conclusion that "it is the development of new traffic and the concomitant rapid institution of full service patterns by a number of carriers that will revive Midway and to a lesser extent slow the pace of growth at O'Hare."³ In other words, the goal of developing Midway Airport, as opposed to developing competitive service and lower fares in certain Midway markets only, will best be achieved by authorizing all fit applicants when there is a need for service between Midway Airport and any market.

Since this is essentially a policy determination, we will give interested persons 21 days to comment upon it, as we did in *Oakland* for the reasons stated in Order 78-4-121 at 57-58. While we will listen to all arguments, we prefer that parties not rehash the general arguments about the propriety or legality of the multiple permissive entry policy, but rather concentrate on their specific objections to its application in *Midway II*. In the meantime, the case should proceed as quickly as possible on the assumptions set out in this order and in Order 78-7-41. We would like to reach our final decision as early as possible in 1979, and we ask the judge and the parties to bear that in mind in setting the procedural schedule at the prehearing conference.⁴

Western Air Lines and all the civic petitioners, except Niagara Falls, seek expansion of the case. We have decided that inclusion of seven additional cities will not delay processing appreciably, given the procedures that are to be followed. Houston and Peoria have the support of at least two of the carrier applicants, and we see no reason to preclude proposals to serve

² Order 78-7-40 at 12-25; Order 78-8-203 at 3 and 10.

³ Order 78-8-203 at 3.

⁴ In response to TWA's petition, we do not expect traditional carrier selection to take place, so we will not require carrier-selection evidence. The evidence required of applicants on the public convenience and necessity issues will be that described in the *Oakland* order (Order 78-4-121, pp. 59-60 and Appendix H). Applicants not now operating certificated service, whose fitness has not been determined in *Midway I* or another proceeding, will also be required to submit the fitness evidence specified in Appendix I to Order 78-4-121.

¹ BPDA and the Metropolitan Nashville Airport Authority filed motions for permission to file their late petitions. The motions are granted.

Quad Cities, Lincoln, Rockford, Nashville, or Sioux Falls at this time. We delegate authority to the judge to consolidate applications for the seven additional cities. Any such applications should be filed no later than the date of the prehearing conference. Niagara Falls wants us to redesignate Buffalo as "Buffalo-Niagara Falls." We will grant that request.

We have decided to grant the petition of Midway (Southwest) in part, by expanding the scope of the case to include consideration of both nonstop and one-stop service between Midway Airport and the other points as issue. As the carrier suggests, this will allow applicants increased flexibility and may well result in a greater volume of service to Midway than would otherwise be possible in some of the smaller markets if only nonstop service were put in issue. However, we intend to keep the case basically focused on service to Midway Airport, so we will provide that all flights operated pursuant to authority granted in this case must serve Midway. Also, since we doubt very much that two-stop service between any of the points at issue and Midway would be of much use to the traveling public, we will not put authority for such two-stop service in issue. For the same reasons, we will not grant one-stop authority involving more than 50 per cent circuitry.⁵ Within the foregoing boundaries, we believe that the proceeding, conducted as it will be on the principle of multiple permissive entry, should not be unduly complicated by including consideration of one-stop service to Midway. Applicants desiring authority for such service should so specify at the outset. A successful applicant will be granted authority encompassing one-stop service between Midway and each of the non-Midway points named in its new Midway segment via any other such point meeting the 50 per cent maximum circuitry criterion, subject to the Midway service requirement set forth above, unless it specifies that it desires less extensive or no such one-stop authority.⁶ Applicants need not submit an illustrative service proposal for each possible one-stop routing; we require only that each point at which it seeks new Midway authority be covered by at least one illustrative service proposal—a nonstop proposal, if that shows that at least some nonstop service can be economically operated in the Midway market in question, or, if there is any doubt about the latter criterion being met, a one-stop proposal with the point in

question served as either a terminal or intermediate point, showing that at least some such one-stop service is feasible.

Finally, we will consolidate all the applications except DHL's in Docket 33132. On August 24, DHL filed a motion to dismiss its applications, which we will grant.⁷ We will also grant Wien's motion to file its application because we believe that good cause has been shown in its motion.

Reply to the dissent. Our dissenting colleague, having disagreed with our decision in *Midway I* to award permissive authority to all qualified applicants in the six markets there at issue,⁸ now objects to our tentative de-

⁵On September 11, Judge Yoder served a document entitled "Initial Decision and Order of Administrative Law Judge," which dismissed DHL's application. Concluding that he did not have delegated authority to act, Judge Yoder attempted to deal with it in a creative way. Unfortunately, Rule 27 of the rules of practice, which delegates authority to judges to make initial decisions, refers to decisions "on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing (emphasis added)." Since no hearing has been held, there can be no "initial decision." Second, even if the judge could issue an initial decision now, there is no indication on the face of his document that he has complied with the service requirements of Rule 27(b). Finally, if this were a valid I.L., review would lie under Rule 28, not 14 CFR 385.50, which is mentioned in his document but which applies only to actions taken under the delegations of authority in Part 385 of the Regulations. He purports to rely on Rule 27, not Part 385. We appreciate Judge Yoder's effort to handle this procedural matter without bringing it to the Board, but that is impossible. We conclude, therefore, that his document has no legal effect and is superseded by this order.

⁷Order 78-7-40, dissent of Member O'Melia, dated August 4, 1978. In view of our dissenting colleague's expressed concern over the legality of our developing policy of multiple permissive awards—a matter which we have dealt with at considerable length in our two orders in the *Oakland Service Case*, Orders 78-4-121 and 78-9-96—we feel justified in pointing out again that his preferred solution to the Midway problem involves at least equally serious legal difficulties, i.e., (1) an unprecedented and legally questionable use of the Board's Airport Notice procedure (14 CFR 202.13(a)) to bar the incumbent carriers from exercising their longstanding albeit now dormant authority to serve Chicago through Midway Airport, where the withdrawal of this authority was never put in issue in *Midway I*; and (2) a similarly unprecedented and questionable use of the Board's rate-suspension powers under Section 1002 of the Act to prevent the incumbents at O'Hare from matching the new carriers' expected low fares at Midway. As to the latter, our colleague does not indicate on what basis he would have us find even preliminarily that such matching fares would be "unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial" (to quote section 1002(d)(1)), particularly in view of our an-

cision to follow the same policy in the 24 additional markets at issue in *Midway II*. He would have us suspend judgment "until all the facts are in," and accuses us of arbitrary and doctrinaire behavior in giving advance notice that we expect in all likelihood to follow the same course of multiple permissive awards in *Midway II* as in *Midway I*. We readily agree that our specific findings and conclusions in *Midway I* are not *res judicata* as to any participants in *Midway II* who were not parties to the earlier case; but while the doctrine of *stare decisis* does not have the same compelling force in administrative law as it does, say, in the law of property, surely an agency cannot be faulted for resolving to behave consistently from one case to the next. Indeed, it is departures from consistency in decisional standards, not adherence to it, that an agency is required to explain with particular care.⁹

The dissenter urges us to wait "until all the facts are in" before arriving at even a tentative conclusion about what course we expect to follow in this case, but omits to mention what facts he anticipates may turn up for the first time in *Midway II* that would require a different conclusion. Very little in *Midway I* turned on the facts peculiar to the six markets there at issue; everything turned on the facts there disclosed about the history of service at Midway and O'Hare, which led us and our dissenting colleague alike to conclude that the incumbent carriers at O'Hare cannot be relied on to restore Midway to its former status as a vigorously active facility serving large numbers of Chicago air travelers, and that only new carriers not holding parallel authority at O'Hare will have the necessary incentives to achieve this important public purpose. These same facts, together with our knowledge of the economics of the airline industry, further convinced us (though not our colleague) that multiple permissive awards were most likely to achieve our common goal. It will be most surprising if the testimony and exhibits in *Midway II* disclose any facts about the history or present status of the Midway problem that we have not already thoroughly explored, and we see no reason—certainly our colleague suggests none—to expect that any facts peculiar to the 24 addi-

nounced policy of allowing air carriers to engage in price competition within very broad limits, see PS-80, August 25, 1978. Compare *Continental Air Lines v. CAB*, 522 F.2d 107 (D.C. Cir. 1974).

⁹See *Braniff Airways v. C.A.B.*, 306 F.2d 739 (D.C. Cir. 1962); *City of Lawrence v. C.A.B.*, 343 F.2d 583 (1st Cir. 1965); *Continental Air Lines v. C.A.B.*, 443 F.2d 745 (D.C. Cir. 1971).

⁵In our view, a flight from point A to Midway via point B involving more than 50 per cent circuitry would be unlikely to carry any significant amount of Midway traffic on the A-B leg; hence the focus on service to Midway would be jeopardized if such service were considered here.

tional Midway markets will lead us to change our conclusions.⁹

Our colleague does us less than justice, however, in suggesting that our minds are already irrevocably made up and that the opportunity for parties to comment we have here provided is a mere sham. Any such suggestion is simply untrue. The Board frequently issues orders to show cause embodying tentative findings and conclusions reached on the basis of an inspection of the parties' initial pleadings, but we do not understand our colleague (who has joined in many such orders) to suggest that they represent an unacceptable form of prejudgment, or that the opportunity they afford parties to reply is a sham. The same is true here. While we have heard extensive oral and written debate over the past six months on the legality and general merits of a policy of multiple permissible awards and its application to a wide variety of markets, we are still prepared to listen to any new arguments that do not simply repeat what has already been said. We have not adopted a general policy of multiple permissible awards, and the adoption of such a policy is not at issue here. We are, however, prepared to give careful attention to any showing that particular circumstances make a specific market or group of markets at issue here unsuitable for multiple permissible awards. If such a showing is made, we would expect to follow a different prescription for those markets, and, if necessary, to reopen the record to admit any carrier selection evidence that might thus become necessary.

In the meantime, however, we do not expect to admit such evidence, nor do we expect the administrative law judge to suspend the proceedings until after we have received and evaluated the parties' comments on the policy issue. In suggesting that we do so, our colleague appears to have lost sight of the pressing need for a prompt decision in this case—not merely because a prompt decision is always desirable, but because it may well make the critical difference between success and failure of the whole effort to revive

service at Midway. The evidence in *Midway I* convinced us (and our colleague evidently agrees), first, that the chances of a new carrier or carriers securing a foothold at Midway will be greatly enhanced if the number of markets it can serve is expanded well beyond the six at issue in *Midway I*, and second, that the chances of restoring Midway to vigorous life are dependent upon bringing in flights from as many other cities as possible, so that travelers will begin to see Midway as an active full service airport.

Prompt decision, however, is utterly incompatible with a conventionally run case in which all the traditional carrier-selection evidence is brought out and examined. When *Midway I* was first set down we limited the markets at issue to six because we were convinced that a fifteen-market case would take far too long to try.¹⁰ A conventionally run 24-market case would undoubtedly still be in process in late 1980, a delay we simply cannot accept. However, as we pointed out in our *Oakland* order,¹¹ one of the incidental benefits of dispensing with carrier-selection evidence is that it will enable us enormously to simplify and speed up our proceedings. Only in this way can we hope to authorize new service in 24 additional Midway markets by early 1979 as is our objective.

Much of what our colleague says in his dissent makes it clear, however, that what he hopes will convert us to his viewpoint is not evidence of circumstances peculiar to the 24 additional Midway markets that would make them unsuited for multiple permissible awards, but evidence which he believes will show that our awards in *Midway I* have failed to produce the desired results. We agree that in some situations it might be a wise course to apply a new policy in a few cases, a few markets, and then await the results before applying it in additional cases and markets. But, two weighty considerations preclude our following that course here. First, it is almost universally agreed that a policy of much freer entry into air transportation, if applied on a limited basis or in only a few selected markets, will offer incentives for perverse behavior by established carriers whose remaining systems are still protected, and therefore will be unlikely to produce results that will be a reliable guide to what can be expected if the policy is widely or universally applied.¹² Second, as already noted, the success of the entire Midway experiment may well depend on the rapidity with which we can au-

thorize new service in additional markets. We cannot prudently delay action in *Midway II* for a year or two while awaiting the results of *Midway I*—and that is essentially what our colleague is proposing—when those results may well depend on our ability to finish *Midway II* in record time.

In any case, we think our colleague's pessimism about the results of our awards in *Midway I* is misplaced or, at very least, premature. It is of course disappointing that the established carriers to whom we awarded new Midway authority have deferred implementing it, but this appears to be explainable more by shortages of capacity¹³ and more immediate profit opportunities elsewhere than by the nature of our awards in *Midway I*. It is hardly reasonable to expect either of the completely new carriers we certificated, Midway Airlines and Midway (Southwest), to be close to inaugurating service only two months after our final decision.¹⁴ In a recent pleading in another docket¹⁵ Midway Airlines represents that it has proceeded with its efforts to obtain financing; that these efforts have been given a substantial boost by the Board's institution of *Midway II* "with its implied assurance that Midway would receive an award of authority therein to serve 17 additional Chicago markets"¹⁶ and by the fact that no other carrier appears to be preparing to institute new service at Midway Airport within the next twelve months; and that it "anticipates that in a short time it will complete its arrangements for financing necessary to commence service by the Spring of 1979."¹⁷ These representations make the situation appear far more hopeful to us than it does to our colleague, and we certainly are not prepared to delay *Midway II* by including carrier selection in the issues while waiting to see if these hopes come to fruition.

As to our inclusion of one-stop authority among the issues in the new case, we must respectfully disagree with our colleague on what is clearly a matter of judgment, not principle. We

⁹We forbear to analyze our colleague's grotesque caricature of our reasoning, other than to point out that if we proceeded by syllogism it would run approximately thus: *Major premise:* The evidence in *Midway I* convinces us that multiple permissible awards are the most promising means to achieve the agreed end, and this conclusion is not based materially on facts unique to the particular Midway markets here at issue. *Minor premise:* There is no apparent reason to suppose that the 24 markets of *Midway II* are materially different in this respect than the six of *Midway I*. *Conclusion:* Our conclusions in *Midway I* will probably apply to *Midway II* as well, and this is sufficiently probable to justify our shaping the procedures of the case on this assumption, unless and until disproved.

¹⁰See Order 77-5-81.

¹¹Order 78-4-121, pp. 52-55.

¹²See our recent opinion in the *Las Vegas-Dallas/Fort Worth Nonstop Service Investigation*, Order 78-7-116; and see also the *Oakland Service Case*, Order 78-9-96, at pp. 47-50.

¹³In our recent *Oakland* order (Order 78-9-96, p. 44) we pointed out the constraints on carrier behavior imposed by temporary externalities outside regulatory control, and specifically the present developing shortage of capacity which may temporarily limit the ability of carriers to inaugurate extensive new services until additional capacity can be ordered and brought on line. We concluded, however, that such short-term constraints in no way impair the long-run validity of our conclusions about multiple permissible entry.

¹⁴Indeed, throughout the proceeding neither of these applicants anticipated beginning service before the spring of 1979.

¹⁵Docket 33223, Answer of Midway Airlines, filed September 25, 1978.

¹⁶*Ibid.* at p. 3.

¹⁷*Ibid.*

are not trying to tell the applicants how to run their airlines, but simply trying to broaden their options. No applicant will be compelled to seek one-stop authority, much less operate one-stop service, unless its own managerial judgment so dictates. If by holding out this option we can ensure superior new service in some of the smaller Midway markets, our purpose will have been served. We do not believe inclusion of one-stop authority in the issues will significantly complicate or prolong the proceeding, once carrier-selection evidence has been excluded.¹⁸ If as our colleague suggests most applicants do not want or need this authority, little time will be spent on it. In any event its inclusion will have no effect whatever on the legal issues; will not add to the civic parties; and can hardly add much to the number of carrier parties since almost every domestic carrier is already in the case as an applicant.

In concluding, we would like to correct a misapprehension of our colleague, most fully set forth in his "interim statement" appended to our recent *Oakland* order (Order 78-9-96). In that and our earlier *Oakland* order (Order 78-4-121) we spoke frequently of our incipient policy of multiple permissive awards as involving carrier selection by "the marketplace" rather than by this Board. Our many references to "the market" and "the marketplace" have filled our colleague with apprehension and doubt: he sees "the market" as an "impersonal agent" to which we have unjustifiably imputed "near-human attributes of insight, rationality, and purposefulness," or as a "metaphysical potter" who "doesn't work like an instructed and fully subservient genie" and may "turn out a real clinker;" and he thinks it "very unlikely that the market—if it had cognitive intelligence—would share our views . . . as to what constitutes the public interest."

We would like to reassure our colleague: "the market" is neither an impersonal agent nor a genie, subservient or otherwise, much less a metaphysical potter. Perhaps we are to blame for couching our *Oakland* analysis in a bit of economists' jargon. The truth is that out there in the real world, away from our offices, there is no "market" or "marketplace," except as a convenient abstraction. What there is out there is millions of ordinary Americans who want fast, convenient, and inexpensive intercity transportation. They have a full measure of insight, rationality, purposefulness, and cognitive intelligence; more to the point,

they know what they want and are prepared to pay for it. On the other side are some hundreds of air carriers (if we count the commuters) and many would-be air carriers who are eager to sell air transportation and to compete for the consumers' dollars.

The fundamental theory of our national life is that, in most situations where sellers are prepared to sell and buyers are prepared to buy a service or commodity, both the greatest satisfaction of consumer desires and the most efficient use of resources will take place where sellers are left free to compete in offering their wares or services and buyers are left free to select the wares or services which most appeal to them at prices which both buyers and sellers find acceptable, with the government keeping out of the way except to prevent violence, fraud, deceit, monopoly, predatory practices, and avoidable threats of life and health. This is "the market" at work. To be sure, there are a small minority of situations where "the market" does not operate satisfactorily, most often because the buyers in a particular area have access to only a single seller and it is difficult or impossible for new sellers to enter. In these situations the government—usually by means of an administrative agency—intervenes to prevent the seller from abusing his monopoly power. But outside of these exceptional situations it has not been our national philosophy that any group of government officials, however well intentioned, should substitute their judgment for that of the individual buyers and sellers in the marketplace.

In 1938, in the wake of the Great Depression, the Congress thought it discerned a danger that the infant air transportation industry, then heavily subsidized through mail pay, would fall into a condition of destructive competition that would end either in the failure of all the competitors, so that the public would receive no air service at all, or in the monopoly domination of the market by one or a few carriers. To avert this danger, and to administer subsidy more fairly than before, Congress set up this Board and endowed it with extensive powers over which carriers would be allowed to enter the marketplace, where they would be allowed to fly, what services they would be allowed to offer, and what prices they would be allowed to charge. This Board has labored mightily for forty years, keeping most newcomers (except those flying small airplanes) out of the market, choosing "the best" one or two or three from among the established carriers to serve each route, and preventing the carriers from either raising or lowering their prices more than the Board thought reasonable at the time. In the

process, the Board has interfered pretty extensively with the consuming public's freedom to choose the air services it liked best; but it was all done in the name of what was then viewed to be the higher public good.

Today, however, air transportation is no longer a struggling infant industry, but a mature giant hundreds of times larger than in 1938. Subsidy is no longer a central feature of the system; the major carriers receive none, and even the remaining subsidized carriers for the most part receive only a small fraction of their revenues from this source. Rather, the driving force of the system is consumer demand. We have reassessed our policies, we have studied the present-day economics of the industry, and we find that, in the Midway and Oakland markets at least, and in a number of other markets we have investigated, there is no discernible danger of the kind of destructive competition Congress feared in 1938. In the light of Congress's own express mandate for competition in section 102 of the Act, and the broad discretion the Act gives us, is it not then our plain duty to get out of the way as much as we can and let the consumers in these markets select the air transportation services they prefer, as they select the hotels and resorts and automobiles and newspapers and soft drinks and toothpaste which most appeal to them? And must we stick to our old practices simply because of the possibility that the public's choice of air carriers and air services may turn out to be different than ours would have been? What warrant have we to assert that our choice would be "better" than theirs?¹⁹

To us these questions seem hardly debatable, given our factual finding that multiple permissive awards in the markets at issue will not lead to the destructive competition Congress once feared. If our colleague disagrees with that finding, we think he ought to tell us what evidence supports his contrary view. Otherwise, once he realizes that "the market" is not some mysterious bogey but simply the American people making free choices from among the offerings of competing sellers, we hope he will join us in throwing open the gates on the sellers' side of the marketplace to the fullest extent the law permits.

Accordingly, the Board: 1. Revises ordering paragraph 2(a) of Order 78-7-41 to read as follows:

"(a) Whether the public convenience and necessity require the grant of additional

¹⁸We note that *Midway I* was not materially complicated by inclusion there of the issue of one-stop service via Midway between peripheral cities. Despite fears at the outset, the parties paid relatively little attention to such one-stop service as the case actually developed.

¹⁹Our colleague fears that "the market" will not observe "due process" in making its choices. We can only say that this has not been thought an adequate justification for bureaucratizing the marketplace for most other goods and services sold in this country.

nonstop or one-stop route authority between Chicago's Midway Airport, on the one hand, and any or all of the following points: Buffalo-Niagara Falls, N.Y.; Cincinnati, Columbus, and Dayton, Ohio; Des Moines, Iowa; Louisville, Ky.; Memphis and Nashville, Tenn.; Omaha and Lincoln, Neb.; Indianapolis, Ind.; Boston, Mass.; Hartford, Conn.; New York, N.Y.-Newark, N.J.; Philadelphia, Pa.; Baltimore, Md.-Washington, D.C.; Atlanta, Ga.; Denver, Colo.; Dallas/Ft. Worth and Houston, Tex.; Sioux Falls, S. Dak.; Peoria and Rockford, Ill.; and Quad Cities, Iowa-Ill.; subject to the condition that—

"(i) All flights operated pursuant to authority granted in this proceeding shall serve Midway Airport;

"(ii) Only the points named above will be considered as intermediate points; and

"(iii) One-stop service between Midway Airport and another point in issue involving more than 50 per cent mileage circuitry will not be authorized."

2. Invites interested parties to file comments on the Board's initial determination to award permissive authority to all fit, willing and able applicants in each Midway market in which any need for additional authorization is shown. Comments must be filed by October 27, 1978;

3. Consolidates the following applications with Docket 33019:

North Central Airlines, Docket 33108; Alaska Airlines, 33116; Ozark Air Lines, 33117; Frontier Airlines, 33118; Southern Airways, 33122; Midway Airlines, 33123; Allegheny Airlines, 33129; Northwest Airlines, 33135; Continental Air Lines, 33138; Eastern Air Lines, 33140; Western Air Lines, 33144; Braniff Airways, 33146; Texas International Airlines, 33147; Federal Express Corp., 33148; American Airlines, 33149; National Airlines, 33152; Midway (Southwest) Airway Co., 33153; Piedmont Aviation, 33154; Trans World Airlines, 33156; Evergreen International Airlines, 33157; Wien Air Alaska, 33178.

4. Dismisses the applications of DHL Airways and SHL Corp. in Dockets 33132.

5. Delegates to the presiding administrative law judge authority to consolidate applications for authority between Midway Airport and any or all of the seven cities added to the proceeding by this order;

6. Directs applicants to file environmental evaluations for the seven additional cities within 21 days of the service date of this order;

7. Grants the motions of Wien Air Alaska, the Bureau of Pricing & Domestic Aviation, and the Nashville Metropolitan Airport Authority for leave to file late pleadings; and

8. Denies all petitions for reconsideration or clarification of Order 78-7-41 except to the extent granted by this order.

This order will be published in the **FEDERAL REGISTER**.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,²⁰
Secretary.

[FR Doc. 78-29191 Filed 10-13-78; 8:45 am]

[6320-01-M]

[Docket No. 32705; Order 78-10-31]

POPULAR LATIN TRAVEL AGENCY, INC.

Order Requesting Comments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of October 1978.

Popular Latin Travel Agency, by motion dated May 19, 1978, has asked the Board to reexamine and disapprove or modify the Air Traffic Conference of America's Resolutions governing declarations of defaults by travel agents (ATC Resolution 80.10, section VII.B and 80.15, paragraph 15). Section VII.B of Resolution 80.10 requires ATC's Executive Secretary to remove all ATC members' ticket stock and the carriers their validation plates if any ATC member declares and agent in default. Under paragraph 15 of Resolution 80.15, the Sales Agency Agreement, the agent agrees that an individual carrier may withdraw its ticket stock and plates if an agent is in default to it or any other participant in ATC's Agency Resolution. ATC has filed an answer, accompanied by a motion for leave to file an unauthorized document.¹

On the basis of the pleadings, the events leading up to the petition are as follows. In the latter part of 1976, blank ticket stock was stolen from Popular Latin, apparently by one of its employees. Under the Sales Agency Agreement, paragraph 18, ATC Resolution 80.15, agents are responsible to carriers for lost or stolen tickets. There is an exception to this general rule for stolen tickets if the theft is reported promptly and if the agent has taken certain security measures, but the exception does not apply if the thief was the agent or an agency employee. There is a dispute as to whether Popular Latin gave prompt notice. Since it is conceded that the thief was a Popular Latin employee, the question need not be resolved. The exception would not be available in any event. Following notification of the theft, an ATC employee investigated and on the basis of his report, ATC's Executive Secretary determined that

²⁰ All Members concurred except Member O'Melia, who dissented and filed his attached dissent, and Member Schaffer, who did not participate. Dissenting statement of Member O'Melia filed as part of the original document.

¹ Because the late filed answer will not further delay this proceeding and because it will assist our determination we will grant the motion.

Popular Latin was not eligible for the exception and that it would be liable under the Sales Agency Agreement. Various carriers honored tickets written on the stolen stock and billed Popular Latin.

Popular Latin apparently was able to satisfy all carriers that honored the stolen tickets except American, which declared it in default under section VII.B of Resolution 80.10 and under paragraph 15 of Resolution 80.15. Popular Latin attempted to have the default declaration arbitrated under ATC arbitration procedures. ATC denied the request because, under the current rules, declarations of default by individual carriers are not included in the class of disputes subject to arbitration.

Under section VII.B of Resolution 80.10, ATC is required to recover ticket stock for all members and the members themselves are required to remove plates and exchange orders. ATC has attempted to perform its function under paragraph VII.B and Popular Latin has attempted to block it in New York State Civil Courts. To date, Popular Latin has not been successful,² but the latest decision adverse to it is pending on appeal.

Popular Latin asserts that ATC's default procedure, which does not allow for a hearing before ticket stock and identification plates of all carriers are removed, amounts to a taking of property without a hearing and is a denial of due process. It also asserts that ATC and the carriers do not apply the default provisions uniformly to all agents and that this results in unfair discrimination.

ATC has challenged the motion on procedural and substantive grounds. It asserts that although Popular Latin's motion purports to be made under Rule 18 of the Board's Rules of Practice, 14 CFR 302.18, it is in fact a petition for reconsideration, which is not authorized by that rule according to its explicit language.

As to the substance of Popular Latin's motion, ATC asserts that the complainant has confused the roles of individual carriers and ATC under section VII.B of Resolution 80.10. American, not ATC, put Popular Latin in default, it asserts; ATC was merely performing its duties under the Agency Resolution. It argues that the issue which might have been subject to arbitration was the declaration of default by American; that this was a matter between American and Popular Latin; that ATC should not have been a party to any arbitration proceeding; and that the Agency Resolution and

² The court decisions against Popular Latin appear to be based on the courts' conclusions that American and ATC acted in accordance with the agency agreement approved by the Board.

Sales Agency Agreement do not in fact, provide for arbitration of default declarations under section VII.B.

ATC further argues that since it is an association of private businesses it is not required under the Constitution to give due process of law in administering contractual relationships with other businesses;³ that, in any event, due process requires only that a hearing be held at some point before a final decision is made; and that Popular Latin had a variety of opportunities to obtain such a hearing in civil courts under the existing Sales Agency Agreement.

We have concluded that Popular Latin's motion has raised serious questions, which cannot be answered on the basis of the pleadings, about whether the ATC's default procedures provided in section VII.B may be adverse to the public interest.

At the outset, we reject ATC's argument that Popular Latin's motion is procedurally defective. Section 412 of the Act confers on the Board the authority and responsibility to disapprove any section 412 agreement "... whether or not previously approved by it, that it finds to be adverse to the public interest or in violation of the Act." Popular Latin's motion, therefore, is not so much a petition for reconsideration as it is a request that the Board perform the reexamination of an agreement that is contemplated under section 412 of the Act. Furthermore, we could in any event conduct such a reexamination sua sponte, and the public interest would not be served if we declined to review the agreement because its possible defects were called to our attention by a third party motion which may not conform to all of the procedural niceties of our Rules of Practice. Indeed, our ability to perform our regulatory responsibilities would be severely impaired if we were not able to rely on requests from affected persons to direct us to agreements, the reexamination of which the public interest requires.⁴

Turning to the default provisions in case of ticket stock thefts, there are a number of discrete actions which might be considered to be denials of due process of law or anticompetitive concerted actions. The steps which would lead to a default declaration are as follows:

(1) Following the report of the theft, an investigation by ATC and a determination by the Executive Secretary as to whether the agent is exempt from liability.

(2) Honoring tickets by ATC carriers and request for reimbursement from the agent.

(3) Following refusal by the agent to reimburse it, the individual carrier declares the agent in default.

(4) Following the declaration of default, ATC removes ticket stock and individual carriers are required to remove their plates.

Since the first step of the process results in a determination of the agent's liability that could result in a loss of its funds, it may constitute a denial of due process. ATC's assertion that private parties are not required to give due process in their contractual relations is correct where the contractual relations are between two individual parties. Where competitors act in concert in making contracts, however, and that concerted action is to be immunized from the antitrust laws, private persons can be required to give due process to those with whom they deal. In *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963), the Supreme Court imposed a due process of law requirement on the New York Stock Exchange. Silver was an over-the-counter dealer whose phone and teletype lines with exchange members were ordered severed. The Exchange never informed Silver of the reason for its action, nor did it give him an opportunity to challenge it. The Exchange argued that the Securities and Exchange Act of 1934 contemplated self-regulation by exchanges, and that its actions against Silver were acts of self-regulation that must be immunized from antitrust laws if the intention of the 1934 Act were to be fulfilled. The Court concluded that while self regulation might justify immunizing certain anticompetitive acts, it did not justify acts which denied due process of law to injured persons.

Silver, of course, involved an explicit delegation of regulatory duties from Congress to private businesses, whereas ATC's agency program does not,⁵ and so we are not bound by *Silver*. Nevertheless, we agree with the basic principle of the case, i.e., that even where special regulatory concerns justify immunizing concerted anticompetitive actions, they do not justify immunizing actions that deny to affected persons due process of law. We have in fact for some time consistently required that agents be afforded due process, with, at minimum, notice and

opportunity for hearing.⁶ As noted in the *Agency Resolution Investigation*:⁷

[the] entire system of joint carrier screening of travel agents is a substantial departure from the normal free competitive practices of our economy, and * * * it would be clearly in violation of Federal antitrust laws were it not for the immunity extended by section 414 of the Act. This is not a situation therefore, where we can grant to the carriers on the basis of management expertise or discretion substantial freedom to make decisions * * * Through the ATC system, the carriers hold life and death power over the travel agencies and it would be unthinkable that the carriers should exercise these powers without giving full notice of their reasons and providing ample opportunity for appeal.

The determination by ATC's Executive Secretary that an agent is not exempt from liability is binding on all ATC members. Hence it falls into the class of concerted actions that should be subject to due process if it is to be immunized, especially since the decision might, as here, ultimately result in termination of the agency relationship. The present record does not, however, permit us to decide whether the procedure does so. We expect that parties commenting here will discuss whether the current procedure affords due process to agents and also the question of what procedures might do so.

The next step at which a question of due process might arise is the carrier's declaration of the agent to be in default. This step cannot be considered in isolation, however, since under ATC's current agreement it leads automatically to removal of all ticket stock and carrier identification plates. ATC has stated that a default declaration under Section VII.B is not subject to review by the Travel Agent Commissioner and to arbitration because it is a private dispute between an agent and an individual carrier. The flaw in this argument is that under the existing agreements, the effect of the dispute is not limited to relations between the individual carrier and agent. ATC's resolutions provide for severance of relations with the agent by all

⁶E.g., *ATC Agency Resolution Investigation*, 29 CAB 258 (1959), requiring notice and hearing for agents that are denied initial accreditation or that are subsequently removed from the agency list, ATC Agreements Concerning Travel Agents' Procedural Rules and Practices, Order 76-5-57, May 14, 1976, approving an agreement establishing a Travel Agent Commissioner, that is designed to provide further procedural and substantive fairness to agents and, Air Traffic Conference of America, Order 77-11-10, Nov. 22, 1977, in which we conditioned our approval of an agreement establishing a third party collection system on requirements that agents be provided sufficient information to meaningfully contest claims against them and that agents not be penalized, even indirectly for contesting them.

⁷29 CAB 264, 265.

³ATC cites *Shelly v. Kraemer*, 334 U.S. 1,13 (1948).

⁴See, e.g., *Hawaii Common Fares*, Order 76-11-117, in which the Board reviewed and disapproved a previously approved rate agreement on the basis of a request from an affected person.

⁵Popular Latin has alleged that the agency program represents delegation of regulatory power from the Board to ATC. The Board, however, does not have jurisdiction to regulate travel agents and it does not consider carrier/agent relations except when carriers agree among themselves to uniform practices.

ATC air carriers, even when the dispute is with only one, without notice or opportunity for hearing. For this reason, the standards for concerted action by all ATC members rather than those for individual carrier action should apply and some measure of due process to agents is required.

Due process questions aside, the removal of ticket stock and plates for all ATC members following the declaration of default raises other anticompetitive questions. Specifically, this is the type of concerted refusal to deal that would be illegal *per se* under the antitrust laws absent Board approval. Its continued approval must, therefore, rest on a showing that it is required by a serious transportation need or in order to secure important public benefits, and that less anticompetitive alternatives do not exist to meet the ends.⁸ Although we would require that due process be afforded agents before action against them is taken under section VII.B, due process alone would not meet the *Local Cartage* test. Our due process requirement is a procedural rule while the *Local Cartage* test is a substantive one, and the agreements in question must pass muster under it independently of due process consideration.

In examining ATC's rules on agency appointment and removal, we have balanced due process and competitive considerations with the carrier's needs to protect themselves from unscrupulous agents. We have in fact, relied on the ability of the ATC's Executive Secretary to summarily terminate agency appointments for flagrant breaches of the Agency Resolution as a means of protecting air carriers when we have required ATC to adopt notice and hearing and arbitration procedures.⁹ This past reliance does not, however, compel us to accept summary removal of ticket stock and plates on the basis of a default declaration by a single carrier. In the first place, the disputes that would have been subject to arbitration in the Agency Resolution Investigation were more likely to affect all ATC members, e.g., failure to maintain bond accounts, or repeated failures to remit or to remit on time. Hence the loss to carriers, and ultimately to the public were potentially greater.¹⁰ More importantly, in the

case, we disapproved a provision that would have required removal of ticket stock pending arbitration on retention question that were subject to arbitration and required that agents be permitted to retain ticket stock. We believe that our decision to impose due process requirements on default declarations by individual carriers is supported by these previous actions.¹¹

The present record does not permit us to engage in the balancing process as we have in the past, and we are therefore deferring action to permit interested persons to comment on section VII.B of Resolution 80.10, and to suggest alternatives. In general, we are concerned not only with providing agents with due process of law so long as section VII.B results in a concerted refusal to deal, but also with the question of whether, even if an agent is afforded due process, an agreement that requires all ATC members to stop dealing with that agent on the basis of a dispute with only one is adverse to the public interest. More specifically, persons commenting should discuss the following:

(1) Does the Executive Secretary's determination on whether an agent is exempt from liability for lost or stolen tickets afford due process to the agent and if not what changes would be required to provide due while protecting ATC members?

(2) What changes to the current section VII.B of Resolution 80.10 are necessary to insure that agents are assured due process of law before ticket stock and identification plates of all ATC members are removed and that carriers funds are protected?

(3) Even if agents were accorded due process, does withdrawal of Ticket Stock and plates of all ATC members under section VII.B fill a serious transportation need or provide important public benefits?

(4) Can this need or these benefits be provided by other less anticompetitive means and what are these means?

We request that interested persons not only comment on the terms of the current agreement but also suggest and comment upon alternatives. Argument and evidence will be due 45 days from the date of service of this order. Reply materials will be due 21 days later. To the extent that parties rely on the need for the carriers to protect themselves as a justification for a par-

¹¹It must also be remembered that in 1959 carriers settled with agents individually rather than through the clearing house system of the Area Settlement Plan, and one carrier might be justifiably concerned over an agent's failure to settle with another. In contrast, today if an agent is maintaining its ongoing obligations under the Area Settlement Plan there is less risk to carriers as a result of an agent's refusal to settle a claim with an individual carrier over stolen tickets.

ticular procedure, they should provide evidence which compares the cost to carriers of adopting their procedure with the cost of those advocated by others.

Accordingly: 1. We will afford interested persons an opportunity to file evidence and arguments, concerning the motion of Popular Latin Travel Agency in Docket 32075 and the issues raised in this order;

2. We will require comments and evidence to be filed not later than November 24, 1978; and reply comments and evidence not later than December 15, 1978; and

3. We shall serve this order on Popular Latin Travel Agency, Inc., the Air Traffic Conference of America, the American Society of Travel Agents, the Association of Retail Travel Agents, the Association of Bank Travel Departments, the Antitrust Divisions, U.S. Department of Justice, and Paul S. Quinn, Esquire.

We shall publish a copy of this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,¹²
Secretary.

[FR Doc. 78-29189 Filed 10-13-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

CONSOLIDATED DECISION ON APPLICATIONS FOR DUTY-FREE ENTRY OF SCIENTIFIC ARTICLES

Correction

In FR Doc. 78-27838 appearing at page 45627 in the issue for Tuesday, October 3, 1978, on page 45628, in the first column, in the application for the University of Hawaii, Institute for Astronomy, "Docket No. 78-00083" should be corrected to read "Docket No. 78-00088".

[3510-25-M]

EXPORTS OF RESIDUAL FUEL OIL FROM THE WEST COAST AND RELATED ISSUES

Hearing and Request for Comments

In a notice published in the FEDERAL REGISTER on August 18 (43 FR 36618), the Department of Commerce announced amendments to the Export Administration Regulations establishing a temporary program for licensing exports of residual fuel oil from the west coast.

This program implemented one of the measures announced by the De-

¹²All Members concurred.

⁸See, *Local Cartage Agreements Case*, 15 CAB 850,852 (1952), *Capacity Reduction Agreements Case*, Order 75-7-98 July 21, 1975, and *Eastern Air Lines*, Order 78-3-108, March 23, 1978.

⁹See, *ATC Agency Resolution Investigation*, 29 CAB at 265, 30 CAB at 579.

¹⁰In the course of that investigation, the predecessor to the Bureau of Pricing and Domestic Aviation had requested the Board to require that summary terminations be subject to after the fact arbitration. The Board denied the request on precedential grounds and so that decision does not affect our decision here.

partment of Energy (DOE) on June 15, 1978, to stimulate the market for heavy, high sulphur California crude oil. In its August 18 notice, the Department of Commerce stated that it intended to keep this temporary program under continuing review and to periodically reevaluate, in consultation with DOE, its effectiveness in achieving the objectives of the program announced by DOE on June 15.

On September 21, 1978, the Department of Energy announced a public hearing and invited written comments regarding the effect of the various measures it announced on June 15, including the Department of Commerce's temporary program for licensing exports of residual fuel oil from the west coast. The public hearing is scheduled to be held in the City Council Chambers in the City Hall, Long Beach, Calif., on October 18, 1978, commencing at 9:30 a.m., and to be continued on the following day if the number of requests to testify so warrants. In addition, submission of written comments is permitted until October 31.

The Department of Commerce will be represented on the panel which will conduct this hearing. The views expressed at the hearing and comments submitted to the Department of Energy in response to its notice which have a bearing on the temporary residual fuel oil export program or otherwise related to exports will be considered by the Department of Commerce, in consultation with the Department of Energy, in determining whether any changes relating to these issues should be made in the Export Administration regulations.

For further details concerning the public hearing and submission of comments, see the FEDERAL REGISTER of September 28, 1978 (43 FR 44468).

LAWRENCE J. BRADY,
Acting Deputy Assistant
Secretary for Trade Regulation.

[FR Doc. 78-29264 Filed 10-12-78; 4:17 pm]

[3510-15-M]

Maritime Administration

[Docket No. S-622]

COVE CARRIERS, INC.

Application

Notice is hereby given that Cove Carriers Inc., Wall Street Plaza, Suite No. 1630, New York, N.Y. 10005, has filed an application dated September 25, 1978, with the Maritime Subsidy Board (the Board) pursuant to Title VI of the Merchant Marine Act, 1936, as amended (the Act), for an operating-differential subsidy contract, to

expire December 31, 1978, unless extended, to operate the SS *Cove Spirit*, 26,371 deadweight tons, in the carriage of bulk raw and processed agricultural commodities in the foreign commerce of the United States (U.S.) from ports in the United States to ports in the Union of Soviet Socialist Republics (U.S.S.R.), or other permissible ports of discharge. Dry and liquid bulk cargoes may be carried from the U.S.S.R. and other foreign ports inbound to U.S. ports during voyages subsidized for carriage of export bulk raw and processed agricultural commodities to the U.S.S.R., or other permissible ports of discharge.

Full details concerning the U.S.-U.S.S.R. export bulk raw and processed agricultural commodities subsidy program, including terms, conditions and restrictions upon both the subsidized operators and vessels, appear in Title 46 of the Code of Federal Regulations, Part 294.

For purposes of section 605(c) of the Act, it should be assumed that should the Board grant the requested approval, the vessel named above will engage in the described trade, on a full-time basis, during the indicated time period. Under such approval, each voyage must be approved for subsidy assistance prior to its commencement, and the Board will act on such request(s) as an administrative matter for which there is no requirement for further section 605(c) notice(s).

Any person having an interest in the granting of the application and who would contest a finding by the Board that the service now provided by vessels of U.S. registry for the carriage of cargoes previously specified is inadequate, must on or before October 25, 1978, notify the Board's Secretary, in writing, of his interest and of his position, and file a petition for leave to intervene in accordance with the Board's rules of practice and procedure (46 CFR 201). Each such statement of interest and petition to intervene shall state whether a hearing is requested under section 605(c) of the Act, and, with as much specificity as possible, the facts that the intervenor would undertake to prove at such hearing.

In the event a hearing under section 605(c) of the Act is ordered to be held with respect to the subject application, the purpose of such hearing will be to receive evidence relevant to (1) whether the application herein described, with respect to the vessel to be operated in an essential service and serviced by citizens of the United States, would be in addition to the existing service or services, and if so, whether the service already provided by vessels of U.S. registry is inadequate, and (2) whether in the accomplishment of the purposes and policy

of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such actions as may be deemed appropriate.

(Catalog Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidy (ODS).)

Dated: October 11, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-29198 Filed 10-13-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL, SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL, COASTAL MIGRATORY PELAGICS ADVISORY SUBPANEL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils were established by the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and the Councils have established Advisory Subpanels on Coastal Migratory Pelagics. These subpanels will meet to review a draft fishery management plan on coastal migratory pelagics (mackerels).

DATES: The Coastal Migratory Pelagics Advisory Subpanels will convene on Wednesday, October 25, 1978, 10 a.m. until 6 p.m.; and on Thursday, October 26, 1978, from 8 a.m. until 6 p.m. This meeting will be open to the public.

ADDRESS: The meeting will take place in the Tampa Room of the Barclay Best Western Inn, 5303 West Kennedy Boulevard, Tampa, Fla.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Fla. 33609, telephone: 813-228-2815.

Dated: October 11, 1978.

JACK W. GEHRINGER,
Acting Deputy Assistant Admin-
istrator, National Marine
Fisheries Service.

[FR Doc. 78-29172 Filed 10-13-78; 8:45 am]

[3510-22-M]

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL SCIENTIFIC AND STATISTICAL COMMITTEE

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council was established by the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and the Council has established a Scientific and Statistical Committee (SSC). The committee will meet to review a draft fishery management plan for groundfish.

DATES: The meeting will convene at 10 a.m. on Thursday, November 2, 1978, adjourning at 5 p.m., and will convene at 8 a.m. on Friday, November 3, 1978, adjourning at approximately 12 noon.

ADDRESS: The meeting will take place in the Victorian Room of the International American Motor Inn, 2601 Severn Avenue, Metairie, La.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Fla. 33609, telephone: 813-228-2815.

Dated: October 11, 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-29173 Filed 10-13-78; 8:45 am]

[3510-22-M]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Surf Clam/Ocean Quahog Management Plan; (2) Other Flounders Management Plan; (3) Status of Fishery

Management Plans; and (4) Other Administrative matters.

DATES: The meeting will convene at 1 p.m. on Wednesday, November 15, 1978, and will adjourn approximately at 1 p.m. on Friday, November 17, 1978.

ADDRESS: The meeting will take place at the Best Western Philadelphia Airport Motel, Philadelphia Airport, Route No. 291, Philadelphia, Pa. 19153, 215-365-700.

FOR FURTHER INFORMATION CONTACT:

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Del. 19901, telephone: 302-674-2331.

Dated: October 11, 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-29174 Filed 10-13-78; 8:45 am]

[3510-22-M]

PACIFIC FISHERY MANAGEMENT COUNCIL'S DUNGENESS CRAB ADVISORY SUBPANEL AND PLAN DEVELOPMENT TEAM

Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Dungeness Crab Advisory Subpanel and Plan Development Team of the Pacific Fishery Management Council established under section 302(a) of the Fishery Conservation and Management Act (Pub. L. 94-265) will meet to review the working draft of the Dungeness Crab Fishery Management Plan.

DATES: The meeting will convene at 1 p.m. on Wednesday, November 15, 1978, and at 8 a.m. on Thursday, November 16, 1978, adjourning at approximately 5 p.m. on both days.

ADDRESS: The meeting will take place at the Thunderbird Motor Inn, located at 400 Industry, Astoria, Oreg.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 Southwest Mill Street, Second Floor, Portland, Oreg. 97201.

Dated: October 11, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc. 78-29175 Filed 10-13-78; 8:45 am]

[3510-22-M]

PACIFIC FISHERY MANAGEMENT COUNCIL'S BILLFISH ADVISORY SUBPANEL AND PLAN DEVELOPMENT TEAM

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Billfish Advisory Subpanel and Plan Development Team of the Pacific Fishery Management Council established under section 302(a) of the Fishery Conservation and Management Act (Pub. L. 94-265) will meet to discuss the preliminary draft of the Billfish Fishery Management Plan.

DATES: The meeting will convene at 10 a.m. and adjourn at about 5 p.m. on Friday, November 3, 1978.

ADDRESS: The meeting will take place at the California Fish and Game Office located at 350 South Golden Shores, Long Beach, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 Southwest Mill Street, Second Floor, Portland, Oreg. 97201.

Dated: October 11, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc. 78-29176 Filed 10-13-78; 8:45 am]

[3510-18-M]

Office of the Secretary

ADVISORY COMMITTEE ON FEDERAL POLICY ON INDUSTRIAL INNOVATION AND ADVISORY SUBCOMMITTEE ON ENVIRONMENT, HEALTH, AND SAFETY REGULATION

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Advisory Subcommittee on Environment, Health, and Safety Regulations of the Advisory Committee on Federal Policy on Industrial Innovation will hold a series of four meetings the first of which will be held on Thursday, October 19, 1978, from 9:30 a.m. until 5 p.m. at the U.S. Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. The room number for this meeting will be set by October 17. Call Mr. John R. Heizer at 202-377-3648 for this information.

The Advisory subcommittee on Environment, Health, and Safety Regulations was established on October 4, 1978, to examine the impact of Feder-

al environment, health, and safety regulations policy on industrial innovation.

The agenda for this meeting is:

1. Refine the scope of work.
2. Discuss the views and orientation of the subcommittee members.
3. Define the final work product.

Three additional meetings of this subcommittee will be held on the following dates:

Tuesday, November 16, 1978, in New York City.

Wednesday, December 6, 1978, in Washington, D.C.

Wednesday, December 13, 1978, in Chicago, Ill.

The time and place for these three meetings will be set by November 1. Call Mr. John R. Heizer at 202-377-3648 for this information. The agenda for these three meetings will involve the review of the work-to-date and the development of the format and content of the final subcommittee report. At the final meeting on December 13, the final report will be reviewed and approved.

The meetings will be open to public observation. A limited number of seats will be available to the public and press on a first-come, first-serve basis.

Copies of minutes and materials distributed will be made available for reproduction, following certification by the subcommittee chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce, Central Reference and Records Inspection Facility, Washington, D.C. 20230.

Further information may be obtained from Mr. John R. Heizer, Room 3868A, U.S. Department of Commerce, Washington, D.C., telephone 202-377-3648.

The Department regrets that emergency circumstances have prevented us from giving at least 15 days advanced notice of the meeting on October 19, 1978. The work plan for the Domestic Policy Review on Industrial Innovation requires that the subcommittee produce a printed report of its recommendations by December 15, 1978. The four meetings specified in this notice are essential to the completion of the committee's work by that deadline. Earlier notice was not possible because the subcommittee members were appointed only a week ago on October 4, 1987, and it was necessary to await such appointments before establishing a schedule for the meetings. The subcommittee's report will be subject to public review and criticism.

Dated: October 10, 1978.

JORDAN J. BARUCH,
Assistant Secretary for
Science and Technology.

[FR Doc. 78-29276 Filed 10-13-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR IMPLEMENTATION OF TEXTILE AGREEMENT

CERTAIN MAN-MADE FIBER TEXTILE PRODUCTS FROM THE REPUBLIC OF CHINA

Adjusting the Import Restraint Levels

OCTOBER 11, 1978

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the level of restraint applicable to certain men's and boys' knit shirts in Category 638, produced or manufactured in the Republic of China and exported to the United States during the agreement year which began on January 1, 1978; and decreasing the level of restraint applicable to women's, girls' and infants' knit shirts and blouses in Category 639 by an equivalent square yard amount. (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 342), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773) and September 5, 1978 (43 FR 39408).)

SUMMARY: Paragraph 7(b) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China, provides that the limit for Category 638 may be exceeded by up to ten percent, but with an equivalent square yard amount deducted in the same agreement year from the limit for Category 639. The Government of the Republic of China has requested application of the provisions of Paragraph 7(b).

EFFECTIVE DATE: October 11, 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 June 16, 1978, a letter dated June 15, 1978, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the *FEDERAL REGISTER* (43 FR 26102), which established the levels of restraint applicable to certain specific categories of cotton, wool and man-

made fiber textile products, produced or manufactured in the Republic of China and exported to the United States during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the level of restraint for Category 638 to 1,678,764 dozen and decrease the level for Category 639 to 4,870,914 dozen.

ROBERT E. SHEPHERD,
Chairman, Committee for the
Implementation of Textile
Agreements, and Deputy Assistant Secretary for Domestic
Business Development.

OCTOBER 11, 1978.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On June 15, 1978, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specific categories, produced or manufactured in the Republic of China and exported to the United States during the agreement year which began on January 1, 1978, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.¹

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed further to amend, effective on October 11, 1978, the levels of restraint previously established for man-made fiber textile products in Categories 638 and 639 during the twelve-month period which began on January 1, 1978 to the following:

Category	Amended 12-Month Level of Restraint*
638.....	1,678,764 dozen
639.....	4,870,914 dozen

*The levels of restraint have not been adjusted to reflect any imports after December 31, 1977.

¹The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China which provide, in part, that: (1) within the aggregate and group limits, specific ceilings may be exceeded by designated percentages; (2) these same levels may be increased for carryforward up to 7.15 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The action taken with respect to the Government of the Republic of China and with respect to imports of man-made fiber textile products from the Republic of China 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 rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements
and Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 78-29156 Filed 10-13-78; 8:45 am]

[3710-03-M]

DEPARTMENT OF DEFENSE

Department of the Army

PRIVACY ACT OF 1974

New System of Records

AGENCY: Department of the Army.

ACTION: Notice of one new and two deleted systems of records.

SUMMARY: The Department of the Army proposes a new system of records identified as A0401.02bDAAG, entitled: "Mailing List for Army Newspapers/Periodicals". The record system notice is published in its entirety below. This makes obsolete two systems notices identified below.

DATES: This system shall become effective as proposed without further notice in 30 calendar days from the date of this publication unless comments are received on or before November 15, 1978, which would result in a contrary determination requiring republication for further comments.

ADDRESS: Comments may be sent to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT:

Mr. Guy B. Oldaker, Administrative Management Directorate, the Adjutant General Center, Department of the Army, Room GA-084, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20314, telephone 202-693-0973.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices as prescribed by the Privacy Act have been published in the FEDERAL REGISTER as follows:

FR Doc. 77-28255 (42 FR 40007) September 28, 1977.

FR Doc. 78-23953 (43 FR 38070) August 25, 1978.

FR Doc. 78-25562 (43 FR 40272) September 11, 1978.

FR Doc. 78-26373 (43 FR 42026) September 19, 1978.

FR Doc. 78-25819 (43 FR 42374) September 20, 1978.

FR Doc. 78-26699 (43 FR 43059) September 22, 1978.

FR Doc. 78-26996 (43 FR 43539) September 26, 1978.

The proposed system of records incorporates categories of publications now covered in Army systems of records A0102.03b, "Mailing List for Army Periodicals" and A0708.09aMTMC, "Mobilization Designee Files". It encompasses those Army staff and field agencies and commands/activities which disseminate on a recurring basis to the general public or to specified individuals who have requested placement on such a mailing list to receive news digests, variously described as command newspapers, professional and/or trade journals, and/or special interest recurring publications of an official or quasi-official but nondirective nature.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

OCTOBER 11, 1978.

DELETIONS

A0102.03bDAAG

System name:

Mailing Lists for Army Periodicals (42 FR 50430) September 28, 1977.

Reason:

This system is covered by the new system notice published below.

A0708.09aMTMC

System name:

Mobilization Designee Files (42 FR 50535) September 28, 1977.

Reason:

This system is covered by the new system notice published below.

ADDITION

A0401.02bDAAG

System name:

401.02 Mailing List for Army

System location:

HQDA Staff and Field Operating Agencies, Major Commands, field installations and activities, Army Service Schools/Colleges, Army National Guard Bureau Headquarters and field activities. Official addresses are in the Department of Defense Directory appearing in the Annual Compilation of System Notices.

Categories of individuals covered by the system:

File contains name and current mailing address of recipients of Army and/or National Guard magazines, newspapers, professional and trade publications, journals, digests, and newsletters.

Recipients may be current of former Army and/or National Guard personnel, staff and faculty or graduate/resident/correspondence student of Service Schools, military reservists, ROTC cadets, civilian academicians, professional or other personnel who have requested inclusion on mailing lists.

Categories of records in the system:

Mailing lists containing names and addresses of recipients of various periodicals published by the Army and/or the National Guard which have public relations value. Types of periodicals include but are not limited to the following:

a. Journals published by military schools and colleges, medical facilities, and training institutions.

b. Army newspapers or digests containing official or quasi-official but non-directive data of either a technical or administrative nature. Other personal data may be included such as Alumni Association Member number, professional society or trade organization of which a member and related information.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012; Title 32 U.S.C., Section 110.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

a. To produce mailing lists for distribution of Army periodicals, newspapers and various journals, digests and newsletters.

b. To perform statistical analyses and surveys of reader interest and opinion.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records, magnetic and computer tape, disk, cards, printouts, and addressograph plates.

Retrievability:

By name of individual.

Safeguards:

Records are maintained by authorized personnel who have a need-to-know.

Retention and disposal:

Retained until no longer needed, normally until individual requests deletion from mailing list, after which record is destroyed.

System manager and address:

Heads of DA Staff and Field Operating Agencies, Major Commands, commanders of installations/activities, Army Service Schools/Colleges and National Guard activities that publish periodicals, command newspapers, or other special-interest recurring publications.

Notification procedure:

Information may be obtained from either the Editor of the publication or the Public Affairs Officer of the Army and/or National Guard element publishing the periodical.

Record access procedures:

Requests should be addressed to the Editor or the Public Affairs Officer as in "Notification procedure".

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21.

Record source categories:

Individual's application for the periodical; records of the Army and/or National Guard organization publishing same.

Systems exempted from certain provisions of the act:

None.

[FR Doc. 78-29130 Filed 10-13-78; 8:45 am]

[3810-71-M]**Department of the Navy****TECHNOLOGY SUB-PANEL OF THE CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE****Closed Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Technology Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on October 31-November 1, 1978. The October 31 session of the meeting will be held at the Navy Foreign Material Program Facility, Chesapeake Beach, Md., and the November 1 session of the meeting will be held at the Pentagon, Washington, D.C. Sessions of the meeting will commence at 9 a.m. and terminate at 5:30 p.m. on both days. All sessions of the meeting will be closed to the public.

The entire agenda will be devoted to discussions of Soviet naval research and development and related intelligence. The agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander

Robert B. Vosilus, U.S. Navy, Executive Secretary of the CNO, Executive Panel Advisory Committee, 1401 Wilson Blvd., Room 405, Arlington, Va. 22209, telephone 202-694-3191.

Dated: October 11, 1978.

P. A. WILLE,
Captain, JAGC, U.S. Navy,
Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-29138 Filed 10-13-78; 8:45 am]

[3810-70-M]**Office of the Secretary****DEFENSE SCIENCE BOARD TASK FORCE ON STRATEGIC PLANNING EXPERIMENT IN THE MARITIME BALANCE AREA****Advisory Committee Meeting**

The Defense Science Board Task Force on Strategic Planning Experiment in the Maritime Balance Area will meet in closed session on November 6, 1978, in Palo Alto, Calif.

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 scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on Strategic Planning Experiment in the Maritime Balance Area has been scheduled for November 6, 1978, to discuss the conduct of an experiment in applying business policy/strategic planning concepts to the development of a competitive strategy for the Maritime Balance Area. The Task Force and its associated Navy Study Group will focus on the long term competition between the United States and the Soviet Union in the maritime area.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board 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.

MAURICE W. ROCHE,
Director, Correspondence
and Directives DOD/WHs.

OCTOBER 11, 1978.

[FR Doc. 78-29129 Filed 10-13-78; 8:45 am]

[6740-02-M]**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****PIPELINE ADVISORY COMMITTEE ON VALUATION****Determination for Establishment**

OCTOBER 12, 1978.

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), I hereby certify that the establishment of a Pipeline Advisory Committee on Valuation is in the public interest in connection with the duties imposed upon the Federal Energy Regulatory Commission, by the Department of Energy Organization Act of 1977, section 624, and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to section 9(a)(2) of the Federal Advisory Committee Act and OMB Circular A-63 (revised).

1. *Name of advisory committee.* Pipeline Advisory Committee on Valuation.

2. *Purpose.* The Committee will provide the Office of Pipeline and Producer Regulation (OPPR), Federal Energy Regulatory Commission (FERC), and Department of Energy (DOE) with data and information needed by FERC to determine annual price/cost indices for pipeline facilities and equipment. These indices are vital to the FERC in determining:

(a) Original (basic) valuations of all oil pipelines as required by section 19a of the Interstate Commerce Act.

(b) Annual valuations for each pipeline which the FERC must do to comply with the requirement of section 19a that on completion of such original valuations it shall keep itself informed of all new construction, extensions, and improvements in each such pipeline and all changes in the investment and the valuation.

In certain cases valuations have been the basis upon which the FERC has determined the reasonableness of pipeline rates, and these valuations are certified by the FERC to the Department of Justice for its use in determining compliance by the pipelines with the oil pipeline Consent Decree.

These valuations are also used by State and local authorities in the regulation of pipeline rates and in the taxation of pipeline properties.

The Committee will serve in an advisory capacity only; completely independent and final calculation of data and information submitted by the Committee will be made by the OPPR's Valuation Branch.

3. *Effective date of establishment and duration.* This Advisory Committee is established effective 15 days after publication of this notice and

after filing of the charter with the standing committees of Congress having legislative jurisdiction over the Department of Energy and with the Library of Congress. The Committee will terminate 1 year from the date of its establishment.

4. *Membership.* The membership of the Advisory Committee shall be fairly balanced in terms of the points of view and functions of the industry and users affected, including those of residential, commercial, and industrial consumers. There will be no discrimination on the basis of race, color, national origin, religion, age, or sex.

5. *Operation.* The Pipeline Advisory Committee on Valuation will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), DOE policy and procedures, OMB Circular A-63 (revised) and other directives and instructions issued in accordance with the implementation of the Act.

6. *Objectivity.* The advice and recommendations of the Advisory Committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the Advisory Committee's independent judgment.

CHARLES B. CURTIS,
Chairman.

[FR Doc. 78-29168 Filed 10-13-78; 8:45 am]

[3128-01-M]

Intergovernmental and Institutional Relations

NATIONAL PETROLEUM COUNCIL SUBCOMMITTEE ON REFINERY FLEXIBILITY

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Subcommittee on Refinery Flexibility of the National Petroleum Council will meet Thursday, November 2, 1978, at 10 a.m., in the Pan American Room of the Capitol Hilton, 16th and K Streets NW., Washington, D.C.

The parent committee was established to provide advice, information and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

The subcommittee will make an analysis of refinery flexibility for the U.S. oil and gas industry, and will report its findings to the parent committee.

The tentative agenda is as follows:

1. Discuss the scope of the study to be conducted in response to the Secretary of Energy's request for an analysis of refinery flexibility.
2. Discuss an organizational structure for the study.

3. Discuss a timetable for completion of the study.

4. Discuss any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the subcommittee concerning matters on the agenda will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to matters on the agenda should inform Georgia Hildreth, Director, Advisory Committee Management, 202-252-5935, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, room 2107, DOE, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., on October 11, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.
[FR Doc. 78-29092 Filed 10-13-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[PP 8G2024/T164; FRL 987-51]

CYANO(3 - PHENOXYPHENYL)METHYL 4 - CHLORO - ALPHA - (1 - METHYLETHYL) BEN- ZENEACETATE

Establishment of Temporary Tolerances

Shell Chemical Co., Suite 200, 1025 Connecticut Ave. NW., Washington, D.C. 20036, submitted a pesticide petition (PP 8G2024) to the Environmental Protection Agency (EPA). This petition requested that temporary tolerances be established for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodities pears at 1 part per million (ppm) and soybeans, peanuts, and potatoes at 0.02 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit that has been issued under

the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerances were adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerances would protect the public health. The temporary tolerances have been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.
2. Shell Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire September 19, 1979. Residues not in excess of 1 ppm remaining in or on pears and 0.02 ppm remaining in or on soybeans, peanuts, and potatoes after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Charles Mitchell, Acting Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-426-9425.

(Sec. 408(j), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)).)

Dated: October 6, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-29109 Filed 10-13-78; 8:45 am]

[6560-01-M]

[PP 8G2032/T167; FRL 986-81]

GLYPHOSATE

Establishment of Temporary Tolerances

Monsanto Co., 800 North Lindbergh Avenue, St. Louis, Mo. 63166, submitted a pesticide petition (PP 8G2032) to the Environmental Protection Agency (EPA). This petition requested that temporary tolerances be established for combined residues of the herbicide glyphosate (N-phosphonomethyl) gly-

cine) and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodities sugar beet roots and tops and potatoes at 0.2 part per million (ppm) and in liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerances were adequate to cover residues resulting from the proposed experimental use. A nitrosamine compound, which is a suspect carcinogen, appears in the formulations as an impurity. However, no detectable residues of the compound are present in the raw agricultural commodities. Thus, it was determined that establishment of the temporary tolerances would protect the public health. The temporary tolerances have been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

These temporary tolerances expire September 5, 1980. Residues not in excess of 0.2 ppm remaining in or on sugar beet roots and tops and potatoes and 0.1 ppm remaining in liver and kidney of cattle, goats, hogs, horses, poultry, and sheep after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Robert Taylor, Product Manager 25, Registration Division (TS-767), Office of Pesticide Programs, 401 M Street SW., Washington, D.C. 20460, 202-426-2632.

(Sec. 408(j), Federal Food, Drug, and Cosmetic Act (U.S.C. 346a(j)).)

Dated: October 6, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-29108 Filed 10-13-78; 8:45 am]

[6560-01-M]

[FRL 988-3]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these functions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1, entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to section 1500.11(c) of the CEQ Guidelines.

Traditionally, the FEDERAL REGISTER notice for EIS's received during a given week has been published on the Friday of the following week. However, as indicated last week, future EPA weekly notice will be published in the FEDERAL REGISTER on the second Monday following the given week. However, computation of review periods will not be altered, that is, the 45-day review period for draft EIS's will continue to be computed from the Friday following the given week and the 30-day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from September 25, 1978, through September 29, 1978; the date of submission of comments on draft EIS's as computed from October 6, 1978, is November 20, 1978.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: October 10, 1978.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Desolation Land Management Plan, Umatilla National Forest, Union, Grant, and Umatilla Counties, Oreg., September 25: Proposed is a land management plan for the 448,840-acre desolation planning unit, Umatilla National Forest, Umatilla, Union, and Grant Counties, Oreg. The preferred alternative features: (1) The management of the Greenhorn Mountain Area for future designation as a special interest area, (2) primitive/remote undeveloped recreational areas, (3) commodity management and production with management of elk and fish habitat, (4) a historical and cultural assessment area, and (5) wood fiber production and domestic grazing areas. Seven alternatives are considered in total. (USDA-FS-06-14-78-02.) (EPA Order No. 81036.)

Final

Trabco Unit Plan, Cleveland National Forest, Orange, Riverside, and San Diego Counties, Calif., September 25: Proposed is the selection of a new land management plan for portions of the Cleveland National Forest in San Diego, Orange, and Riverside Counties, Calif. Four alternative plans are proposed: (1) Continue the present management program, (2) increase the present levels of opportunities for recreation uses with emphasis on dispersed use, (3) emphasize the high levels of developed recreation opportunities with major increases in road and trail construction for access by standard automobiles, and (4) emphasize the primitive and near primitive recreation. Comments made by: EPA, AHP, USDA, DOI, DOD, DOT, DOE, State and local agencies, and individuals and businesses. (EPA Order No. 81037.)

Great Bear Wilderness Proposal; Montana, September 26: Proposed is the addition to the wilderness system of two separate units in northwestern Montana; the 289,400-acre western portion is on the Flathead National Forest and the 9,600-acre eastern portion is on the Lewis and Clark National Forest. Both areas are adjacent to the northern boundary of the Bob Marshall Wilderness. The wilderness quality of the study area is very high and although most of the study area is suitable for wilderness, 26,440 acres are not recommended because of the need for a more manageable wilderness boundary. Comments made by: DOI, EPA, FPC, and State agencies. (EPA Order No. 81042.)

DEPARTMENT OF DEFENSE, ARMY

Contact: George A. Cunney, Jr., Acting Chief, Environmental Office, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310.

Final supplement

Disposal of Chemical Agent Identification Set, Adams County, Colo., September 25: This final statement supplements a final EIS issued during October 1977 concerning the relocation of 1,734 chemical agent identification sets from various military storage sites located throughout the country for disposal at the Rocky Mountain Arsenal in Adams County, Colo. This supplement concerns the relocation of the remaining sets from 15 sites to the arsenal for disposal. Procedures to be used will be the same as those discussed in the final statement which has been included as an attachment to this final supplement. (EIS Order No. 81040.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final supplement

Trimble Wildlife Area, Replacement, Little Platte River, Jackson, Ray, and Clay Counties, Mo., September 26: Proposed is authorization for acquisition of 2,610 acres of land in Jackson, Ray, and Clay Counties, Mo., for basic replacement of Trimble Wildlife Area. Seven alternatives are considered which are: (1) No action, (2) direct purchase, (3) Camp Branch site, (4) Edgartown site, (5) New Point site, (6) twenty-two other sites in western and northwestern Missouri, and (7) levee protection of existing Trimble Wildlife Area. (Kansas District.) (EIS No. 81043.)

DEPARTMENT OF ENERGY

Contact: Mr. Robert Stern, Office of NEPA Affairs, Department of Energy, 1200 Pennsylvania Avenue NW., Room 7119, Washington, D.C. 20461, 202-566-9760

BONNEVILLE POWER ADMINISTRATION

Draft

BPA Fiscal Year 1980 Program, several Idaho, Montana, and Oregon counties, September 27: This statement includes the draft BPA proposed 1980 fiscal year program and draft facility planning supplements which will involve the States of Idaho, Montana, Oregon, and Washington. The project will include: (1) Approximately 180 to 210 miles of new transmission line, (2) four possible new substations and related structures, including power system control stations, (3) possible equipment additions to six existing substations, (4) maintenance of approximately 12,814 miles of existing transmission line, and (5) control of vegetation. (EPA Order No. 81045.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: George R. Alexander, Jr., Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2000.

Final

Detroit Water Pollution Control Systems, Wayne, Oakland, and Macomb Counties, September 29: The proposed action involves Federal financial assistance for the upgrading and expansion of an existing regional waste water treatment plant in the city of Detroit, Mich. The plant capacity would be expanded to treat an average daily flow of 600 mg with a 48-hour sustained peak flow

of 1,050 mgd. The plan also includes expansion of the associate collection system. Operation, maintenance, financial, and management improvement changes will be incorporated as well as modifications to existing contracts and ordinances. (EPA Region 5.) Comments made by: DOI, DOT, DOC, HEW, State and local agencies, and groups, individuals, and businesses. (EPA Order No. 81051.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, 202-566-0405.

Draft

Construction of Federal Building and Related Facilities, Douglas County, Nebr., September 28: Proposed is the construction of a Federal office building, parking facility, and vehicle maintenance facility on a site of at least 127,000 square feet to be acquired in the downtown area of Omaha, Douglas County, Nebr. Seven alternatives are considered which include: (1) No action; (2) utilization of existing Government-owned space; (3) utilization of leased space; (4) construction of the new facilities, retention of old facilities with consolidation of leased locations; (5) alteration/modernization; (6) acquisition and renovation of an existing non-Federal building or facility; and (7) construction of new facilities, disposal of old ones. (EPA Order No. 81049.)

Final

Leasehold, 1900 Half Street SW., Buzzards Point, Washington, D.C., September 29: GSA proposes that full occupancy be achieved for the 461,500 square feet of space in the 1900 Half Street building, located in the Buzzards Point area of Southwest Washington, D.C. In August 1973, GSA acquired a leasehold interest in this property which includes 271 parking spaces. Presently, the building is partially occupied by 1,085 Federal Government employees and GSA proposed to move agencies and employees in to fill the vacant space. At full occupancy, the building will house approximately 2,300 to 2,700 employees. (EDC/8004.) Comments made by: DOI, DOT, COE, FERC, DOC, EPA, HUD, local agencies and groups, individuals, and businesses. (EPA Order No. 81056.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Alderbrook Estates, Master Plan, King County, Wash., September 26: Proposed is the issuance of home mortgage insurance for Alderbrook Estates in King County, Wash. The subdivision, which encompasses approximately 171.75 acres, will include approximately: (1) 541 single-family lots, (2) 170 multifamily units, and (3) 87,000 square feet of business space. The three alternatives considered are: (1) Disapproval of the proposed development or cancellation by the applicant, (2) disapproval of one or both rezoning applications, and (3) rejection of participation by HUD. (HUD-R010-EIS-78-40.) (EPA Order No. 81041.)

SECTION 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

North Hollywood Redevelopment Project, Los Angeles County, Calif., September 29: Proposed is the redevelopment of North Hollywood located in Los Angeles City, Los Angeles County, Calif. Features of the project include: (1) Rehabilitation of existing deteriorated residential and commercial structures, (2) new residential and commercial development, (3) development of community facilities, (4) open space development, and (5) improvement of the local street system. Four alternatives are considered which include: (1) No project, (2) delay in the project, (3) change of project, and (4) change in design of project. (B-78-MC-06-0523.) (EPA Order No. 81052.)

Final

Lovick-Trussville Water Project, Jefferson County, Ala., September 26: The proposed action will involve the extension of a potable water supply to residents within the Lovick-Trussville impact area, located in Jefferson County, Ala. The project will extend water to 153 households, dispersed over 6.5 square miles, and require placement of 47,520 linear feet of pipe. The existing Birmingham Water Works Board (BWBB) mains would be tapped and water piped into the impact area. The BWBB will assume the related engineering and maintenance responsibilities. (CD-4-02-21A-LVK.) Comments made by: DOI, DOT, COE, AHP, and State agencies. (EPA Order No. 81044.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

Draft

Stat Lake, BISII regional coal, McKinley and San Juan Counties, N. Mex., September 29: Proposed is the issuance of right-of-way for the construction and operation of a railroad and a high voltage transmission line to serve the coal mining in the Star Lake-BISII Region, McKinley and San Juan Counties, N. Mex. The applicants are: (1) Star Lake Railroad Co., and (2) the Public Service Co., of New Mexico. No action and partial action are considered as alternatives. Also included is a full development scenario and a transportation alternative. (DES-78-41.) (EPA Order No. 81054.)

Final

Upper Gila-San Simon livestock grazing, Arizona and New Mexico, September 29: This statement proposes to implement a livestock grazing management program based on multiple-use concepts. The grazing area is located in the States of Arizona and New Mexico and includes a total land area of 2,346,062 acres, which includes public, Federal, State, and private lands. The grazing area will total 193 units and be used for livestock grazing with incorporation of var-

ious resource uses and minimal conflict. (FES-78-25.) Comments made by: AHP, DOI, USDA, COE, State and local agencies, groups, individuals, and businesses. (EPA Order No. 81055.)

1979 OCS oil and gas sale No. 49, mid-Atlantic, New Jersey and Delaware, September 29: The proposed action is the leasing of 136 tracts, totaling 774,273 acres, of OCS lands off the coasts of New Jersey and Delaware in an area known as the Baltimore Canyon Trough. The tracts vary from 50-100 miles off shore with depths from 115 to 4,100 feet. The proposal is to lease these tracts for exploration, development, and production of potential oil and gas resources. If implemented, this sale is tentatively scheduled to be held in spring of 1979. (FES-78-20.) Comments made by: DOI, EPA, USCG, FERC, DOE, DOC, State and local agencies, groups and businesses (EPA Order No. 81053).

Hot desert grazing management plan, Dixie Resource, Washington County, Utah, September 27: This statement concerns livestock grazing management plans on 529,564 acres of public land in the Dixie Resource Area, Washington County, Utah. The plan will involve 42 allotment plans, 14 custodial plans and 3 plans to eliminate grazing. Four basic systems are proposed which consist of: (1) A 1-year rest period on 401,271 acres; (2) delayed grazing on a portion of each allotment during the growing season; (3) delay of grazing until after the growing season; and (4) season long use primarily during the winter period. (FES-78-21.) Comments made by: DOI, EPA, State and local agencies (EPA Order No. 81046).

Sandy area livestock grazing management, several counties in Wyoming, September 28: This statement concerns a grazing management program for the sandy area located in Sweetwater, Lincoln, Sublette and Fremont Counties, Wyo. The project proposes management of grazing on approximately 1,997,330 acres and no grazing on 970 acres. The plan will involve 16 allotment plans (AMP's) and 33 custodial pastures employing a variety of grazing/rest rotation plans. The action will also provide for, within the AMP's seasonal use, proper grazing, allowance of animal unit months (AUM's) available, boundaries, grazing land treatment, and conversion of livestock qualification in AUM's. (FES-78-22.) Comments made by: AHP, DOI, EPA, USDA, State and local agencies, groups, individuals, and businesses (EPA Order No. 81050).

STATE DEPARTMENT

Contact: Mr. Cameron Sanders, Office of Environmental Affairs, Department of State, Washington, D.C. 20520, 202-632-9169.

Draft

Rio Grande boundary preservation, Hudspeth and Presidio Counties, Tex., September 28: Proposed is a joint United States-Mexico project which would restore and provide for the preservation of the Rio Grande River as an international boundary in accordance with the 1970 boundary treaty. The proposed action includes restoration of about 86 miles of river channel and a narrow strip of grasslands along each side of 170 miles of river channel between Fort Quitman and Presidio, Hudspeth and Presidio Counties, Tex. Four alternatives are considered which include: (1) No action, (2) monument the boundary, (3) restoration and preservation of the channel of the Rio

Grande as the boundary, and (4) alternative No. 3 with wildlife enhancement (EPA Order No. 81048).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

Saginaw River Bridge study, Bay City, Bay County, Mich., September 25: Proposed is the construction of a new bridge across the Saginaw River in Bay City, Bay County, Mich. The improvements range from functional replacement of the old two-lane bridge at Third Street to the construction of either a two-lane or four-lane bridge at a new location. Relocation facilities include necessary bridge approaches and the construction of an arterial at-grade type facility from both the west and east bridge approaches. The total length of the project is approximately 2 miles and will require some new right-of-way. (FHWA-M1-EIS-78-03-0.) (EPA Order No. 81038).

Final

I-15, through Bear River Valley, Box Elder County, Utah, September 25: Proposed is the construction of a 15-mile segment of four-lane divided Interstate Route 15, between Interstate 84 near Tremonton and that portion of I-15 under construction near the community of Plymouth, Utah. Environmental impacts would be expected primarily in the spheres of agriculture, wildlife, business relocation, aesthetics, and changes in land use. Some land currently in crop production would be converted to residential use as the growth projected for the valley (resulting from project implementation) is approached. (FHWA-UT-EIS-76-01-F). Comments made by: AHP, USDA, HEW, HUD, DOI, EPA, DLAB, DOT, GSA, ICC, State and local agencies (EPA Order No. 81039).

OFFICIAL RETRACTION

It has come to EPA's attention that the following EIS's were not distributed to the public at the same time the official filing was made by the originating agency. Therefore, notice of availability is hereby republished. The review periods of 45 days for drafts and 30 days for finals will begin on the new date as specified below.

DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4357.

Draft

I-75, widening and improvement, Fulton and Clayton Counties, Ga., October 6: Proposed is the widening and improvement of I-75 in Fulton and Clayton Counties, Ga. This project will be known as Georgia projects I-75-2(51) and I-75-2(58), and follow I-75 northwest to the interchange area at Lakewood Freeway (GA-166). Also included will be interchange improvement at Central Avenue and Cleveland Avenue, with an interchange to be added to serve Hartsfield

International Airport. The facility will have limited access. (FHWA-GA-EIS-78-01-D) (EIS Order No. 81092).

Originally filed with EPA on August 10, 1978, and published in the FEDERAL REGISTER dated August 21, 1978.

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. C. Grant Ash, Office of Environmental Policy, Attention: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final

Mouth of the Colorado River, Tex., Matagorda County, Tex., October 3: The proposed project consists of an entrance channel in the gulf, 15 feet deep by 200 feet wide, protected by jetties. The proposed east jetty is a weir type, designed to pass littoral material into an impoundment basin for periodic transfer to the Down-Drift Beach. From the Gulf inland to its connection with the Gulf Intracoastal Waterway (GIWW), the proposed channel will be dredged to 12 feet in depth and 100 feet in width. Adverse effects include the elimination of most of the benthic populations occupying the affected areas. About 242 acres of terrestrial wildlife habitat will be removed or modified. (Galveston District.) Comments made by: EPA, DOI, DOC, AHP, HEW, USDA, DOT, State agencies (EIS Order No. 80949).

Originally filed with EPA on August 29, 1978 and published in the FEDERAL REGISTER dated September 18, 1978.

OFFICIAL CORRECTION

The EPA has been notified by the Civil Aeronautics Board that the correct contact name and address for the draft statement, *Oakland Service* case, docket 30699, published in the Monday, September 18, 1978, FEDERAL REGISTER is:

Contact: Steve Rothenburg, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5205.

[FR Doc. 78-29103 Filed 10-13-78; 8:45 am]

[6560-01-M]

[OPP-00076; FRL 990-21]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Open Meeting

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

ACTION: Notice of open meeting.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:30 a.m. to 4:30 p.m. daily on Thursday and Friday, October 26 and 27, 1978. The meeting will be held in Room 1112A, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway,

Arlington, Va., and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766), Room 803, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va., telephone 703-557-7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under §§ 6(b) and 25(a) prior to implementation. The purpose of this meeting is to discuss the following topics:

1. Completion of Panel review of proposed regulatory action to conclude the RPAR (rebuttal presump-

tion against registration) on Endrin products;

2. Completion of Panel review of proposed regulatory action to complete the RPAR process on Strychnine products;

3. Presentation of the decision options being considered by the Agency to conclude the Amitraz (BAAM) RPAR; and

4. In addition, the Agency may present status reports on other ongoing programs of the the Office of Pesticide Programs.

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above to be sure that the meeting is still scheduled. Interested persons are permitted to file written statements before or after the meeting, and may upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or

oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit three copies of a summary no later than October 20, 1978.

Individuals who wish to file written statements are advised to submit ten copies of statements to the Executive Secretary in a timely manner to insure appropriate consideration by the Panel.

(Sec. 25(d) of FIFRA, as amended (86 Stat. 973; 89 Stat. 751; (7 U.S.C. 136(a)) et seq.) and sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).)

Dated: October 13, 1978.

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

[FR Doc. 78-29295 Filed 10-13-78; 10:55 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

MEXICAN STANDARD BROADCAST STATIONS

Notification List

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Mexican standard broadcast stations modifying the assignments of Mexican broadcast stations contained in the appendix to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

SEPTEMBER 1, 1978.

MEXICAN LIST No. 287

Call letters	Location	Power Watts	Antenna radiation mv/ m/kw	Schedule	Class	Antenna height (ft)	Ground system		Proposed date of change or commencement of operation
							No. of radials	Length (ft)	
XEGUZ	Cd. Guzman, Jal., N. 19°47'45", W. 103°28'56"	.200	ND-D-175.....	550 kHz D	III	361	120	328	Mar. 1, 1979.
XEJA	Jalapa, Ver., N. 19°30'56", W. 96°55'34" (PO 0.500/kw/U)	1,000D/ .500N	ND-U-175.....	610 kHz U	III	469	120	574	
(New)	Cananea, Son., N. 30°58'57", W. 110°18'01"	5,000	ND-D-175.....	630 kHz D	III	390	120	328	Do.
XELV	Hermosillo, Son., N. 29°05'03", W. 110°57'54"	0.250	ND-D-175.....	680 kHz D	II	262	120	308	Do.
XEGZ	Cd. Lerdo, Dgo., N 25°32'30", W. 103°31'12" (shares antenna with XEBP, 1450 kHz)	1,000D/ .250N	ND-U-174.....	790 kHz U	III	305	120	216	Do.
XEIN	Cintalapa, Chis., N. 16°41'42", W. 93°42'23" (PO 1450 kHz)	1,000	ND-D-175.....	810 kHz D	II	304	90	243	Do.
XEYJ	Nueva Rosita, Coah., N. 27°55'23", W. 101°14'45" (PO 10 kw/D/0.100 kwN, ND-U-180)	10,000D/ 10,000N	ND-D-180, DA-N.	950 kHz U	III	264	90	264	
XEORF	El Fuerte, Sin., N. 26°14'25", W. 108°42'33" (PO 1/kw/D, ND- D-190)	1,000D/ .500N	ND-U-178.....	950 kHz U	III	256	120	202	
XEEO	Chihuahua, Chih., N. 28°38'12", W. 106°04'42"	1,000	ND-D-190.....	1010 kHz D	II	244	120	244	Immediately.
XEXK	Poza Rica, Ver., N. 20°30'05", W. 97°28'28"	.500	ND-D-160.....	1080 kHz D	II	115	90	205	Do.
(New)	Cd. Saucillo, Chih., N. 28°02'48", W. 105°15'07"	.250	ND-D-175.....	1190 kHz D	II	166	90	166	Mar. 1, 1979.
				1200 kHz					

MEXICAN LIST No. 287—Continued

Call letters	Location	Power Watts	Antenna radiation mv/ m/kw	Schedule	Class	Antenna height (ft)	Ground system No. of radials	Length (ft)	Proposed date of change or commencement of operation
XEPLA	Pabellon, Ags., N. 22°09'16", W. 102°16'18"	1,000	ND-D-183.....	D	II	187	120	187	Do.
XESC	Sabinas, Coah., N. 27°51'13", W. 101°06'34"	1,000	ND-D-175.....	1250 kHz D	III	157	90	177	Immediately.
XEUAS	Culliacan, Sin., N. 24°48'40", W. 107°23'30" (PO 1330 kHz)	5,000D/ .500N	ND-U-190.....	1260 kHz U	III	195	120	195	Mar. 1, 1979.
XELTZ	Loreto, Zac., N. 22°16'16", W. 101°58'56"	.500	ND-D-179.....	1260 kHz D	III	177	120	164	Do.
(New)	Tizimin, Yuc., N. 21°07'11", W. 88°09'07"	1,000	ND-D-190.....	1280 kHz D	III	192	120	192	Do.
XEUAS	Culliacan, Sin., N. 24°48'34", W. 107°23'58" (change to 1260 kHz)	5,000D/ 1,000N	ND-D-190, DA-N.	1330 kHz U	III	185	120	185	
XEIK	Piedras Negras, Coah., N. 28°41'55", W. 100°31'35"	.500D .250N	ND-U-187.....	1360 kHz U	III	223	120	133	Immediately.
XEXM	Jerez, Zac., N. 22°38'51", W. 102°59'48"	1,000D/ .100N	ND-U-190.....	1360 kHz U	III	180	120	180	Do.
XEAPM	Apatzingan, Mich., N. 19°04'54", W. 102°15'31"	1,000D/ .100N	ND-U-190.....	1380 kHz U	III	178	120	178	Mar. 1, 1979.
XERUY	Merida, Yuc., N. 20°59'00", W. 89°38'43" (assignment deleted)	10,000D/ .250N	ND-N-185, DA-D.	1390 kHz U	III	167	120	167	
XEQJ	Tamazula, Jal., N. 19°40'00", W. 103°16'00"	1,000	ND-D-190.....	1400 kHz D	IV	176	120	176	Immediately.
XELR	Linares, N.L., N. 24°51'39", W. 99°34'05"	.250D/ .100N	ND-U-150.....	1400 kHz U	IV	109	90	109	Mar. 1, 1979.
XERUY	Merida, Yuc., N. 20°59'00", W. 89°38'00" (see 1390 kHz)	1,000D/ .250N	ND-U-185.....	1400 kHz U	IV	167	120	167	Immediately.
(New)	Tizimin, Yuc., N. 21°04'30", W. 88°09'00"	.500D/ .250N	ND-U-175.....	1420 kHz U	III	169	114	128	Mar. 1, 1979.
XETT	Tlaxcala, Tlax., N. 19°17'59", W. 98°14'22" (PO 0.500/kw/D, ND-D-190)	.800	ND-D-190.....	1430 kHz D	III	172	120	172	
(New)	Buctzotz, Yuc., N. 21°12'11", W. 88°47'42"	.500D/ .100N	ND-U-175.....	1440 kHz U	III	177	120	177	Do.
XEBP	Torreón, Coah., N. 25°32'18", W. 103°27'55" (shares antenna with XEGZ, 790 kHz)	1,000D/ .250N	ND-U-234.....	1450 kHz U	IV	305	120	215	Do.
XEIN	Cintalapa, Chis., N. 16°41'58", W. 93°43'24" (change to 810 kHz, PO 1/kw/D, .200/kw/N, ND-U-175)	1,000D/ .200N	ND-D-175.....	1450 kHz U	IV	246	120	246	
XEZC	Rio Grande, Zac., N. 23°52'30", W. 103°02'00" (change to 710 kHz, PO 0.250/kw/U, ND-U- 165)	.500D/ .250N	ND-U-187.....	1450 kHz U	IV	180	90	180	
XEQF	Loma Bonita, Oax., N. 18°05'06", W. 95°54'37"	5,000D/ 5,000N	ND-D-184, DA-N.	1470 kHz U	III	167	90	167	Do.
(New)	Becal, Camp., N. 20°25'52", W. 90°03'39"	1,000	ND-D-190.....	1470 kHz D	III	167	120	167	Do.
XERB	Cozumel, Q.R., N. 20°29'02", W. 86°54'19"	5,000	DA-D.....	1510 kHz D	II				Do.
XEKI	Navojoa, Son., N. 27°04'42", W. 109°27'13"	.500	ND-D-190.....	1510 kHz D	II	164	120	164	Do.
XEKI	Villa de Seris, Son., N. 29°03'30", W. 110°57'30" (assignment deleted)	.250	ND-D-190.....	1510 kHz D	II	164	120	164	
XEZYB	Oaxaca, Oax., N. 17°03'49", W. 96°44'10"	.500	ND-D-190.....	1530 kHz D	II	161	120	161	Do.
(New)	Cabo San Lucas Bcs., N. 22°54'00", W. 109°54'54"	5,000	ND-D-190.....	1540 kHz D	II	160	120	160	Do.
				1550 kHz					

MEXICAN LIST No. 287—Continued

Call letters	Location	Power Watts	Antenna radiation mv/ m/kw	Schedule	Class	Antenna height (ft)	Ground system		Proposed date of change or commencement of operation
							No. of radials	Length (ft)	
XEUVV	Jalapa, Ver., N. 19°31'35", W. 96°54'51"	10,000D/ 10,000N	ND-U-175.....	U	I-B	131	90	131	Do.
XEZW	Cerritos, Slp., N. 22°26'44", W. 100°16'56"	.500	ND-D-185.....	1560 kHz D	II	148	120	148	Do.
XEAF	Apaseo El G. Gto., N. 20°32'28", W. 100°41'48"	1,000	ND-D-175.....	1580 kHz D	II	148	90	148	Do.
XEFP	Jalpa, Zac., N. 21°39'37", W. 102°56'40" (PO 1/kw/D, 0.250/kw/N, ND-U-190)	2,000D/ .25N	ND-U-190.....	1580 kHz U	II	156	120	156	
XECSI	Culliacan, Sin., N. 24°51'24", W. 107°23'47"	.250	ND-D-190.....	1590 kHz D	III	155	120	155	Do.
XECP	Valladolid, Yuc., N. 20°41'24", W. 88°12'23"	10,000	ND-D-175.....	1590 kHz D	III	164	90	164	Do.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau,
Federal Communications Commission.

[FR Doc. 78-28957 Filed 10-13-78; 8:45 am]

[6712-01-M]

[FCC 78-725]

CLARIFICATION OF DISTRESS SALE POLICY

OCTOBER 11, 1978.

On May 25, 1978, the Commission issued a "Statement of Policy on Minority Ownership of Broadcasting Facilities", FCC 78-322, designed to encourage minority ownership of broadcast facilities, and announced two specific policies designed to implement that goal. One of those policies permits consideration of "distress sales" of broadcast facilities at reduced prices to minority groups by licensees who had been designated for hearing on their qualifications but were not yet involved in hearing proceedings.¹

¹Since issuing the "Statement of Policy on Minority Ownership of Broadcasting Facilities", Public Notice No. FCC 78-322, on May 25, 1978, (hereafter Policy Statement), the Commission has applied it on two occasions;

This limitation was considered necessary both to encourage early consideration of such sales, thereby avoiding the expense and delay of protracted hearings, and to prevent belated efforts to assign licenses when an adverse outcome of hearing appeared likely to the incumbent.

Since publication of the minority

sions; *Golden Broadcasting Systems, Inc.*, FCC 78-508 (released July 26, 1978); *Leflore Broadcasting Co., Inc.*, FCC 78-432 (released July 20, 1978). In both cases initial decisions had already been issued by the Administrative Law Judge and the appeals process had been initiated or completed. On this basis the requests for consideration as a distress sale under the Policy Statement were denied. Nevertheless, in so doing the Commission stated, "in view of our policy to review these matters on a case-by-case basis, consideration of requests for distress sales involving cases in early stages of hearing prior to the rendering of an initial decision cannot be precluded."

ownership policy, several licensees have pointed out that the announcement of the distress sale policy followed the commencement of their hearing proceedings so that they had no opportunity to consider the distress sale alternative. As recently noted by Commissioner Brown in remarks before the National Association of Black Journalists, the policy as initially framed forecloses exploration of such sales by any and all licensees already involved in hearing as of May 25, 1978.

Accordingly, the Commission is persuaded that those licensees who were in hearing status prior to May 25, 1978, should be eligible to file distress sale applications under the procedure outlined below. The Commission will not, however, consider such applications from this limited class of licensees after an initial decision has been issued by the Administrative Law Judge.

A two-step procedure will be followed. It will both permit the consideration of distress sales by the limited group of licensees involved in hearings as of May 25, 1978, and serve to allay any possibility of abuse of Commission processes. In the interest of avoiding otherwise protracted licensing hearings, these licensees shall therefore be given a limited period within which to seek distress sale relief. Accordingly, we shall require licensees interested in the distress sale avenue to elect that option by November 13, 1978. Licensees not declaring their election will be required to continue in hearing as a matter of course until final resolution of the designated issues and must face the prospect that they will not be permitted to assign their station if they are ultimately found unqualified. Licensees declaring their election will have until April 13, 1979, in which to submit a formal application for distress sale, and absent unusual circumstances, such sales will be expected to be promptly consummated.² Again, if an assignment application in proper form is not submitted by this deadline, the licensee must continue in hearing until resolution of the questions committed to that proceeding. The Commission, for its part, will attempt to expedite staff and Commission review of such transactions, as it has in other minority ownership contexts, in recognition of the additional financial burden attendant on protracted administrative consideration.

It should be emphasized that while the class of licensees in hearing as of May 25, 1978, is eligible for consideration of distress sale proposals, such special relief will be granted only after examination of individual cases to determine a proper balance of the various public interest factors involved.³ Relief will not be extended to licensees designated for hearing after May 25, 1978, who are not in hearing proceedings; those licensees, as we stated in the Policy Statement as modified by subsequent cases, must explore and resolve the prospects for such an assignment prior to, or, possibly, shortly following the commencement of hearing.

²In the event a licensee's exploration of (or application for) distress sale relief is unsuccessful, however, the suspended qualification hearing will be resumed.

³Distress sales are an option only where no competing applicant is involved in the hearing. In comparative hearings the *Ash-backer* rights of the challenger to a full administrative comparison with the incumbent properly preclude departure of the existing licensee from the administrative process.

We reaffirm our conclusion, contained in the original Policy Statement, that licensees generally cannot be permitted, far less encouraged, to knowingly play roulette with Commission licensing processes.

The number of possible distress sales by licensees already in hearing before the announcement of our policy is relatively small. Moreover, these applications are necessarily subject to cut-off dates as noted above. Whatever the actual number of such applications tendered and granted as a result of today's action, the Commission believes that our express willingness to consider such transactions will work to further encourage minority ownership without adversely affecting the Commission's interest in preserving its sanctions against misconduct.

Action by the Commission October 5, 1978. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, White and Brown.

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-29126 Filed 10-13-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington office of the Federal Maritime Commission, 1100 L Street NW., room 10218; or may inspect the agreements at the field offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 6, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or

ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-3723.

Filing party: Richard L. Landes, Deputy City Attorney, Offices of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, Calif. 90801.

Summary: Agreement No. T-3723, between City of Long Beach (City) and Powell River-Alberni Sales Corp. (Powell River), provides for the 5-year, nonexclusive, preferential assignment to Powell River of berths 52, 53, 54, and pier 2 in Long Beach, Calif., to be used as a marine terminal and distribution warehouse. City's general manager will have the right to make temporary or secondary assignments as provided in the Port of Long Beach tariff. As compensation, Powell River will pay to City all revenue from dockage and wharfage and other applicable tariff charges accruing from its operations up to a minimum obligation of \$220,000 per 12-month period, after which City and Powell River will divide revenues. Agreement No. T-3723 will supersede agreement No. T-2736.

Agreement No. T-3724.

Filing party: Richard L. Landes, Deputy City Attorney, Offices of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, Calif. 90801.

Summary: Agreement No. T-3724, between city of Long Beach and Powell River-Alberni Sales Corp. (Powell River), provides for the 5-year lease to Powell River of warehouse No. 6 and adjacent yard area containing approximately 110,683 square feet, for use in the storage of paper and wood products and for other purposes incidental to Powell River's warehousing operation. As compensation, Powell River will pay \$10,985 per month, plus utility charges.

Agreement No. 9718-6.

Filing party: Charles F. Warren, Attorney, Warren & Associates, P. C., 1100 Connecticut Avenue NW., Washington, D.C. 20036.

Summary: Agreement No. 9718-6, among Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Yamashita-Shinnihon Steamship Co., Ltd., would amend the second "Whereas" clause of the basic Japan-California Ports containership service agreement to include ports in Korea in the scope thereof.

Dated: October 11, 1978.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-29127 Filed 10-13-78; 8:45 am]

[4110-86-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

SAFETY AND OCCUPATIONAL HEALTH STUDY SECTION

Meeting, Change in Location

Notice of the October 26-28, 1978, meeting of the Safety and Occupational Health Study Section of the National Institute for Occupational Safety and Health was published in the FEDERAL REGISTER on Wednesday, September 13, 1978, volume 43, No. 178, pages 40924-5.

The location of the meeting has been changed from Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md., to the Fairfax Room, Dulles Marriott Hotel, Dulles International Airport, Washington, D.C.

All other aspects of the notice published on September 13, 1978, remain the same.

Dated: October 3, 1978.

WILLIAM H. FOEGE,
Director, Center for
Disease Control.

[FR Doc. 78-29079 Filed 10-13-78; 8:45 am]

[4110-07-M]

Social Security Administration

DEPUTY COMMISSIONER OF SOCIAL SECURITY, ET AL.

Redelegations of Authority With Respect to
the Disposition of Supplemental Security
Income Benefit Overpayments

I. Section 1631(b) of the Social Security Act, as amended (the Act), provides the Secretary of Health, Education, and Welfare (the Secretary) with authority to approve or deny waiver of adjustment or recovery of those supplemental security income (SSI) benefit payments made under the provisions of title XVI of the Act found to be incorrect, where the overpaid individual is without fault and recovery of the overpayment would defeat the purposes of title XVI, or would be against equity or good conscience, or would, because of the small amount involved impede efficient or effective administration of title XVI. The Secretary has delegated his authority under Section 1631(b) of the Act to the Commissioner of Social Security (the Commissioner), with authority to redelegate (38 FR 15648, dated June 14, 1973). Notice is hereby given that the Acting Commissioner has redelegated this authority to the following Social Security Administration (SSA) positions, as indicated:

Delegates	Scope of authority
A. Deputy Commissioner of Social Security.....	A. to D. The incumbents of these positions may exercise the subject authority with respect to any case involving an overpayment of benefits under title XVI of the Act, regardless of the amount of overpayment, and without concurrence from any other delegate.
B. Associate Commissioner for Program Operations and Deputy Associate Commissioner for Program Operations.	
C. Regional Commissioners.....	
D. Assistant Regional Commissioners, Supplemental Security Income.	
E. District Managers, Assistant District Managers, Branch Managers, Operations Supervisors, Claims Representatives and Field Representatives in District and Branch Offices, Office of Program Operations.	E. The incumbents of these positions may exercise the subject authority as follows: (1) In cases where the amount of overpayment is \$1,000 or less, these delegates have full authority to make the waiver determination, without concurrence from another delegate. (2) In cases where the amount of overpayment is between \$1,001 and \$5,000, the waiver determination requires two actions: a recommendation by one of these delegates and concurrence in that recommendation from an Operations Supervisor or the Assistant District Manager, Branch Manager or District Manager, as appropriate. (3) In cases where the amount of overpayment is \$5,001 or more, the waiver determination requires two actions: a recommendation by one of these delegates and concurrence in that recommendation from the Assistant Regional Commissioner, Supplemental Security Income or the Regional Commissioner.

II. Under the Federal Claims Collection Act of 1966 (FCCA), codified at 31 U.S.C. 951-953, the Secretary, or his designee, is authorized to compromise, suspend or terminate collection action on certain debts owed to the Department of Health, Education, and Welfare (HEW), provided appropriate HEW regulations have been promulgated in accordance with standards provided in Joint Regulations of the Department of Justice and the General Accounting Office (4 CFR Parts 101-105). Such regulations for HEW are published in the Code of Federal Regulations at 45 CFR 30.1. The Secretary's authority is restricted to those debt claims which involve compromise, suspension or termination of collection action regarding amounts of \$20,000 or less, exclusive of interest, and which do not involve fraud, presentation of a false claim, misrepresentation on the

part of the debtor or any other party having an interest in the claim, or conduct in violation of anti-trust laws. Claims which cannot be collected, suspended, compromised or terminated, or which amount to more than \$20,000, exclusive of interest, are referred to the General Accounting Office for disposition. Those cases involving fraud, false claims, misrepresentation, or violation of anti-trust laws are handled by the Department of Justice. The Secretary has delegated his authority under the FCCA to the Commissioner, with authority to redelegate (33 FR 5836 and 5843, dated April 16, 1968), insofar as that authority relates to the mission of SSA. Notice is hereby given that the Acting Commissioner has redelegated this authority, as it pertains to the disposition of overpayments of SSI benefits under title XVI of the Act, to the following SSA positions, as indicated:

Delegates	Scope of authority
A. Deputy Commissioner of Social Security.....	A. to D. The incumbents of these positions may exercise the subject authority with respect to any case involving an overpayment of benefits under title XVI of the Act amounting to \$20,000 or less, exclusive of interest, without concurrence from any other delegate.
B. Associate Commissioner for Program Operations and Deputy Associate Commissioner for Program Operations.	
C. Regional Commissioners.....	
D. Assistant Regional Commissioners, Supplemental Security Income.	
E. District Managers, Assistant District Managers, Branch Managers, Operations Supervisors, Claims Representatives and Field Representatives in District and Branch Offices, Office of Program Operations.	E. The incumbents of these positions may exercise the subject authority as follows: (1) In cases where the amount of overpayment is \$1,000 or less, exclusive of interest, these delegates have full authority for decision, without concurrence from another delegate. (2) In cases where the amount of overpayment is between \$1,001 and \$5,000, exclusive of interest, the decision requires two actions: a recommendation by one of these delegates and concurrence in that recommendation from an Operations Supervisor or the Assistant District Manager, Branch Manager or District Manager, as appropriate. (3) In cases where the amount of overpayment is between \$5,001 and \$20,000, exclusive of interest, the decision requires two actions: a recommendation by one of these delegates and concurrence in that recommendation from the Assistant Regional Commissioner, Supplemental Security Income or the Regional Commissioner.

III. The redelegations specified in section II. above must be exercised in accordance with standards provided in Joint Regulations of the Department of Justice and the General Accounting Office, which are specified in 4 CFR 101-105, and those HEW standards provided in 45 CFR 30.1.

IV. The redelegations specified in section II. above do not apply to the handling of any debt claim where there is an indication of fraud, the presentation of a false claim, misrepresentation on the part of the debtor or any other party having an interest in the claim, or conduct in violation of anti-trust laws. Such cases are to be handled by the Department of Justice.

V. The redelegations specified in section II. above do not apply to cases involving amounts in excess of \$20,000, exclusive of interest. These cases are to be handled by the General Accounting Office.

VI. All of the redelegations specified in sections I. and II. above shall be effective as of the date that this General Notice thereof is published in the FEDERAL REGISTER. To the extent that any actions taken by the incumbents of the positions enumerated in sections I. and II. above, in effect, involve the exercise of the subject authorities prior to the date that this notice is published in the FEDERAL REGISTER, such actions are hereby affirmed and ratified, provided they fall within the scope of these redelegations. Further redelegations of any of the authorities specified in sections I. and II. above are not authorized.

Dated: October 3, 1978.

DAN WORTMAN,
Acting Commissioner of
Social Security.

[FR Doc 78-29159 Filed 10-13-78; 8:45am]

[4310-80-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DESOLATION-GRAY RIVER MANAGEMENT PLAN

Availability of Draft Plan

The draft river management plan for Desolation and Gray Canyons of the Green River, Utah is available for review and comment at the following locations:

Price Resource Area Headquarters, 900 North 7 East, P.O. Box AB, Price, Utah 84501.

Moab District Office, 125 West 2nd South, P.O. Box 970, Moab, Utah 84532.

Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

A synopsis of the recommendations contained in the plan is also available from each of these offices upon request.

The plan primarily provides for the management of the floatboating recreation resource on the river from Sand Wash (3 miles north of Carbon County line) to Swasey's rapids (12 miles north of the town of Green River, Utah).

Comments received will be used in the preparation of the environmental assessment and in developing the final plan. Comments should be addressed to the District Manager, P.O. Box 970, Moab, Utah 84532 and must be submitted no later than November 17, 1978, to assure full consideration.

S. GENE DAY,
Moab District Manager.

OCTOBER 6, 1978.

[FR Doc. 78-29088 Filed 10-13-78; 8:45 am]

[4310-84-M]

[NM 34671 and 34672]

NEW MEXICO

Application

OCTOBER 4, 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), Southern Union Gathering Company has applied for two 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 10 W.,

Sec. 18, lot 5.

T. 32 N., R. 10 W.,

Sec. 18, lot 9.

These pipelines will convey natural gas across 0.12 of a mile of public lands in San Juan 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 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-29080 Filed 10-13-78; 8:45 am]

[4310-84-M]

[NM 34541]

NEW MEXICO

Application

OCTOBER 4, 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), Northwest Pipeline Corp. has applied for two 4½-inch natural gas pipelines right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 6 W.,

Sec. 35, W½SE¼.

T. 29 N., R. 7 W.,

Sec. 7, lots 5 and 6.

T. 29 N., R. 8 W.,

Sec. 12, NE¼NE¼.

These pipelines will convey natural gas across 0.412 of a mile of public lands in Rio Arriba and San Juan Counties, 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 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-29081 Filed 10-13-78; 8:45 am]

[4310-84-M]

[NM 34766]

NEW MEXICO

Application

OCTOBER 3, 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. as applied for one 4½-inch natural gas pipeline and related facilities right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 7 W.,
Sec. 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$.

This pipeline will convey natural gas across .136 of a mile of public land in Rio Arriba 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. 6770, Albuquerque, N. Mex. 87107.

RAUL E. MARTINEZ,
*Acting Chief, Branch of Lands
and Minerals Operations.*

[FR Doc. 78-29082 Filed 10-13-78; 8:45 am]

[4310-84-M]

[NM 34670]

NEW MEXICO

Application

OCTOBER 4, 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), Gas Co. of New Mexico has applied for one 20-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 23 N., R. 9 W.,
Sec. 10, N $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 11, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

This pipeline will convey natural gas across 0.66 of a mile of public lands in San Juan 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 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
*Chief, Branch of Lands
and Minerals Operations.*

[FR Doc. 78-29083 Filed 10-13-78; 8:45 am]

[4310-84-M]

[NM 34763]

NEW MEXICO

Application

OCTOBER 4, 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), Gas Company of New Mexico has applied for one 6-inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 25 E.,
Sec. 34, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 20 S., R. 25 E.,
Sec. 3, lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 14, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 23, E $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 25, W $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 26, E $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$.

This pipeline will convey natural gas across 3.38 miles 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 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. 78-29084 Filed 10-13-78; 8:45 am]

[4310-84-M]

[NM 34740]

NEW MEXICO

Application

OCTOBER 5, 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), Cities Service Co. has applied for one 6-inch and two 4-inch natural gas pipelines right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 7 S., R. 31 E.,
Sec. 33, SW $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 8 S., R. 31 E.,
Sec. 3, lots 1, 2, 3 and 4;
Sec. 4, lots 1, 2, 3, 4 and SE $\frac{1}{4}$ NW $\frac{1}{4}$.

These pipelines will convey natural gas across 2.594 miles of public lands in Chaves County, New Mexico.

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, New Mexico 88201.

FRED E. PADILLA,
*Chief, Branch of Lands
and Minerals Operations.*

[FR Doc. 78-29085 Filed 10-13-78; 8:45 am]

[4310-84-M]

[NM 34731, 34785, 34786]

NEW MEXICO

Applications

OCTOBER 5, 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 4 $\frac{1}{2}$ -inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 22 S., R. 25 E.,
Sec. 1, lots 10, 14, 15, 18 and 19.
T. 22 S., R. 26 E.,
Sec. 6, lot 7 and SE $\frac{1}{4}$ SW $\frac{1}{4}$.
T. 24 S., R. 34 E.,
Sec. 18, S $\frac{1}{2}$ NE $\frac{1}{4}$.
T. 21 S., R. 36 E.,
Sec. 18, lot 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$.

These pipelines will convey natural gas across 1.968 miles of public lands in Eddy and Lea Counties, New Mexico.

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. 78-29086 Filed 10-13-78; 8:45 am]

[4310-84-M]

INM 347251

NEW MEXICO

Application

OCTOBER 4, 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 one 4 1/4-inch natural gas pipeline and related facilities right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 18 S., R. 31 E.,
Sec. 34, NE 1/4 SE 1/4;
Sec. 35, S 1/2 NW 1/4 and NW 1/4 SW 1/4.

This pipeline will convey natural gas across 0.721 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. 78-29087 Filed 10-13-78; 8:45 am]

[4310-70-M]

National Park Service

[Order No. 2, Amdt. 1]

ADMINISTRATIVE TECHNICIAN, ET AL.

Delegation of Authority Regarding Purchase
Orders for Supplies, Equipment, or Services

2. *Administrative Technician.* The Administrative Technician, Fort McHenry National Monument, may issue purchase orders not in excess of \$500 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriations. This authority may be exercised by the Administrative Technician in behalf of any area administered by the Superintendent of Fort McHenry National Monument.

(National Park Service Order No. 71 (38 FR 7478), as amended; Mid-Atlantic Region Order No. 1 (39 FR 3694), as amended; Fort McHenry National Monument Order No. 1 (33 FR 14653).)

Dated: August 16, 1978.

DENNIS E. MCGINNIS,
Superintendent,
Fort McHenry National Monument.
[FR Doc. 78-29125 Filed 10-13-78; 8:45 am]

[4410-05-M]

DEPARTMENT OF JUSTICE

Bureau of Prisons

ADVISORY CORRECTIONS COUNCIL

Meeting

Notice is hereby given that the Advisory Corrections Council in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) will meet on Friday, November 3, in Jacksonville, Fla. The Council will tour the Union Correctional Institution in Raiford, Fla., and meet in Jacksonville.

Agenda items include a discussion of the role of the Federal Government in corrections; cooperation between State and Federal correctional agencies; the status of the revised criminal code; and Department of Justice correctional standards.

Signed at Washington, D.C., this 10th day of October, 1978.

NORMAN A. CARLSON,
Director, Bureau of Prisons.
[FR Doc. 78-29128 Filed 10-13-78; 8:45 am]

[4410-09-M]

Drug Enforcement Administration

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Pursuant to 21 U.S.C. 823(a)(1), and § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 11, 1978, Endo Laboratories, Inc., 1000 Stewart Avenue, Garden City, N.Y. 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	Schedule
Oxycodone (6143)	II
Hydrocodone (9193)	II
Oxymorphone (9452)	II

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug

Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than November 16, 1978.

Dated: October 10, 1978.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.
[FR Doc. 78-29119 Filed 10-13-78; 8:45 am]

[4410-09-M]

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Pursuant to 21 U.S.C. 823(a)(1), and § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 21, 1978, Eli Lilly and Co., 1249 South White River Parkway, East Drive, Bldg. 80, Indianapolis, Ind. 46225, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the schedule II controlled substances amobarbital (2125) and secobarbital (2315).

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, U.S. Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than November 16, 1978.

Dated: October 10, 1978.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.
[FR Doc. 78-29120 Filed 10-13-78; 8:45 am]

[6820-35-M]

LEGAL SERVICES CORPORATION

GRANTS AND CONTRACTS

OCTOBER 5, 1978.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C. 2996-2996f, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other

project, the corporation shall announce publicly * * * such grant, contract, or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Wisconsin Judicare in Wausau, Wis., to serve the Native Americans on the Bad River, Lac Courte Oreilles, Lac Du Flambeau, Menominee, Mole Lake, Oneida, Potawatomi, Red Cliff, St. Croix, Stockbridge-Munsee, and Winnebago Reservations.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corp., Denver Regional Office, 1726 Champa Street, Denver, Colo. 80202.

THOMAS EHRLICH,
President, Legal Services
Corporation

[FR Doc. 78-29062 Filed 10-13-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear powerplants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operation, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the Member States. The Senior Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director

General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-QA6, "Safety Guide on Quality Assurance in the Design of Nuclear Power Plants," has been developed. The Working Group, consisting of Mr. S. K. Hellman (The Ralph M. Parsons Co.), United States of America; Mr. A. Kakodkar, India; and Mr. L. Laurent, France, developed the initial draft of this Safety Guide from an IAEA collation during a meeting January 30-February 3, 1978. The Working Group draft of this Safety Guide was modified by the IAEA Technical Review Committee on Quality Assurance which met in April 1978, and we are soliciting public comments on this modified draft. Comments on this draft received by December 1, 1978 will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion.

Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a).)

Dated at Rockville, Md., this 29th day of September 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of
Standards Development.

[FR Doc. 78-29069 Filed 10-13-78; 8:45 am]

[7590-01]

[Docket No. 50-245]

NORTHEAST NUCLEAR ENERGY CO., CON- NECTICUT LIGHT & POWER CO., HARTFORD ELECTRIC LIGHT CO., AND WESTERN MAS- SACHUSETTS ELECTRIC CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 53 to Provisional Operating License No. DPR-21 to Northeast Nuclear Energy Co., The Connecticut Light & Power Co., The Hartford Electric Light Co., and Western Massachusetts Electric Co. (the licensees), which amended the license and its appended Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1, located in the Town of Waterford, Conn. The amendment is effective as of its date of issuance.

This amendment adds license conditions relating to the completion of facility modifications for fire protection and the implementation of administra-

tive controls, and modifies the Technical Specifications to require three operable fire pumps, and increased spray and/or sprinkler systems and fire hose stations to be operable in the turbine building.

This amendment adds license conditions relating to the completion of facility modifications and implementation of administrative controls for fire protection, and modifies the Technical Specifications to require three operable fire pumps and additional spray and/or sprinkler systems and fire hose stations to be operable in the turbine building. The amendment also changes the limiting conditions for operation by adding the requirement for a fire watch.

The application for 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 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 the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 24, 1978, (2) the licensee's submittals dated April 12, 1978, July 11, 1978, July 27, 1978, and August 17, 1978, (3) Amendment No. 53 to License No. DPR-21 including the Commission's letter of transmittal, and (4) 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 Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Conn. A copy of items (3) and (4) 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 26th day of September 1978.

For the Nuclear Regulatory Commission.

THOMAS V. WAMBACH,
Acting Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-29071 Filed 10-13-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Notice was published *FEDERAL REGISTER* on September 28, 1978 (43FR 44547) of proposed amendments to 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," and to 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," that would ensure continuing control of byproduct materials such as those contained in sources used in logging techniques for oil, gas, and mineral exploration. Regulatory Guide 6.8, "Identification Plaque for Irretrievable Well-Logging Sources," is being issued for public comment concurrently with the proposed rule changes. This guide describes methods that would be acceptable to the NRC staff for meeting the proposed requirements with respect to the characteristics and the mounting of a permanent identification plaque at the surface of a well that contains an irretrievable well-logging source.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. public comments on Regulatory Guide 6.8 will, however, be particularly useful in evaluating the need for an early revision if received by December 11, 1978.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or

for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Md., this 5th day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of
Standards Development.

[FR Doc. 78-29094 Filed 10-13-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.130, "Service Limits and Loading Combinations for Class 1 Plate-and-Shell-Type Component Supports," delineates acceptable levels of service limits and appropriate combinations of loadings associated with normal operation, postulated accidents, and specified seismic events for the design of American Society of Mechanical Engineers Code Class 1 plate-and-shell-type component supports in light-water-cooled reactors.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or

for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Md., this 4th day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of
Standards Development.

[FR Doc. 78-29095 Filed 10-13-78; 8:45 am]

[7590-01-M]

[NUREG-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced, *FEDERAL REGISTER* notice dated December 8, 1977, the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to §4.2, Fuel System Design, of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear powerplants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is \$70, including first-year supplements. Annual subscriptions for supplements alone are \$30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 4.2 is \$4. Foreign price information is available from NTIS. A copy of the

Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda this 2d day of October 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSO,
Director, Division of Systems
Safety, Office of Nuclear Reactor
Regulation.

[FR Doc. 78-29096 Filed 10-13-78; 8:45 am]

[7590-01-M]

[Construction Permit Nos. CPPR-139 &
CPPR-140]

UNION ELECTRIC CO. (CALLAWAY PLANT,
UNITS 1 AND 2)

Show-Cause, Construction Permit Proceeding;
Assignment of Atomic Safety and Licensing
Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this show-cause, construction permit proceeding:

Alan S. Rosenthal, Chairman
Michael C. Farrar
Richard S. Salzman

Dated: October 10, 1978.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc. 78-29072 Filed 10-13-78; 8:45 am]

[7590-01-M]

[Docket No. 50-281]

VIRGINIA ELECTRIC & POWER CO.

Issuance of Amendment to Facility Operating
License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 44 to Facility Operating License No. DPR-37, issued to Virginia Electric and Power Co. (the licensee), which adds license conditions related to operation of the Surry Power Station, Unit No. 2 (the facility) located in Surry County, Va. This amendment is effective as of the date of issuance.

This amendment specifies license conditions related to steam generator tube inspections for Surry Unit 2. Operating limits on these plant parameters were previously governed by NRC Order for Modification of License dated April 7, 1978, which is superseded by the amendment. The only change to the operating limits previ-

ously imposed for steam generator tube inspections is the date for the next inspection.

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 July 23, 1978 as supplemented August 16, 1978; (2) Amendment No. 44 to License No. DPR-37; 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 Swem Library, College of William and Mary, Williamsburg, VA. 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 3d day of October 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors
Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-29093 Filed 10-13-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 15222 (SR-NSCC-77-8)]

NATIONAL SECURITIES CLEARING CORP.

Order Approving Proposed Rule Change

OCTOBER 6, 1978

On September 1, 1977, National Securities Clearing Corp. ("NSCC") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4

thereunder, a proposed rule change setting forth a new fee schedule for use by NSCC after consolidation of operations or, prior to consolidation, for use by the ASECC and SCC Divisions of NSCC at the discretion of NSCC's board of directors.

Notice of the proposed rule change was given and a request for public comment was made in Securities Exchange Act Release No. 13968 (September 19, 1977) and in the FEDERAL REGISTER (42 FR 49534, Sept. 27, 1977). The Commission received one comment letter. NSCC also solicited comments by means of a notice to participants. NSCC received five comment letters and attached them as an exhibit to the proposed rule change.

After publication of the proposed rule change, at the request of the Commission staff, NSCC submitted an internal NSCC memorandum, prepared for NSCC's Board of Directors, discussing the proposed fee schedule. By letter dated September 13, 1978, the Commission also requested that NSCC engage its independent public accountant to review the proposed fee schedule and to issue a report on certain aspects of it. On September 25, 1978, NSCC submitted that report, prepared by Price Waterhouse & Co. (the "PW report"). Attached to the PW report was a memorandum prepared by NSCC discussing the bases used in developing its proposed fee schedule. The two NSCC memoranda and the PW report, as well as all comment letters, have been placed in file No. SR-NSCC-77-8 and are available to the public. In addition, NSCC provided a copy of the PW report and the accompanying memorandum to each registered clearing agency. To date no comments have been received.

NSCC'S FEE SCHEDULE AS SUBMITTED

A. THE DEVELOPMENT OF NSCC'S PROPOSED FEE SCHEDULE

NSCC indicated that it began developing its proposed fee schedule by first estimating that its operating expenses after consolidation would be \$23,645,000 per year or approximately \$2,000,000 per month. Next, NSCC divided its services into four general categories and estimated the percentage of total expenses that would be required to provide the services in each of those categories. NSCC then set individual fees so that the percentage of total revenues produced by fees for services within each category would approximately equal the expense of

NSCC's estimate of annual expenses by principal category was:

Administrative costs	\$2,000,000
Depository fees paid to the Depository Trust Co. ("DTC")	5,153,000
Facilities management expenses paid to the Securities Industry Automation Corp. ("SIAC")	18,492,000
(with 1 minor exception)	23,645,000

providing the services in that category.²

As part of its analysis, NSCC stated that it factored in the cleared share volume from four sample months (which NSCC indicates reflected the average activity for all of 1976.³ Based on the cleared share volume from those sample months, NSCC next estimated that the proposed fees and other income would have generated total revenues of \$32,840,000. Using its estimated cost of providing services at that volume level (\$23,645,000), NSCC computed that, under its proposed rebate program, it would have rebated approximately 24 percent of those revenues (\$7,755,000) to participants leaving \$1,440,000 (or approximately \$660,000 after taxes) for retained earnings.⁴ NSCC projected that its revenues would equal expenses at a daily average cleared share volume of 14,300,000 shares from the NYSE, 1,500,000 shares from the Amex, and 2,700,000 shares from the OTC market. NSCC established its fee schedule so that revenues would equal expenses at a volume level somewhat lower than the then current average volume in order to help assure a sufficient revenue stream in low volume periods and to avoid frequent free amendments because of changing conditions. Excess revenues, as noted, will be returned to participants under NSCC's rebate program.

B. THE ESTABLISHMENT OF SPECIFIC FEES

1. *General.* In establishing specific fees, NSCC considered not only the cost of providing a service but also other factors. Those considerations resulted in some fees to be paid by individual participants not being based entirely on the cost of providing a service to those participants. NSCC indicated, however, that overall, the revenues produced by fees for each service were related to the cost of that service.

Among those other factors were:

(1) Providing equal services at equal fees to all participants wherever located

(geographic price mutualization ("GPM"));

(2) Encouraging the use of book-entry services rather than services involving the physical movement of securities; and

(3) Maintaining the method of pricing individual services as close to the current method of pricing as possible.

2. *Participant fees.* NSCC indicated that participant fees are designed to recover the administrative cost of providing certain services to participants. The proposed participant fees for individual NSCC services are: (a) \$1 per side for trade processing with a maximum of \$100 per month; (b) \$50 per month for the Envelope Settlement System; (c) \$50 per month for the Correspondent Delivery and Collection Service ("CDCS"); (d) \$50 per month for the National Transfer Service ("NTS"); and (e) \$50 per month for the Dividend Settlement Service ("DSS"). NSCC proposes to limit total participant fees to a maximum of \$150 per month per participant because it believes that administrative costs attributable to a participant do not increase in direct proportion to the number of services a participant utilizes.

3. *Trade comparison and recording fees.* In this area, NSCC indicated that it set fees on the basis of four services: equity trade comparison, bond trade comparison, equity trade recording and bond trade recording.⁵ NSCC proposes that participants pay the same fee for this service regardless of whether they relate to NSCC through NSCC's New York City facility, through a branch office, or through NSCC's direct clearing procedures.

NSCC indicated that for trades compared at NSCC it will impose a trade correction fee for each stamped advisory submitted in order to encourage the prompt and accurate reporting of transactions.⁶ In addition, NSCC proposes to base its fee for comparison on reported trades rather than on compared trades in order to encourage ac-

curate reporting by participants.⁷ NSCC also proposes to charge a paper input fee in order to encourage participants to submit data in machine readable form.

In establishing the fees for comparison, NSCC stated that it considered dollar value, sides and shares as alternative bases for billing. NSCC eliminated a dollar-value charge because it did not want to charge different fees for performing the same function. That is, NSCC did not view the cost of comparing trades as being affected by the value of the securities being compared. As for a per-side charge basis, NSCC recognized that, in general, it might reflect more closely than a per-share charge the work required to perform comparison. NSCC also recognized that a per-share fee would result in comparison fees varying because of the size of the trade being compared. NSCC was concerned, however, that a per-side charge would penalize a participant for splitting an order between markets or cleaning up limit orders on the specialist's book. NSCC also indicated that a per-share charge is NSCC's current method of billing for comparison and trade recording in the ASECC and SCC Divisions.

As a result, NSCC concluded that, although a per-side charge might more closely represent the work done for each individual trade, a per-share charge was still a better choice overall because (i) it provided continuity to the existing method of pricing used in the ASECC and SCC Divisions, (ii) it was agreeable to participants, (iii) it favored best execution, and (iv) revenues produced would still be approximately equal to the cost of the service. A per-share charge therefore was selected.⁸

4. *Clearance processing fees.* Clearance processing is the netting and settling of a participant's compared trades. In its continuous net settlement ("CNS") system, NSCC, for each issue in which a participant has compared trades, nets those trades until the participant has either a net long position (that is, the participant is a net buyer of the security) or a net short position (that is, the participant is a net seller of the security). NSCC then settles those netted transactions by making a book-entry movement either into or out of the participant's depository account.

advisories will encourage participants to submit their trades promptly and accurately and thus reduce the number of advisories NSCC has to send out.

⁷For example, if a trade is correctly submitted by a participant and compares during the first comparison cycle, the participant will be charged only once for comparison. If the participant incorrectly reports the trade, however, and has to correct and resubmit it, the participant will incur a second charge.

⁸In the case of bonds, the fee is a face-value charge that is essentially the equivalent of a per-share charge for equities.

²That analysis produced the following projection:

	Expense (percent)	Revenue (percent)
Trade comparison and recording.....	25.5	25.1
Clearance processing.....	42.9	43.0
Envelope settlement.....	11.6	11.6
Other services.....	20.0	20.3

³Those sample months and the daily average cleared share volume by market were:

	NYSE	AMEX	OTC
November 1975.....	14,700,000	1,500,000	2,900,000
January 1976.....	26,000,000	2,200,000	4,400,000
April 1976.....	20,200,000	2,700,000	4,400,000
July 1976.....	21,400,000	2,300,000	3,800,000
Average.....	20,800,000	2,200,000	3,900,000

⁴NSCC intends to rebate to participants revenues in excess of operating expenses and a retained earnings reserve. The rebates will be made by discounting each participant's total monthly bill.

⁵NSCC's trade recording fee is a fee for NSCC entering into its system trades compared at other clearing agencies but shipped through an interface to NSCC for clearance and settlement.

⁶In the NSCC system, if a participant submits a trade for which there is no match (that is, a corresponding side was not submitted by the participant named as the contra party to the trade or was submitted too late for inclusion in that processing cycle, or errors in one or both of the submitted sides made comparison impossible), NSCC sends an advisory to the participant named as then contra party in the submitted trade. If the participant receiving the advisory acknowledges the trade, it stamps the advisory and returns it to NSCC. NSCC believes that a fee for submitting stamped

The clearance processing function also includes the processing of designated valued deliveries submitted by special representatives.⁹ Outside of the CNS system, clearance processing entails the issuance of security orders.¹⁰

The proposed fees in this category are: (a) \$1.20 for each position delivered from the CNS system to a participant's account (called a "receive" by NSCC); (b) \$1 for each delivery from a participant's account to CNS during the night cycle; (c) \$2 for each delivery to CNS during the day cycle; (d) \$0.20 per side for designated valued deliveries entered through special representative procedures; (e) \$0.20 for each security order generated; and (f) \$2 for each buy-in submitted. NSCC proposes that participants pay the same fees regardless of whether they relate to NSCC through NSCC's New York City facility, through a branch office or through NSCC's direct clearing procedures.

A dollar-value basis again was not used because NSCC did not want clearance processing fees to vary with the value of the securities being cleared and settled. Shares (face value for bonds) was considered in order to be consistent with the fees for comparison and trade recording. NSCC decid-

ed, however, that deliveries and receipts were the most realistic measures from the standpoint of cost and there were no overriding considerations, as there were in choosing shares as the basis for trade comparison and recording fees. NSCC also preferred to have a single basis for billing clearance processing (deliveries and receipts) rather than to differentiate between the processing of debt and equity securities.

NSCC indicated that generating security orders and processing designated valued deliveries are not as costly to NSCC as making CNS deliveries and receipts, and, accordingly, set those fees at a lower rate.

5. *Delivery service fees.* These are fees for services involving the physical movement of securities and include the following specific services: (a) The Envelope Settlement System; (b) the Correspondent Delivery and Collection Service ("CDCS"); (c) order outs from clearing; (d) deposits to clearing; (e) underwriting pickups; (f) physical receives from third parties; and (g) handling of participants' depository accounts. Each of these proposed fees is based on a per item charge.

Many of the services requiring physical movement of securities involve what NSCC calls a "primary receive location." A primary receive location can be either NSCC's New York City facility or a branch office. Each participant will choose one location as its primary receive location. NSCC proposes that participants pay the same fee for NSCC moving securities to or from their primary receive location regardless of where it is located.

Currently, NSCC operates three envelope settlement services. Two of those, run by the SCC Division and the NCC Division, operate only in New York City. The New York City envelope systems are, in essence, a central location where participants can drop off envelopes containing securities and have those envelopes placed in another participant's box. Participants come to the central location during the day to see if they have received an envelope. The third service, the National Envelope Settlement System, run by the NCC Division, is similar except that it operates in 11 regional cities. Envelopes are shipped overnight by couriers.

On switching the processing of over-the-counter transactions from the NCC Division to the SCC Division, NSCC intends to discontinue the intra-city envelope system run by the NCC Division and to move the NCC Division inter-city envelope system to the SCC Division. The proposed fees for intra-city deliveries in the ongoing SCC Division envelope system will be a per-envelope charge and will be based on the time of day that the envelope is submitted for delivery. The proposed

fees for inter-city deliveries also will be a per-envelope charge but will be the same regardless of the location of the NSCC facility to which the envelope is delivered or the time of day of the delivery. The inter-city delivery fee will be higher than the fee for intra-city deliveries.

CDCS is a delivery service currently operated by NSCC that consists of a network of facilities to which participants can deliver securities for shipment by courier and at which participants or nonparticipants can receive shipments of securities. It is available to any entity which executes a CDCS agreement with NSCC. The CDCS fee is a per-envelope charge plus a pass-through of any cost for deliveries outside of the immediate area of the receiving CDCS facility. The fee is the same regardless of the location of the CDCS facility to which the securities are delivered.

Order outs from clearing will allow a CNS participant to have its CNS long position delivered to it on settlement day. The delivery can be either free or against payment. If the securities are delivered to the participant's primary receive location, the fee is the same regardless of which primary receive location the participant has selected. The participant can have securities ordered out to it at other than its primary receive location for an additional charge. Participants also can deliver to other participants or to third parties either free or against payment by combining the order out service with CDCS or the envelope system. In that situation, the participant also is charged for the use of CDCS or the envelope settlement system.

Deposits to clearing will enable participants to deposit securities for next-day credit to cover CNS short positions. The deposits can be made at any NSCC branch office or at NSCC's New York City facility for the same fee.

The underwriting pick-up fee is for NSCC picking up a participant's share of a distribution from the underwriter and delivering it to the participant's primary receive location. If a participant wants to deliver all or part of the securities to another location, to another participant, or to a third party, it utilizes other NSCC services such as CDCS or the envelope system and pays the additional fees.

Physical receives is a service whereby NSCC, if instructed by a participant, will accept delivery of securities on behalf of that participant either free or against payment. The delivery can be made to any NSCC branch office, and NSCC will take deliveries from anyone. The fee includes redelivery of the securities to the receiving participant's primary receive location.

Depository handling fees are for NSCC acting as a participant's agent

⁹A designated valued delivery is an instruction to CNS from a special representative to transfer a valued position (that is, one against which money is owed) directly from one NSCC participant to another or, through a clearing interface, to a nonparticipant. For a discussion of special representative procedures, see, Securities Exchange Act release No. 13456 (Apr. 21, 1977), 42 FR 21881.

¹⁰A security order is an instruction to deliver or receive securities outside of the CNS system. Those instructions are generated when securities are not eligible for CNS processing or when both parties to a transaction wish to settle outside the CNS system. Security orders may be issued on an item-by-item basis or netted through balance order procedures.

¹¹In making book-entry deliveries of securities from the depository accounts of participants with CNS short positions to the depository accounts of participants with CNS long positions, NSCC makes its first attempt to deliver on the evening prior to settlement date and then makes repeated attempts on settlement date. Often, a participant with a short position will not have sufficient securities available to meet its entire delivery requirement until several passes have been made. As a result, NSCC may have to make two or more deliveries to satisfy a receiving participant's long position. Because the receiving participant has no control over when there are sufficient securities in the system to fill its long position, NSCC will treat multiple receipts in a security as one receipt for billing purposes.

¹²NSCC indicated that it set a lower fee for night cycle processing because computer processing costs during the night are lower, and it wants to encourage participants to have sufficient securities available for night cycle deliveries.

at the Depository Trust Co. ("DTC"). Through NSCC, a participant can deposit securities into and withdraw securities from its DTC account, or give instructions to DTC. This service also can be combined with NSCC's envelope system or CDCS.

6. *Special services.* This category of services includes the National Transfer Service ("NTS"), the Dividend Settlement Service ("DSS"), options processing, the customer transfer service and commission billing. These fees are based on per-item charges.

The National Transfer Service is a service in which participants deliver envelopes to NSCC containing securities for transfer. NSCC sorts the envelopes, batches them and sends them to the appropriate transfer agent. This service currently operates only in New York City and only runs to certain transfer agents.

The customer transfer service, another NSCC transfer service, will operate both in and outside of New York City and will run to any transfer agent. In this service, NSCC does not merely deliver envelopes to transfer agents but rather acts as the participant's agent in effecting the transfer.

The Dividend Settlement Service provides a system for processing dividend claims. In brief, a participant submits to NSCC in-house proof of entitlement to payment of the dividend and a notice that within 5 days it will submit a claim. Upon receipt of the claim form, NSCC credits the participant's settlement account with the money value stated on the claim and debits the settlement account of the participant against whom the claim was made. A reclaim procedure is available. DSS currently is limited to New York City.

Options processing fees are for NSCC acting as a participant's agent in comparing American Stock Exchange ("Amex") option transactions or for acting as a participant's agent at the Options Clearing Corporation ("OCC").¹³ NSCC also will do a participant's OCC cashing. OCC cashing involves accounting for money obligations between OCC and a participant, principally margin obligations and premiums.

Commission billing is a service that participants can use to collect commissions from other participants. NSCC indicated that this service is used principally by specialists and floor brokers on the American and New York Stock Exchanges.

7. *Direct clearing.* Direct clearing is a service that NSCC provides for SCC and ASECC Division participants who do not want to maintain a New York City presence. NSCC, in effect, acts as the direct clearing participants' New

York City agent. Currently, NSCC participants who use direct clearing pay a fee of \$0.50 per transaction for NSCC acting as their New York City presence plus a monthly fee of \$1,000. Direct clearing participants also pay variable monthly fees designed to recover the remainder of NSCC's cost of providing direct clearing. Those variable fees are \$x per delivery and receipt and \$x per \$1,000 of value of each delivery or receipt. In addition, direct clearing participants pay the same fees as other NSCC participants for certain other services.

Under the new fee schedule, both the variable charges for direct clearing and the \$1,000 monthly charge will be eliminated. Instead, direct clearing participants will pay the same fees other NSCC participants pay for services. NSCC, however, will continue to collect \$0.50 per transaction for acting as the direct clearing members' New York City presence.

8. *Interface fees.* NSCC ceased charging fees for clearing and settling transactions through interfaces in the summer of 1977. NSCC's filing formally removes those fees from the fee schedule. NSCC, however, will retain a charge for interface exclusion and inclusion instructions.¹⁴

9. *DTC sponsored accounts.* Because the SCC and ASECC Divisions of NSCC are operationally linked with DTC, SCC and ASECC Division participants currently also have to be DTC participants. For those participants who do not believe their activity justifies DTC participation or, who, for other reasons, do not wish to be DTC participants, NSCC will open a sponsored account at DTC. NSCC's fees for this service will be \$0.75 for each delivery or receipt to or from the sponsored account plus a passthrough of all related DTC fees except for DTC membership fees. There will be a maximum charge of \$400 per month for deliveries and receipts. NSCC indicated that it set the maximum fee higher than DTC's \$260 per month membership fee to encourage participants with sufficient volume to join DTC directly.

C. NSCC'S ESTIMATE OF THE EFFECT OF THE PROPOSED FEE SCHEDULE ON ITS PARTICIPANTS

After formulating its proposed fee schedule, NSCC tested the effect of the proposed fee schedule on sample groups of participants. The sample groups used were: (1) Retail wire houses; (2) institutional houses; (3)

¹⁴For example, if an NSCC participant has left standing instructions with NSCC to ship compared trades through an interface to another clearing agency for clearance and settlement, the participant can instruct NSCC to exclude certain transactions from its standing instructions.

OTC market makers; (4) specialists; (5) regional firms using direct clearing; (6) regional firms with a New York City office; and (7) banks. NSCC also ran a test against the average activity of essentially all its participants.¹⁵

In its test, NSCC estimated that, at an average daily cleared volume level of 16.4 million shares from the NYSE, 1.8 million shares from Amex and 3.1 million shares from the OTC market, revenues produced by the current fees would equal revenues produced by the new fees. At the average daily volume level of the four sample months discussed earlier¹⁶ (20.6 million shares from the NYSE, 2.2 million from Amex and 3.9 million from the OTC market), NSCC's figures show that participants would experience a reduction in fees (after rebates) of \$3,540,000 per year. NSCC believes that at higher volume levels participants will experience greater savings.

NSCC's estimate of the impact of the proposed fee schedule on the different classes of participants at the average volume level of the four test months was:

	Average monthly fee		
	Current fee structure	Proposed fee structure	Percent change
Retail wire houses.....	\$57,859	\$53,526	-7.5
Institutional houses.....	35,488	29,476	-16.9
OTC market makers ¹⁷	16,254	10,009	-38.4
Specialists.....	5,200	5,722	10.0
Regional firms—direct clearing.....	17,476	11,567	-33.8
Regional firms—NYC office.....	9,697	10,597	9.3
Banks.....	5,467	12,035	120.0
Average participant.....	8,831	7,908	-10.4

¹⁷Much of the reduction in OTC processing costs reflects savings anticipated to result from the transfer of OTC processing from the NCC Division to the SCC Division.

As another measure, NSCC, using the same volume levels, ran a test to estimate the effect of only the proposed fees for trade comparison and clearance processing. The result of that test, expressed in cost per side and cost per 100 shares, was:

	Current schedule		Proposed schedule	
	Per side	Per 100 shares	Per side	Per 100 shares
Retail wire houses.....	\$0.555	\$0.189	\$0.518	\$0.176
Institutional houses.....	.800	.110	.819	.112
OTC market makers ¹⁸	1.452	.322	.653	.145
Specialists.....	.295	.080	.322	.087
Regional firms—direct clearing.....	.900	.274	.871	.265
Regional firms—NYC office.....	.794	.300	.819	.310

¹⁸The comment made in footnote 17 also applies here.

¹⁹A few inactive participants were excluded.

²⁰Supra p. 3.

¹³NSCC currently relates only to OCC's New York City office.

COMMENTS RECEIVED ON NSCC'S FEE SCHEDULE

A. *TAD Depository Corp. ("TAD")*. TAD, which ceased doing business earlier this year, had reached an agreement with NSCC to establish an interface. TAD's comments related to that interface. TAD's first comment was that, since NSCC would open sponsored accounts at DTC for NSCC participants who did not want to have their own DTC account, NSCC, if requested by NSCC participants, should open sponsored accounts for them at TAD. TAD's other comments related to NSCC developing two fee schedules, one based on DTC fees and one based on TAD fees.

In view of TAD's determination to cease operations, it is not possible to be responsive to TAD's comments. If TAD chooses to resume operations, the Commission will consider its comments at that time.

B. *Salomon Bros.* Salomon Bros. stated that, overall, the new NSCC fee schedule was an improvement. It suggested, however, that fees for envelope deliveries should not be based on the time when an envelope is submitted for delivery. Salomon Bros. argued that it has no control over when it receives securities needed for redelivery.

In response to Salomon Bros.' comment, NSCC stated that there is a fee differential based on the time an envelope is submitted for delivery in order to encourage participants to submit their envelopes early. NSCC continued that, the earlier a delivery is made, the greater the opportunity for receiving participants, like Salomon Bros., to turn those securities around the same day. NSCC indicated that early deliveries also will help it to process envelope deliveries more smoothly.

The Commission believes NSCC's policy of using its fee schedule to encourage early deliveries will promote more efficient clearing and therefore is appropriate.

C. *The Chase Manhattan Bank, N.A. ("Chase Manhattan")*. With regard to the envelope settlement system and CDCS, NSCC initially proposed a fee based on both a per-item charge and a charge for the value of the securities being delivered. NSCC's rationale was that those two services were designed to provide for the safekeeping and rapid turnaround of higher valued securities and that, as a result, higher valued securities should bear a proportionately greater share of the cost. Also, NSCC felt that the cost of those services should be related to the risk of loss to the clearing corporation.

Chase Manhattan commented that the cost of delivering envelopes is not greatly affected by the value of the securities in the envelopes. Chase Manhattan continued that, as a result, fees

should be based on a per-item charge and not on both a per-item charge and a charge related to the value of the securities. In response to that and other comments, NSCC, noting that the increased costs for insurance were not significant in relation to the total cost of the envelope system, changed the fee.

D. *Stifel, Nicolaus & Co., Inc. ("Stifel, Nicolaus")*. Stifel, Nicolaus commented that the clearance processing charge should be based on the number of sides submitted rather than on receipts and deliveries. Stifel, Nicolaus felt that a fee based on deliveries. Stifel, Nicolaus felt that a fee based on deliveries and receipts discriminated in favor of participants that submitted a large number of trades. Stifel, Nicolaus stated that, for example, using the NSCC fee of \$1 for night cycle deliveries to CNS, a small firm with ten trades in a security which net to one delivery obligation would pay an effective rate of \$0.10 per trade for clearance processing while a larger broker with 50 trades which net to one delivery obligation would pay only \$0.02 per trade.

The principal work of clearance processing in NSCC's CNS system is effecting deliveries to and receipts from participants' depository accounts and generating money settlement instructions. These are services related not to the number of sides submitted for clearance processing but rather to the number of netted positions. For example, if a CNS participant has two trades in a particular stock, both purchases of 100 shares, the participant will have a net long position of 200 shares, and NSCC will make one book-entry delivery of 200 shares to that participant's depository account on settlement day. If another participant had bought 100 shares and sold 100 shares, its CNS position would net to zero, and NSCC would make no book-entry movement either into or out of the participant's depository account.

Under NSCC's new fee schedule, both participants would pay for the comparison of two sides, but only the first would pay for clearance and settlement. Under Stifel, Nicolaus' rationale, NSCC would charge both participants for comparison and for clearance processing even though, in the latter case, there was no delivery into or out of the participant's depository account. Stifel, Nicolaus' theory is that the benefit to both brokers is equal. NSCC's theory is that the processing cost is not the same for both brokers and that fees should be based on cost, not benefit. The Commission believes NSCC's selection of deliveries and receipts as the basis for its clearance processing fee reasonably allocates the costs of that service among

participants and is, therefore, appropriate.

E. *Bradford Securities Processing Services, Inc. ("BSPS")*. BSPS had several comments. Its first was that where NSCC had little or no direct competition (trade comparison and recording and envelope settlement) its fees were above cost and where there was a competitor (physical receipts and deliveries) its fees were below cost. As evidence, BSPS stated that for physical receipts and deliveries its fees and those of banks it surveyed were much higher. BSPS continued that NSCC's fees for physical receipts and deliveries were below BSPS's cost for performing similar services.

BSPS comments that the fees for the envelope settlement service should not be based on the value of the contents of the envelope but rather on the number of deliveries and the ancillary services involved. BSPS also was concerned about NSCC proposing fees for services (order outs from clearing and deposits to clearing) when NSCC did not then offer those services.

In addition, BSPS argued that the comparison fee should be a per-item charge rather than a charge based on the number of shares being compared. BSPS stated that the cost of doing comparison is unrelated to the number of shares compared.

BSPS indicated that it had developed a rough model of NSCC's proposed fee structure and that it discriminated against associate members and specialists and favored retail and institutional broker-dealers. BSPS also stated that NSCC had not established a sufficient basis for justifying the new fee structure.

Finally, BSPS requested an interface with NSCC.

BSPS' initial comment is that NSCC is engaging in predatory pricing by allowing revenues from services where there is little competition to subsidize services where there is competition, thus setting artificially low prices. BSPS also suggested that certain groups of NSCC participants are discriminated against and that NSCC has not developed a sufficient basis for its fee schedule. Although BSPS presented no data to support its allegations, the Commission nevertheless requested NSCC to review its proposed fee schedule with its independent public accountant and have its accountant issue a report on certain aspects of NSCC's proposed fee schedule. The Commission believes that the data submitted by NSCC, in particular the report of NSCC's independent public accountant, demonstrate that, when developed, NSCC's fees for individual services were reasonably related to the projected cost of providing those services and that the bases for allocating cost to lines of service also were rea-

sonable. Moreover, the Commission has requested and received from NSCC an undertaking that, among other things, it will promptly update and revise its fee schedule in the light of actual operating experience.

BSPS's suggestion that NSCC should base its envelope settlement fee on the number of deliveries and not on the value of the securities being delivered was incorporated into NSCC's fee schedule. As for BSPS's comment on NSCC proposing fees for services not yet established, the Commission recently approved a rule change, SR-NSCC-77-10 (Securities Exchange Act release No. 15142, September 13, 1978) which, among other things, permits NSCC's SCC Division to offer those services.

In considering NSCC's choice of a per-share basis, rather than one based on the number of sides, the Commission reviewed the rationale advanced by NSCC.¹⁹ NSCC appears to have made a reasonable choice among alternatives by selecting one which, among other things, favors best execution. Moreover, the Commission found it significant that no participant using NSCC's comparison service objected to a per-share basis for NSCC's comparison fee.²⁰ While the Commission, as a result has determined to permit the fee as proposed, the Commission will ask NSCC, in preparing its revised fee schedule, to reexamine its choice of a per-share basis and provide further data on the effect of that choice on various groups of participants.

Finally, the Commission does not consider it appropriate to consider BSPS's request for an interface in the context of approving NSCC's fee schedule under Rule 19b-4. Development of interfaces among clearing agencies in general, and BSPS's request in particular, have been and will continue to be part of the Commission's ongoing responsibilities with regard to the national clearance and settlement system. The Commission stands ready, at anytime, to work with NSCC and BSPS regarding the establishment of an interface between them.

F. Pacific Clearing Corp. PCC's first comment was that there should not be a participant fee of up to \$100 per month for trade processing in addition to separate fees for comparison. PCC argued that it did not object to a fee for comparison, but that the participant fee forces brokers who clear and settle New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") trades at a regional clearing corporation to pay "membership dues" to NSCC.

PCC also stated that the NYSE and Amex trade comparison system is "antiquated" and forces regional brokers either to maintain a New York City presence, use a correspondent, or pay the NSCC direct clearing charge of \$0.50 per side for remote trade comparison. PCC argued that regional brokers, having established one of those three arrangements for comparison of NYSE and Amex transactions were likely to stay at NSCC for clearance and settlement. In addition, PCC argued that: (i) NSCC's proposed fee for comparison was too high;²¹ (ii) NSCC should supply a cost justification for the direct clearing fee of \$0.50 per transaction (which PCC refers to as a "remote comparison fee"); and (iii) NSCC should charge that direct clearing fee only when transactions compared through direct clearing procedures fail to compare on the first comparison cycle.

PCC felt that NSCC's trade recording fee is an inappropriate toll on brokers who execute transactions in markets other than the NYSE and Amex and clear at NSCC. PCC indicated that it charges no trade recording fee.

PCC argued that basing NSCC's clearance processing fee on the number of deliveries and receipts (a netted fee) rather than on cleared shares encourages regional brokers to use correspondents.

Finally, PCC stated that the regulatory fee collected by NSCC for the NYSE and Amex is not related to the cost of the regulatory services NSCC receives and that the excess represented "royalties" to the NYSE and Amex.²²

NSCC's participant fee for trade processing is designed to recover the administrative costs of providing trade processing. In that sense, PCC is correct that that fee is similar to a "membership fee." A fee based on cost is not predatory, however, and the Commission believes that the information NSCC submitted in conjunction with its fee schedule demonstrates that NSCC's fees for individual services, when developed, were reasonably related to the projected cost of providing those services. Similarly, with regard to PCC's concerns about NSCC justifying its direct clearing fee and about NSCC's comparison fee being too high, the Commission believes that NSCC has demonstrated that its fees, when developed, were reasonably related to cost. In addition, the Com-

mission has requested and received from NSCC an undertaking that, among other things, it will promptly update and revise its fee schedule in the light of actual operating experience.

With regard to PCC's concern about the NYSE and Amex comparison system being "antiquated," NSCC's participants have not expressed to the Commission dissatisfaction with that process, and NSCC has argued that its procedures for comparison best meet the needs of its participants. Accordingly, the Commission does not find PCC's charge that the system is antiquated, of itself, a sufficient reason to reexamine NSCC's comparison procedure at this time.

PCC is concerned, however, that broker-dealers who are potential regional clearing agency participants will be discouraged from regional participation by NSCC's comparison process. That concern appears to stem from a misunderstanding of the requirements of the Commission's order granting NSCC registration as a clearing agency (Securities Exchange Act release No. 13163, Jan. 13, 1977). PCC suggests that brokers must compare NYSE and Amex trades either by having a New York City office, using a correspondent, or using direct clearing. PCC then argues that brokers which utilize a correspondent for comparison will also use it for clearance and settlement. Similarly, if brokers bear the expense of opening a New York City back office for comparison, PCC believes they will use it to complete the clearing process as well. Accordingly, the only alternative, in PCC's view, that permits comparison of NYSE and Amex trades at NSCC and clearance and settlement elsewhere is direct clearing.

PCC's argument appears to continue that, if direct clearing fees are unduly high that creates a "front-end load" that locks brokers into NSCC. In effect, if the \$0.50 charge for direct clearing results in participants paying more than cost for comparison but less than cost for clearance and settlement at NSCC, it will inhibit movement to other clearing agencies.²³ PCC therefore proposes that NSCC only charge a direct clearing fee when a trade fails to compare on the first comparison cycle.

²³For example, if total fees for a transaction were \$1.50 at clearing agency A, divided into \$1 for comparison (more than cost) and \$0.50 for clearing and settlement (less than cost), while clearing agency B charged \$0.50 for comparison and \$1 for clearing and settlement (assumed to be a cost-based allocation), participants who compare transactions at clearing agency A would tend to stay for clearing and settlement paying a total of \$1.50 rather than move compared trades to clearing agency B and incur fees of \$2 (\$1 for comparison at A and \$1 for clearing and settlement at B).

¹⁹Discussed supra pp. 5-6.

²⁰BSPS, which raised the only objection to NSCC's use of a per-share basis for its comparison fee, does not use NSCC's comparison service.

²¹As noted, supra p. 4, NSCC proposes to charge the same fee for comparison regardless of whether a participant relates to NSCC through NSCC's New York City facility, through a branch office or through NSCC's direct clearing procedures.

²²Although PCC does not mention it in its comment letter, NSCC also collects this fee for the National Association of Securities Dealers, Inc. (the "NASD").

This misperceives the situation in three ways. First, the NSCC registration order required NSCC to provide for remote comparison including comparison through other clearing agencies. Thus brokers are not required to utilize direct clearing. Second, the \$0.50 fee is not, in any case, a comparison fee but rather a fee for NSCC acting as a participant's New York City agent. The comparison fee is the same regardless of how a participant relates to NSCC. Third, NSCC's fee is cost-based. Eliminating the charge entirely, or, as PCC suggests, eliminating it when trades compare on the first cycle, would subsidize participants who utilize direct clearing and shift those expenses elsewhere, causing other NSCC services to be no longer cost-based. Accordingly, the Commission views PCC's proposal as inappropriate.

PCC argues that NSCC's trade recording fee discourages trading on regional exchanges in that brokers who choose to clear and settle transactions at NSCC and who trade on regional exchanges will have to pay both a comparison fee to the clearing agency affiliated with the regional exchange and a trade recording fee to NSCC. PCC continues that, if those brokers executed their transactions on the NYSE and Amex, they would pay only a comparison fee. PCC concludes that the trade recording fee is a toll on executions outside of New York City and is, in effect, an interface fee that is imposed only on NSCC participants who execute outside New York.²⁴

PCC's argument is not that the trade recording fee discourages regional clearing, but rather that it discourages regional execution.²⁵ The Commission, however, in the absence of more persuasive evidence, cannot conclude that a trade recording fee of \$0.03 per hundred shares would influence a broker's choice of market of execution for a transaction.

PCC also was concerned that NSCC charges a clearance processing fee based on deliveries and receipts. PCC felt that such a fee would encourage the use of correspondents. PCC's argument centers on the fact that, in NSCC's ASECC and SCC Division system, the greater the number of transactions a participant has in a particular security, the lower the cost per transaction of clearance processing for that participant. That is, an NSCC

participant with 10 transactions in a security on a particular day will pay the same clearance processing fee as a participant with one transaction that day.²⁶ PCC believes that correspondents, by combining the processing volume of many brokers, will achieve lower clearing fees and can use those savings as a means of attracting customers.

Assuming PCC's analysis is correct and a correspondent would have clearance processing fees smaller than the sum of the clearance processing fees its customers would incur if each customer were a direct participant, that does not necessarily lead to the conclusion PCC draws. First, the savings achieved by correspondents may not be substantial in terms of overall clearing costs. In any case, the correspondents may choose not to pass the savings back to their broker-dealer customers. Second, correspondents charge for their services, and those charges may offset any savings. Third, correspondents tend to offer a package of services often including research and execution as well as comparison, clearing, and settlement, and it would be difficult to demonstrate that the NSCC clearance processing fee was the controlling factor in a broker's decision to use a correspondent. Last, the Commission believes NSCC's selection of deliveries and receipts as the basis of its clearance processing fee more reasonably allocates the costs of that service among NSCC participants than a fee based on cleared shares. In the system operated by the ASECC and SCC Divisions, there is no more work involved in making a delivery of 100 shares than of 1,000 shares.

Nevertheless, the Commission will ask NSCC in revising its fee schedule to study this matter further and to present data on the extent to which this fee may have a competitive impact. The Commission also will examine the problem as part of its ongoing monitoring program. In the interim, however, because the fee is derived from a reasonable allocation of NSCC's costs to the service provided, the Commission believes it should be permitted.

Finally, with regard to PCC's concern about NSCC collecting the NYSE and Amex regulatory fee, it is not clear whether PCC objects to the existence of an additional \$0.12 per side charge in NSCC's fees or to NSCC's collecting that charge. In the former case, the additional \$0.12 would tend to make NSCC's charges less competitive *vis-a-vis* other clearing agencies such as PCC. In the latter case, it is a common practice for clearing agencies to collect charges imposed on their

broker-dealer participants by entities other than the clearing agency. Moreover, in granting NSCC registration as a clearing agency, the Commission considered, and found appropriate, NSCC's decision to collect that regulatory fee (Securities Exchange Act release No. 13163 (Jan. 13, 1977), pp. 98-101).²⁷

APPROVAL OF NSCC'S PROPOSED FEE SCHEDULE

The information submitted by NSCC in connection with its proposed fee schedule, in particular the PW report, demonstrates that, at the time they were developed, NSCC's proposed fees reasonably approximated the projected cost of providing the respective services and that the basis for allocating costs to lines of service also was reasonable. In establishing specific fees, however, NSCC considered other factors, particularly geographic price mutualization, that in some situations may cause fees paid by an individual participant to vary from the cost of providing a service to that participant. Even in those instances, NSCC related the overall fees for a service to the estimated cost of providing that service. Moreover, NSCC's plan to rebate excess revenues is intended to ensure that, in the event actual expenses and gross revenues vary from NSCC's projections because of fluctuations in volume or other factors, net revenues will remain tied to the cost of operations.²⁸

The Commission recognizes, however, that certain changes have occurred since NSCC's fee schedule was prepared that may have affected NSCC's estimate of its cost for providing services. The first is that DTC, to which NSCC pays a significant amount of fees, instituted a new fee schedule after NSCC's cost analysis was completed. NSCC indicated that it was uncertain whether the net effect of the new DTC fees would be to increase or decrease its costs. The second is that NSCC has experienced a loss of participants due principally to mergers. The third is that the average volume of shares cleared by NSCC has in-

²⁴ The Commission, however, indicated its intention to review the appropriateness of NSCC collecting that fee upon resolution of certain issues described in release No. 13163.

²⁵ Although the rebate will be given across-the-board and not only to those participants using the particular services generating excess revenues, the Commission does not believe that at this time it is necessary to require NSCC to compute the excess revenues attributable to specific services and rebate those revenues on a pro rata basis to the participants using those services. No NSCC participant or other interested person objected to NSCC's decision to use an across-the-board rebate. The Commission, however, will ask NSCC to consider the feasibility and desirability of a service-by-service rebate in revising its fee schedule.

²⁶ Regional participants who execute in New York but clear regionally would pay only the NSCC comparison fee (if the regional clearing agency, like PCC, charged no trade recording fee). On the other hand, brokers who execute regionally, would be encouraged by this fee to clear regionally and not at NSCC in order to avoid the double fee.

²⁷ If anything, it encourages regional clearing. See, footnote 24.

²⁸ This is also discussed in conjunction with the Stifel, Nicolaus comment letter, supra p. 15.

creased since NSCC made its cost analysis. And the last is that NSCC has not accounted for the effects of inflation.²⁹

Nevertheless, the Commission has decided to approve NSCC's fee schedule at this time, rather than have NSCC submit a revised proposed fee schedule, for three reasons. First, there always will be a gap between the time a fee schedule is developed and its effective date. That results from the need to gather underlying data regarding participants' activities; prepare, test and revise fees; and obtain participants' comments, board approval, and Commission approval.³⁰

Second, the implementation of the fee schedule is necessary to facilitate NSCC's transfer of OTC processing from its NCC Division to a separate processing stream within its SCC Division. As discussed in Securities Exchange Act releases Nos. 15143 and 15221 this step is expected to have important benefits for the development of a national clearance and settlement system and for the investing public.³¹ Third, modifications based on hypothetical projections would not be as accurate as those made in the light of day-to-day experience.

In view of the changes which have occurred since NSCC developed its fee schedule, however, the Commission has requested and received from NSCC an undertaking that it will: (i) Update and revise the fee schedule promptly in light of actual operating experience; (ii) present with the revised fee schedule such information as the Commission may request on the effects of geographic price mutualization or other pertinent factors; and (iii) review the revisions and information with its independent public accountant.

The Commission also has considered the opinion of the United States Court of Appeals for the District of Columbia Circuit in *Bradford National Clearing Corp., et al. v. Securities and Exchange Commission* (D.C. Cir. Nos. 77-1199, and 77-1547, Sept. 19, 1978) in reviewing NSCC's proposed fee schedule. The Court affirmed the order

granting NSCC registration as a clearing agency but remanded two issues to the Commission for further consideration. One of those issues was the use by NSCC of geographic price mutualization ("GPM").³²

Specifically, the Court requested that the Commission—

[provide] a better explanation, if one exists, of how GPM may be utilized without thwarting regional [clearing agency] competition. Failing that, the Commission must either condition registration on NSCC's abandonment of GPM, or at least convincingly conclude that the loss of regional competition engendered by GPM will not upset the favorable balance of benefits and anti-competitive effects that [the Commission] originally calculated on the assumption that such competition would exist. (Op., P. 54.)

The Commission has been monitoring the effects of NSCC's registration, including NSCC's use of GPM. Among other things, the Commission in its Hearings into the Development of a National Clearance and Settlement System (File No. 600-15, Mar. 6-10 and Apr. 19-20, 1978) requested comment upon "whether there currently are geographic differences in the costs of engaging in business as a broker or dealer which make inappropriate geographic mutualization of charges for clearing and settlement services."³³ More recently, the Commission requested and received from NSCC an undertaking that NSCC will, among other things, provide the Commission with data on the effects of geographic price mutualization.

The Commission, prior to approval of NSCC's revised fee schedule, and prior to determining whether NSCC should be permitted to begin Phase II operations, will examine fully and resolve the issue of NSCC's use of geographic price mutualization. Until consideration of GPM is completed, the Commission believes that it is appropriate to attach certain conditions to its approval of NSCC's fee schedule. Those conditions are designed to restrict NSCC's use of GPM.

There are two principal ways in which NSCC has incorporated geographic price mutualization into its proposed fee schedule. The first is that NSCC proposes to charge participants the same fees for comparing, clearing and settling transactions regardless of whether they relate to NSCC through NSCC's New York City facility, through a branch office or through NSCC's direct clearing service.³⁴ Second, the fees for physical

handling services incorporate GPM through the primary receive location concept and through the use of a flat-rate charge for inter-city envelope deliveries.³⁵

Accordingly, the specific conditions that the Commission is imposing to restrict the use of GPM are: (i) NSCC may not, until further notice, compare, clear or settle transactions in listed securities through its branch offices or through other facilities located outside of New York City;³⁶ (ii) NSCC may not accept new participants into its direct clearing service unless NSCC has first given the Commission not less than 30 days notice, and the Commission may take appropriate steps to deny, limit or condition the use of direct clearing services by the prospective participants; and (iii) NSCC, in providing physical handling and envelope delivery services outside of New York City, must include in its fees the actual cost of transporting securities.

Accordingly, after careful review of all comments and data, and upon its own evaluation, the Commission finds that:

1. NSCC's proposed fees for individual services, when developed, were reasonably related to the projected cost of providing those services and the bases for allocating costs to lines of service likewise were reasonable. Furthermore, NSCC has undertaken to revise promptly its fee schedule in light of actual operating experience.

2. The new fee schedule is necessary and appropriate to facilitate NSCC's transfer of OTC processing from its NCC Division to a separate processing stream within the SCC Division.

action for acting as the direct clearing participants' New York City agent. With that exception, direct clearing participants will pay the same fees as other NSCC participants. See, *supra* p. 11 for a discussion of direct clearing fees.

²⁹ See, *supra* pp. 8-9.

³⁰ In imposing this condition, the Commission recognizes that NSCC participants will be able to compare, clear and settle transactions in over-the-counter ("OTC") securities through NSCC branch offices at a mutualized price. The NCC Division, however, already offers NSCC participants OTC clearing through the branch offices at a mutualized price, a pricing mechanism used since the National Clearing Corporation, one of NSCC's predecessors, began OTC processing. The Commission also recognizes that the switching of OTC processing to the SCC Division system will result in lower fees for OTC processing. The Commission believes, however, that permitting NSCC to continue to offer OTC clearing through branch offices at a mutualized price until the Commission finishes its consideration of the GPM issue, does not represent a substantial alteration of the status quo. The Commission does not anticipate a significant impact on regional clearing agency competition, particularly because of the restriction on processing listed transactions through NSCC's branch offices.

²⁹ As long as volume remains high, NSCC will continue to collect sufficient revenues to cover its costs. NSCC's projection of its break-even point is discussed *supra* p. 3.

³⁰ The task is more complex when, as here, an entire new fee schedule is being prepared.

³¹ In its letter of Sept. 13, 1978 (Securities Exchange Act release No. 15143) the Commission authorized NSCC to terminate the facilities management contract with Bradford National Clearing Corp. ("BNCC") for operation of the NCC Division and to switch OTC processing to the SCC Division. In its letter of Oct. 6, 1978 (Securities Exchange Act release No. 15221), the Commission declined to withdraw its authorization as requested by Bradford National Corp., parent of BNCC.

³² The other issue remanded to the Commission for further consideration was NSCC's selection, without competitive bidding, of the Securities Industry Automation Corp. as facilities manager of its consolidated system.

³³ Securities Exchange Act release No. 14411 (Jan. 25, 1978).

³⁴ With regard to direct clearing, NSCC proposes to charge a fee of \$0.50 per trans-

3. The conditions imposed will restrict NSCC's use of geographic price mutualization while the Commission is considering that issue.

4. Approval of the proposed fee schedule will not substantially improve NSCC's competitive position during the period prior to phase II.

Accordingly, the Commission finds the proposed rule change consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and, in particular, the requirements of section 17A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78(s)(b)(2), that the above-mentioned proposed rule change be approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29090 Filed 10-13-78; 8:45 am]

[8010-01-M]

[Rel. No. 20727 (70-5252)]

INDIANA AND MICHIGAN POWER CO. ET AL.

Proposed Amendments to Nuclear Fuel Leases

OCTOBER 6, 1978.

In the matter of Indiana & Michigan Power Co., care of American Electric Power Service Corp., 2 Broadway, New York, N.Y. 10004; Indiana & Michigan Electric Co., 2101 Spy Run Avenue, Fort Wayne, Ind. 46801; American Electric Power Co., Inc., 2 Broadway, New York, N.Y. 10004.

Notice is hereby given that American Electric Power Co., Inc. ("AEP"), a registered holding company, Indiana & Michigan Electric Co. ("I. & M.E."), an electric utility subsidiary company of AEP, and Indiana & Michigan Power Co. ("I. & M.P."), an electric generating subsidiary company of I. & M.E., have filed a posteffective amendment to an application-declaration previously filed with this Commission pursuant to sections 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By prior order in this proceeding (HCR No. 19950, March 21, 1977), I. & M.E. was authorized to assign its right, title, and interest in a nuclear material lease ("1971 Lease") to I. & M.P., without limiting or affecting I. & M.E.'s obligation under the 1971 Lease. The nuclear material as for use at unit 1 of I. & M.P.'s Donald C. Cook Nuclear Plant ("Cook Plant"). The order also permitted I. & M.P. to enter

another lease ("1977 Lease") for nuclear material to be used at unit 2 of the Cook Plant, with AEP executing a guaranty as to I. & M.P.'s obligations under the 1977 Lease. The lessor in both Leases is PruLease, Inc. ("PruLease"), a subsidiary of Pruco, Inc., which is a holding company subsidiary of Prudential Insurance Co. of America.

It is proposed that the 1971 and 1977 Leases be amended and restated as follows. The principal amendments to the 1971 Lease would (a) increase the maximum permitted unrecovered acquisition cost of PruLease, at any one time, from \$43,500,000 to \$75,000,000, (b) modify the formula for the calculation of rent so that (i) for nuclear material placed under lease subsequent to the effective date of the proposed posteffective amendment, that portion of rent which is based on money market rates will be at a rate equal to 1½ percent plus the rate on PruLease commercial paper (as opposed to the present rate of 1½ percent plus the higher of (A) the prime rate or (B) the rate on PruLease commercial paper) and (ii) there shall be included in the calculation of rent a nonusage fee equal to 1 percent per annum on the excess of the maximum permitted unrecovered acquisition cost over the average daily balance of the stipulated casualty value of all nuclear material under lease, (c) delete the option on the part of I. & M.P. to purchase the nuclear material for its fair market value or the stipulated casualty value, whichever is greater, upon a termination of the lease, and provide instead in that event for the payment by I. & M.P. to the lessor of an amount equal to the stipulated casualty value, whereupon PruLease is to release I. & M.P. all of PruLease's right, title, and interest in the nuclear material, and (d) effect certain other modifications of the text of the 1971 Lease. It is stated that the changes to the 1971 Lease described in terms (c) and (d) above will have the effect of conforming the terms of the 1971 Lease to the terms of the 1977 Lease. It is stated that the increase in the amount of maximum permitted unrecovered acquisition cost which may be outstanding at any one time is deemed desirable in light of increased costs for nuclear material and the revision of the rent formula is deemed desirable inasmuch as it is anticipated to result in lower rent. I. & M.P. will consent to the amendment and restatement and remain responsible for performance under the 1971 Lease.

The principal amendments to the 1977 Lease would (a) increase the maximum permitted unrecovered acquisition cost of PruLease, at any one time, from \$55 million to \$100 million and (b) change the formula for the calculation of rent so that it is identical

with the formula on the 1971 Lease. It is stated that the increase in the maximum permitted unrecovered acquisition cost and the revision of the rent formula are deemed desirable for the same reasons as in the case of the amendments of the 1971 Lease. AEP will agree to an amendment of its guaranty of the 1977 Lease.

The fees and expenses to be incurred in connection with the proposed transactions will be filed by further amendment. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions, except that I. & M.E. proposes to request the Public Service Corp. of Indiana, and I. & M.E. and I. & M.P. propose to request the Michigan Public Service Commission to authorize the 1971 Lease amendments, in each case to the extent they have jurisdiction thereof; and I. & M.P. proposes to request the latter commission to authorize the 1977 Lease amendments.

Notice is further given that any interested person may, not later than October 31, 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, as amended, 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 addresses, and proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said posteffective amendment or as it may be further amended, may be granted and permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29089 Filed 10-13-78; 8:45 am]

[8010-01-M]

[Rel. No. 15224 (SR-NYSE-76-44)]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

OCTOBER 6, 1978.

On September 13, 1976, the New York Stock Exchange, Inc. ("NYSE") 11 Wall Street, New York, N.Y. 10005, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and rule 19b-4 thereunder, copies of a proposed rule change. Under its proposal, the NYSE would delete rule 409(c), which requires that customers' confirmations bear a legend to enable a customer to determine the amount of any odd lot differential.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 34-12803, September 16, 1976) and by publication in the FEDERAL REGISTER (41 FR 41974, September 24, 1976). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

On October 6, 1978, the Commission announced the adoption of amend-

ments to rule 10b-10 under the Act.¹ Rule 10b-10, among other things, provides that a broker-dealer must disclose to his customers (1) whether he was charged an odd lot differential and (2) that the amount of the differential will be disclosed to the customer upon oral or written request. In light of the Commission's adoption of a uniform standard for disclosure of odd lot charges, NYSE rule 409(c) is no longer necessary. Retention of this rule would impose an unnecessary burden on NYSE members, who have indicated that it would be costly and operationally difficult for them to comply with NYSE rule 409(c) absent a fixed odd lot differential rate.

Accordingly, the Commission finds that the proposed rule change of the NYSE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29091 Filed 10-13-78; 8:45 am]

¹Securities Exchange Act Release No. 15219. Action on rule filing SR-NYSE-76-44 was delayed pending Commission adoption of rule 10b-10.

NEW APPLICATION

[4910-60-M]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

APPLICATIONS FOR EXEMPTIONS

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's hazardous materials regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein.

DATES: Comment period closes November 15, 1978.

ADDRESS: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 6500, Trans Point Building, 2100 Second Street SW., Washington, D.C.

Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

Application No.	Applicant	Regulation(s) affected	Nature of application
8077-N	Dependable Welding Service, Buckley, Calif.	49 CFR 173.247	To manufacture, mark and sell non-DOT specification steel drums comparable to DOT-5A specification for shipment of silicon tetrachloride. (Modes 1, 2.)
8078-N	Aerojet Solid Propulsion Co., Sacramento, Calif.	49 CFR 172.101, 175.30	To authorize shipments of a rocket motor, class B explosive, exceeding the weight limitation presently authorized by cargo-only aircraft. (Mode 4.)
8079-N	Container Corp. of America, Wilmington, Del.	49 CFR 178.35a	To manufacture, mark and sell DOT specification 28L polyethylene container using a higher density, higher melt index resin than presently prescribed for shipment of various hazardous materials. (Modes 1, 2, 3.)
8080-N	Diamond Shamrock Corp., Cleveland, Ohio	49 CFR 173.164	To authorize the shipment of an oxidizer in a DOT specification 105A300W pressurized tank car modified to a DOT specification 111A100W tank car with sparger equipment. (Mode 2.)
8081-N	National Aeronautics and Space Administration, Greenbelt, Md.	49 CFR 172.101, 175.30	To authorize the shipment of rocket motors, class B explosive, exceeding the weight limitation presently authorized by cargo-only aircraft. (Mode 4.)
8082-N	Arctic Foundations Inc., Anchorage, Alaska	49 CFR 172.101, 173.304, 175.3, 175.30	To authorize shipment of liquefied carbon dioxide in a non-DOT specification container exceeding the weight limitation presently authorized by cargo-only aircraft. (Mode 4.)
8083-N	Farrell Lines Inc., New York, N.Y.	49 CFR 172.101	To authorize transportation of carbon disulfide and nickel carbonyl aboard vessels carrying class A or B explosives. (Mode 3.)
8084-N	Ireco Chemical, Salt Lake City, Utah	49 CFR 173.65(a)(5)	To authorize shipment of high explosives with no liquid explosive ingredient nor any chlorate, containing over 5 pct moisture without the polyethylene bag closure or the 2L lining. (Mode 1.)
8085-N	Rallgard, Daggett, Calif.	49 CFR 179.100-23	To allow DOT 112A and 114A tank cars to be equipped with head shields having certain design deviations from those prescribed. (Mode 2.)

NEW APPLICATION—Continued

Application No.	Applicant	Regulation(s) affected	Nature of application
8086-N	Boeing Aerospace Co., Seattle, Wash.	49 CFR 173.119(a)(10)	To authorize shipment of a flammable liquid in a non-DOT specification aluminum container. (Mode 1.)
8087-N	Union Carbide Corp., Bound Brook, N.J.	49 CFR 173.154	To authorize the shipment of water reactive solids in DOT specification 56 portable tanks. (Mode 1.)
8088-N	Inland Steel Container, Chicago, Ill.	49 CFR 178.80-8, 178.97-6	To manufacture, mark and sell DOT specification 5 and 6 series drums using round pipe sections instead of rolled I-bar sections for the shipment of certain hazardous materials. (Modes 1, 2, 3, 4.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on October 6, 1978.

J. R. GROTHE,
Chief, Exemptions Branch,
Office of Hazardous Materials Regulation,
Materials Transportation Bureau.

[FR Doc. 78-29059 Filed 10-13-78; 8:45 am]

[4910-60-M]

APPLICATIONS FOR RENEWAL OR MODIFICATION OF EXEMPTIONS OR APPLICATIONS TO BECOME A PARTY TO AN EXEMPTION

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier FEDERAL REGISTER publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.), they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes October 31, 1978.

ADDRESSED TO: Dockets Branch, Information Services Division, Materi-

als Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for examination in the Dockets Branch, Room 6500, Trans Point Building, 2100 Second Street SW., Washington, D.C.

Application No.	Applicant	Renewal of exemption
2051-X	International Plastics, Inc., Colwich, Kans.	2051
2136-X	U.S. Department of Defense, Washington, D.C.	2136
3095-X	Dow Chemical Co., Tulsa, Okla.	3095
3193-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	3193
3216-X	Pennwalt Corp., Philadelphia, Pa.	3216
3216-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	3216
3768-X	Chemetron Corp., Chicago, Ill.	3768
3992-X	Olin Chemicals Group, Stamford, Conn.	3992
3992-X	Stauffer Chemical Co., Westport, Conn.	3992
3992-X	Linden Chlorine Products, Inc., Cranford, N.J.	3992
4453-X	W. A. Murphy, Inc., El Monte, Calif.	4453
4453-X	Strawn Explosives, Inc., Dallas, Tex.	4453
4607-X	Armstrong Laboratories Division, West Roxbury, Mass.	4607
4717-X	Stauffer Chemical Co., Westport, Conn.	4717
4803-X	Dow Chemical Co., Tulsa, Okla.	4803
4884-X	Union Carbide Corp., Tarrytown, N.Y.	4884
5038-X	Western Electric Co., Lee's Summit, Mo.	5038
5188-X	U.S. Department of Energy, Washington, D.C.	5188
5232-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	5232
5403-X	BJ-Hughes Inc., Midland, Tex.	5403
5403-X	Halliburton Services, Duncan, Okla.	5403

Application No.	Applicant	Renewal of exemption
5792-X	Stauffer Chemical Co., Westport, Conn.	5792
5792-X	El Paso Products Co., Odessa, Tex.	5792
5792-X	Publicker Industries Inc., Philadelphia, Pa.	5792
5820-X	ICI Americas Inc., Wilmington, Del.	5820
5825-X	Phillips Petroleum Co., Bartlesville, Okla.	5825
5944-X	Dow Chemical Co., Midland, Mich.	5944
5959-X	El Paso Products Co., Odessa, Tex.	5959
6016-X	Guttman Supply Co., Belle Vernon, Pa.	6016
6121-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	6121
6231-X	Lox Equipment Co., Livermore, Calif.	6231
6334-X	U.S. Department of Defense, Washington, D.C.	6334
6349-X	Air Industrial Gases, Murray Hill, N.J.	6349
6369-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	6369
6392-X	Stauffer Chemical Co., Westport, Conn.	6392
6418-X	Great Lakes Chemical Corp., El Dorado, Ark.	6418
6434-X	Mobil Chemical Co., Richmond, Va.	6434
6518-X	Union Carbide Corp., Bound Brook, N.J.	6518
6538-X	Aladdin Industries Inc., Nashville, Tenn.	6538
6563-X	Liquid Carbonic Corp., Chicago, Ill.	6563
6563-X	Mada Medical Products, Inc., Carlstadt, N.J.	6563
6569-X	Blue Star Line, Inc., San Francisco, Calif.	6569
6602-X	Great Lakes Chemical Corp., El Dorado, Ark.	6602
6606-X	Stauffer Chemical Co., Westport, Conn.	6606
6611-X	Air Products & Chemicals Inc., Allentown, Pa.	6611
6651-X	Heatbath Corp., Springfield, Mass.	6651
6651-X	Park Chemical Co., Detroit, Mich.	6651
6670-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	6670
6743-X	Atlas Powder Co., Dallas, Tex.	6743
6793-X	Traipak Ltd., Aylesbury, England.	6793
6802-X	Fitch Industrial & Welding Supply, Lawton, Okla.	6802

Application No.	Applicant	Renewal of exemption
6816-X	U.S. Department of Defense, Washington, D.C. ¹	6816
6844-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	6844
6847-X	United Foam Corp., Compton, Calif.	6847
6932-X	Ugine Kuhlmann of America, Inc., Paramus, N.J.	6932
6984-X	IMC Chemical Group, Inc., Allentown, Pa.	6984
7023-X	Western Electric Co., Inc., Greensboro, N.C.	7023
7046-X	J. T. Baker Chemical Co., Phillipsburg, N.J.	7046
7066-X	The Procter & Gamble Manufacturing Co., Cincinnati, Ohio.	7066
7085-X	California Seal Control Corp., San Pedro, Calif. ²	7085
7096-X	Fike Metal Products Corp., Blue Springs, Mo.	7096
7097-X	Fuller System, Inc., Woburn, Mass.	7097
7206-X	Ruan Transport Corp., Des Moines, Iowa.	7206
7275-X	Express Airways, Inc., Mojave, Calif.	7275
7567-X	Conus, Inc., Jonesboro, Ark.	7567
7568-X	W. A. Murphy, Inc., El Monte, Calif.	7568
7620-X	W. P. Butterfield (Engineers) Ltd., Shipley West Yorkshire, England.	7620
7620-X	Eastern Mediterranean (Container) Co., Ltd., London, England ³	7620
7650-X	ICI Americas, Inc., Wilmington, Del. ⁴	7650
7665-X	Phillips Petroleum Co., Houston, Tex.	7665
7683-X	Lubbock Manufacturing Co., Lubbock, Tex.	7683
7767-X	Hydraulic Research Textron, Pacoima, Calif.	7767
7820-X	LOWACO S.A., Geneva, Switzerland.	7820
7823-X	Allied Chemical Corp., Morristown, N.J.	7823
7828-X	Alaska International Air, Inc., Fairbanks, Alaska.	7828
7864-X	Callery Chemical Co., Callery, Pa.	7864
7881-X	FMC Corp., Philadelphia, Pa.	7881
7896-X	Monsanto Co., St. Louis, Mo. ⁵	7896
7922-X	Allied Chemical Corp., Mt. Clemens, Mich.	7922
7923-X	Allied Chemical Corp., Mt. Clemens, Mich.	7923

¹Renewal and to provide for shipments of certain compressed gases in DOT Specification 106A and 110A tanks by cargo vessel.

²Renewal and to authorize shipments of a water reactive flammable solid.

³Renewal and to delete the requirement for one-way travel time restriction, holding time tests, and requirements for certain venting reports.

⁴Renewal and to provide for certain tank design modifications.

⁵To authorize cargo vessel as an additional mode of transportation.

⁶Renewal and to authorize rail as an additional mode of transportation.

⁷To authorize certain tank design modifications.

⁸To renew and alter the retest period.

⁹To authorize shipment by rail as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
2587-P	Welding & Therapy Service, Inc., Louisville, Ky.	2587
2587-P	C & C Oxygen Co., Chattanooga, Tenn.	2587
3126-P	Hercules Inc., Wilmington, Del.	3126
4390-P	Cordova Chemical Co., Sacramento, Calif.	4390

Application No.	Applicant	Parties to exemption
5736-P	Mobil Chemical Co., Beaumont, Tex.	5736
6126-P	Hoffman-La Roche Inc., Nutley, N.J. ¹	6126
6626-P	Zimmer Welding Supplies & Service, Inc., Brooklyn, N.Y.	6626
6984-P	Piedmont Explosives, Inc., Statesville, N.C.	6984
6984-P	Hazard Explosives Co., Hazard, Ky.	6984
7052-P	Ultra Energy Inc., El Paso, Tex.	7052
7654-P	Mallinckrodt, Inc., St. Louis, Mo.	7654
7990-P	Georgla-Pacific Corp., Newport Beach, Calif.	7990
7990-P	FMC Corp., Philadelphia, Pa.	7990
7992-P	FMC Corp., Philadelphia, Pa.	7992
8078-P	National Aeronautics & Space Administration, Greenbelt, Md.	8078

¹To become a party to the exemption, accommodate packaging modification and to authorize transportation by common-carrier.

²To become a party to the exemption and provide for shipments aboard cargo vessel as additional mode of transportation.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on October 6, 1978.

J. R. GROTHE,
Chief, Exemptions Branch,
Office of Hazardous Materials
Regulation, Materials Transportation Bureau.

[FR Doc. 78-29060 Filed 10-13-78; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

[Docket No. IP78-8; Notice 1]

GENERAL MOTORS CORP.

Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corp. of Warren, Mich., has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or

other exercise of judgment concerning the merits of the petition.

General Motors has installed 48 improperly marked rims on heavy duty vehicles manufactured between August 1977 and October 1977. The rims should have been marked "22x7.50-5" and were instead marked "22.5x7.50-5." The rims are intended for use with tube-type wheels. The company argues that safety implications are "limited to situations where the marking was used in connection with replacing a tire on these rims." Petitioner points out that the correct information is already provided through the placard installed in the vehicle in accordance with Standard No. 120 and on the sidewall of the tire being replaced, both of which correctly instruct the reader to use a 22-inch tube-type tire. GM states that there is no tube-type tire available in the 22.5-inch size and that even if a tubeless tire could be mounted on the rim (which it considers improbable if not impossible) it would not be possible to inflate it because of incompatibility between tubeless tire valves and rim slots provided for tube tire valve stems.

The manufacture date of the rims is not stated. NHTSA notes that the rim marking requirements became effective August 1, 1977, and if the rims were manufactured on or after such date, the misinformation noted would appear to be a noncompliance with §5.2(b) of Standard No. 120. However, if the rims were manufactured before the effective date of §5.2, the trucks on which the wheels were installed could be viewed as incorporating a safety related defect. In either event, GM's petition is appropriate.

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corp. described above. Comments should refer to the docket number and be submitted: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the FEDERAL REGISTER pursuant to the authority indicated below.

Comment closing date: November 15, 1978.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on October 10, 1978.

MICHAEL M. FINKELSTEIN,
Acting Associate Administrator
for Rulemaking.

[FR Doc. 78-29181 Filed 10-13-78; 8:45 am]

[4910-59-M]

[Docket No. EX77-1; Notice 2]

MODULAR AMBULANCE CORP.

**PETITION FOR TEMPORARY EXEMPTION FROM
FEDERAL MOTOR VEHICLE SAFETY STAND-
ARD**

This notice grants the petition by Modular Ambulance Corp. of Grand Prairie, Tex. for a temporary exemption from 49 CFR 571.301-75, Motor Vehicle Safety Standard No. 301-75, Fuel System Integrity, on the basis that compliance would cause it substantial economic hardship.

Notice of the petition was published on December 20, 1976 (41 CFR 55409), and an opportunity afforded for comment.

Petitioner is a final-stage manufacturer which mounts ambulance bodies on chassis manufactured by Chevrolet, Ford, and Dodge. In its fiscal year ending April 30, 1976, it assembled 480 such vehicles. Apparently the incomplete vehicle manufacturers concerned have been unable to provide petitioner with sufficient information to enable it to certify the completed vehicle with assurances that it will comply with fuel system integrity requirements. The company "does not feel that any of the ambulances that we modify or convert would have to be modified to achieve compliance because we do not alter the fuel system at all other than to attach the fuel filler hoses provided by the chassis manufacturer." But it believes the only way to assure compliance with confidence is to submit its vehicles to testing and "we do not have the test facilities or equipment" necessary. It estimated that testing costs to meet September 1, 1976, requirements are \$218,500 and for those of September 1, 1977, almost \$70,000. These estimates are based upon the presumed necessity of actually crash testing many different vehicles. The company had a net loss of \$278,000 in its 1976 fiscal year, and a net income of \$228,000 in its 1975 fiscal year. A 3-year exemption was sought. Petitioner argued that the exemption would be consistent with traffic safety objectives and in the public interest since it will allow cities and States to purchase ambulances in establishing "their Emergency Medical Services Systems as provided for by the Department of Transportation and Health, Education, and Welfare."

Three comments were received on the petition, from the General Ser-

vices Administration of the United States of America, Chrysler Corp., and the Department of California Highway Patrol. All comments supported the petition.

The request by Modular Ambulance is similar to that frequently received by the agency and for which exemptions are granted, in that it represents the good faith belief of a manufacturer that the vehicle, in fact, complies but that the costs of testing are so expensive that to verify conformance would create hardship. Since Modular Ambulance does not alter the fuel system or the chassis of a vehicle that is certified as conforming when it is completed by its own chassis manufacturer (i.e., Chevrolet, Ford, Dodge) it would appear that there is a reasonable basis for its belief of conformance, and that an exemption would be consistent with traffic safety objectives. The costs of testing, which may be less than petitioner's estimate, would nevertheless appear to create hardship for a company which has a net loss of \$50,000 in its last 2 fiscal years. An exemption covering the 1978 and 1979 model years will afford petitioner time in which to verify conformance and, if required, to modify its product, on a financial plan that will be less burdensome. Provision of a temporary exemption to a manufacturer of ambulances is in the public interest.

In consideration of the foregoing Modular Ambulance Corp. is hereby granted NHTSA Exemption No. 77-1 from 49 CFR 571.301-75, expiring January 1, 1980.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410) delegation of authority at 49 CFR 1.50.)

Issued on October 6, 1978.

HOWARD DUGOFF,
Acting Administrator.

[FR Doc. 78-29180 Filed 10-13-78; 8:45 am]

[4910-59-M]

[Docket No. EX77-6; Notice 2]

TRAVEL EQUIPMENT CORP.

**Petition for Temporary Exemption From Federal
Motor Vehicle Safety Standard**

This notice grants in part the petition by Travel Equipment Corporation ("TEC" herein) of Goshen, Ind., for a temporary exemption from paragraph S6 of 49 CFR 571.301-75, Motor Vehicle Safety Standard No. 301-75, Fuel System Integrity, on the basis that compliance with the standard would cause it substantial economic hardship.

Notice of the petition was published on September 22, 1977, and an opportunity afforded for comment (42 FR 47908).

Paragraph S6 of Standard No. 301-75 sets forth requirements for barrier crash tests followed by static rollover. TEC manufactured 47 motor vehicles in the 12-month period before filing its petition. It receives completed and certified vans, altering them into ambulances and buses. It also manufactures and incomplete vehicle known as the Rescue Type III ambulance. The fuel system is not disturbed in any of the alterations but a larger alternator is installed "outboard and slightly below the original location". In the event of a 30 degree angle front barrier crash conducted in accordance with Standard No. 301-75 "it is possible that the alternator would be displaced inboard and down to a position of interference with fuel pump". TEC appears to believe that its vehicles would comply with Standard No. 301-75 but cannot be sure without testing them. It sought an exemption for 2 years, covering approximately 230 vehicles and estimated total compliance testing costs for the 1977 and 1978 model years as approximately \$208,000. The company had a net loss before taxes of \$39,000 in fiscal year 1976. TEC argued that an exemption would be in the public interest as "more and more community rescue services and fire departments are finding that the small van type ambulance is more versatile, more economical, and a proven method to bring much needed swift life saving and life-sustaining services to their citizens".

No comments were received on the petition.

Because petitioner converts vehicles that are already certified as conforming to Standard No. 301-75 without disturbing fuel system components it would appear that its compliance problems may, in fact, be minimal or nonexistent and confined only to the frontal barrier crash aspects of S6.1, rather than the whole spectrum of tests set forth in S6. In providing an exemption to TEC from S6.1 the agency has thus narrowed the scope from the petitioner's original request. The agency finds that a frontal barrier test and consequent engineering changes would cause substantial economic hardship to a company whose net loss before taxes in its last fiscal year was \$39,000. NHTSA notes also that TEC has requested an exemption for less than the statutory maximum. Because the vehicles are intended for public transit and medical use, a temporary exemption has been found to be in the public interest.

In consideration of the foregoing Travel Equipment Corp. is herewith granted NHTSA Exemption No. 77-6 from S6.1 of 49 CFR 571.301-75, Motor Vehicle Safety Standard No. 301-75, Fuel System Integrity, expiring December 1, 1979.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.50)

Issued on October 6, 1978.

HOWARD DUGOFF,
Acting Administrator.

[FR Doc. 78-29182 Filed 10-13-78; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

CENTRAL OFFICE EDUCATION AND TRAINING REVIEW PANEL

Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92-463 that a meeting of the Central Office Education and Training Review Panel authorized by section 1790(b), Title 38, United States Code, will be held in Room A-35, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. on November 14, 1978, at 10 a.m. The meeting will be held for the purpose of reviewing the decision of the Director, Veterans Administration Regional Office, Columbia, S.C., that benefits to all eligible persons enrolled in Southeastern Business College, 560 King Street, Charleston, S.C. 29403 be discontinued.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Larry R. Stockmoe, Education and Rehabilitation Service, Veterans Administration Central Office (phone 202-389-2850) prior to November 6, 1978.

Dated: October 6, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

[FR Doc. 78-29113 Filed 10-13-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 729]

ASSIGNMENT OF HEARINGS

OCTOBER 11, 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 139434 (Sub-5), Mid-America Express, Inc., now being assigned January 9, 1979, (1 day), at Omaha, NE, in a hearing room to be later designated.

MC 129387 (Sub-46), Payne Transportation, Inc., now being assigned January 10, 1979, (1 day), at Omaha, NE, in a hearing room to be later designated.

MC 114589 (Sub-202), Shaffer Trucking, Inc., now being assigned January 11, 1979, (2 days), at Omaha, NE, in a hearing room to be later designated.

MC 120427 (Sub-9), Williams Transfer, Inc., now being assigned January 15, 1979, (5 days), at Omaha, NE, in a hearing room to be later designated.

MC 144546F, Lawyer Trucking Inc., now being assigned for prehearing conference on November 21, 1978, at the Offices of Interstate Commerce Commission, Washington, DC.

MC 143446 (Sub-3F), Gary L. McCallister & Monte A. McCallister d.b.a. McCallister Bros., now assigned for hearing on October 16, 1978, at Denver, CO is postponed to November 28, 1978, (3 weeks), at Denver, CO, in a hearing room to be later designated.

MC 112304 (Sub-133F), Ace Coran Hauling & Rigging Co., now assigned for hearing on October 19, 1978, at Chicago, IL, is cancelled and application dismissed.

MC 142789, Wetco, Inc., d.b.a. Key Limousine, now assigned for hearing October 16, 1978, at Salt Lake City, UT is postponed indefinitely.

MC 107295 (Sub-73), Pre-Fab Transit Co., now being assigned October 31, 1978, (1 day), in Room No. 501, 150 Causeway, 5th floor, Boston, MA.

MC 144975F, Road Runner Trucking Co., Inc., now being assigned November 6, 1978, (1 day), in Room 501, 150 Causeway, 5th floor, Boston, MA.

MC 144225, Jadeel Trucking, Inc., now being assigned November 3, 1978, (1 day), in Room No. 501, 150 Causeway, 5th floor, Boston, MA.

MC 116915 (Sub-52F), Eck Miller Transportation Corp., now being assigned for prehearing conference on November 21, 1978, at the Offices of Interstate Commerce Commission, Washington, DC.

MC F13608, Arkansas Best Freight System, Inc.—Control and Merger—Navajo Freight Lines, No. FD-28771, Arkansas Best Freight System, Inc., No. FD-28772, Arkansas Best Freight System, Inc., now being assigned for prehearing conference on November 20, 1978, at the Offices of Interstate Commerce Commission, Washington, DC.

MC 113855 (Sub-430F), International Transport, Inc., now being assigned for hearing on December 7, 1978, at the Offices of Interstate Commerce Commission, Washington, DC.

MC 134477 (Sub-229F), Schanno Transportation, Inc., now being assigned for hearing on November 30, 1978, at the Offices of Interstate Commerce Commission, Washington, DC.

MC 109638 (Sub-32), Everette Truck Line, Inc., now being assigned for hearing on November 29, 1978, at the Offices of Inter-

state Commerce Commission, Washington, DC.

MC 18121 (Sub-19), Advance Transportation Co. & MC 18121 (Sub-20), Advance Transportation Co. are assigned for continued hearings on October 30, 1978 (5 days) at Waukesha, Wisconsin and will be held at Waukesha County Office Building, and will be continued on November 13, 1978 (5 days) at Madison, WI.

AB 43 (Sub-47), Illinois Central Gulf Railroad Co. Abandonment at Cherokee, Iowa and Sioux Falls, SD, in Cherokee, O'Brien, Sioux and Lyon Counties, Iowa, Rock County, MI and Minnehaha County, SD, now being assigned for continued hearing on October 24, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

AB 43 (Sub-47), Illinois Central Gulf Railroad Co. Abandonment at Cherokee, Iowa and Sioux Falls, SD, in Cherokee, O'Brien, Sioux and Lyon Counties, Iowa, Rock County, MI and Minnehaha County, SD, now assigned for continued hearing on October 24, 1978, at Washington, DC is postponed to October 26, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 143691 (Sub-8F), Pony Express Courier Corp., now being assigned December 4, 1978, (1 week), at Atlanta, GA, in Room 305, 1252 West Peachtree Street NW.

MC 36914 Georgia Intrastate Car Demurrage Rules-Free Time, now assigned November 23, 1978, (4 days), at Atlanta, GA, will be held in Room 305, 1252 West Peachtree Street NW.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-29161 Filed 10-13-78; 8:45 am]

[7590-01-M]

[Decisions Vol. No. 30]

DECISION-NOTICE

Correction

In FR Doc. 78-26196, appearing at page 42060 in the issue of Tuesday, September 19, 1978, in the second column on page 42066 under the heading, "MC 134282 (Sub-20F), in the 15th line, the stated abbreviation "MN" should read "NM."

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 11, 1978.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before October 31, 1978.

FSA 43611, Traffic Executive Association-Eastern Railroads, Agent's NO. E.R. 3074, rates on soda ash, in bulk, from East St. Louis, IL, and St. Louis, MO, to Huntington, WV, in Supp. 318 to its Tariff 400-S, I.C.C. C-382, to become effective November 11, 1978. Grounds for relief—water-truck competition.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-29162 Filed 10-13-78; 8:45 am]

[7035-01-M]

[Docket No. AB-31 (Sub-No. 5)]

**GRAND TRUNK WESTERN RAILROAD CO.
ABANDONMENT OF LAKE MICHIGAN CAR
FERRY OPERATIONS**

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 May 30, 1978, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, the present and future public convenience and necessity permit the abandonment by the Grand Trunk Western Railroad Co. of its Lake Michigan car ferry service between Muskegon, MI, and Milwaukee, WI. The distance by water between the described port cities is approximately 88.8 miles. The land considered for abandonment in the application consists of the ferry slip and support facilities at Milwaukee, WI. This parcel of land includes 6.3 acres owned by the applicant and 24.165 acres presently leased by applicant. The subject leasehold interest by its terms will expire in the year 2006. The abandonment is subject to the conditions for the protection of railroad employees, submitted by the Grand Trunk Western Railroad Company (Grand Trunk), Railway Labor Executives' Association (RLEA) and National Maritime Union (NMU) in lieu of the labor conditions originally imposed and further subject to the following conditions: (1) Where existing rates now apply via Chicago, IL, applicant shall support continuation of cross-lake mileages for rate making purposes; and, shall neither initiate any rate increases based on route distances, nor concur with any other carriers who shall seek to raise rates based solely on route distance changes because of applicant's car ferry abandonment; (2) that applicant establish and maintain at least one or more points of interchange or gateway for the future movement of cross-lake traffic on through routes via the C&O and Ann Arbor Ferry System, their successors and assigns; and (3) that the States of Michigan and Wisconsin, their agents or assigns, jointly or severally, be granted a first and prior right of refusal for purchase of applicant's two existing vessels, or either of them, upon like terms and conditions as to any bona fide offer of purchase, or in the absence of such an offer, at such price and terms as shall be mutu-

ally agreed upon: *Providing however*, That exercise of the option herein provided be contingent upon dedication of said vessels to continued use in cross-lake rail car ferry service; and option to expire 90 days following the effective date of final authorization of abandonment in this proceeding or 90 days from the effective date of the final decision of the Commission disposing of the application C&O to abandon its cross-lake ferry service, docket AB-18 (Sub-No. 21), whichever event shall last occur; and, that applicant shall maintain said vessels in current operating condition during the term of said option. A certificate of abandonment will be issued to the Grand Trunk Western Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, 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 the revenues which are attributable to such line of railroad and the avoidable cost of providing rail 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 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. 78-29163 Filed 10-13-78; 8:45 am]

[7035-01-M]

[Notice No. 116]

**MOTOR CARRIER BOARD TRANSFER
PROCEEDINGS**

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before November 15, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopsis form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77634, filed April 14, 1978. Transferee: A M & M, INC., Highway U.S. 45 North, Henderson, TN 38340. Transferor: Record Truck Line, Inc., P.O. Box 2646, Jackson, TN 38301. Representative: R. Connor Wiggins, Jr., Esq., 100 North Main No. 909, Memphis, TN 38103. Authority sought for purchase by transferee of operating rights of transferor as set forth in Certificate Nos. MC 125277, Subs 7 and 10, issued November 21, 1966, and September 17, 1971, respectively, and Permits Nos. MC 133220 Subs 1, 7, and 8, issued June 5, 1974, February 8, 1978, and June 5, 1974, respectively, as

follows: *Agricultural machinery, implements and parts*, from the plantsite of Ferguson Manufacturing Co., Inc., at Suffolk, VA to points in AR, AZ, AL, CA, MS, TN, TX, OK, CO, IA, ID, KS, ND, SD, WY, NB, NM, MO, IL, MN, MT, NV, OR, UT, WA, KY, and WI; and *fire prevention sprinkler systems, parts, accessories, and attachments*, from, to, and between specified points, and *materials in return movements*. Transferee presently holds no authority from this Commission. Temporary authority under section 210a(b) was granted May 1, 1978.

MC-FC-77844, filed September 5, 1978. Transferee: SANDHILLS GRAIN, INC., 524 Augusta Street, Bassett, NE 68714. Transferor: Grand Island Contract Carriers, Inc., Box 2078, West Old Highway 30, Grand Island, NE 68801. Representative: George L. Hirschbach, Hirschbach & Wichser, 5000 South Lewis Boulevard, P.O. Box 417, Sioux City, IA 51102; Jack Schulz, Box 82028, 13th and N Streets, Lincoln, NE 68501. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Permit Nos. MC 129808 (Sub-Nos. 16, 19, 20, 21, 22, and 27), issued by the Commission July 13, 1976, August 5, 1976, March 15, 1977, January 13, 1977, August 11, 1977, and July 5, 1978, as follows: *Home decorating trimmings and accessories*, from Grand Island, NE, to Dallas, TX. *Materials, supplies and equipment* used in the manufacture, sale, and distribution of home decorating trimmings and accessories, between Grand Island, NE, and Traverse City, MI. *Irrigation pipe and fittings*, from the facilities of Heinzman Manufacturing Co., Division of Heinzman Engineering, Inc., located at or near Grand Island, NE, to San Ysidro, CA. (1) *Irrigation pipe and fittings* (except iron and steel articles, earth drilling commodities), from the plantsite and warehouse facilities of Heinzman Manufacturing Co., Division of Heinzman Engineering, Inc., at or near Grand Island, NE, to points in the United States (except AK and HI and those in the Davenport, IA-Rock Island and Moline, IL commercial zone, as defined by the Commission. (2) *Materials, supplies and equipment* used in the manufacture, sale and distribution of irrigation pipe and fittings (except iron and steel articles, earth drilling commodities and commodities in bulk), from Lewisport and Hawesville, KY, Oswego, NY, Lancaster, PA, Los Angeles, CA, and Seattle, WA, to the facilities of Heinzman Manufacturing Co., at or near Grand Island, NE. (1) *Home decorating trimmings and accessories*, from Grand Island, NE, to points in CA, CT, CO, IA, IL, IN, KS, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, TN, TX, VA, WA, and WI; (2) *materials*

als, supplies and equipment used in the manufacture, sale and distribution of the immediately aforementioned commodities (except in bulk), from the destination points named in (1) above to Grand Island, NE. *Home decorating trimmings and accessories*, from Traverse City and Greenville, MI, to Grand Island, NE. *Home decorating trimmings and accessories*, from Traverse City, MI, to Grand Island, NE, and to Dallas and Big Springs, TX. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77856, filed September 13, 1978. Transferee: MARYLAND CONTINENTAL EXPRESS, INC., 129 Overhill Drive, Hagerstown, MD 21740. Transferor: Arthur H. Fulton, Inc., P.O. Box 86, Stephens City, VA 22655. Representative: Edward N. Button, Attorney at Law, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Permit No. MC 129613 (Sub-No. 2), issued May 16, 1978, as follows: *Mulch, sawdust, wood chips, waste veneer, and lumber*, from Martinsburg, WV, to Louisville, KY, New Albany, IN, and points in NY, PA, MD, NC, SC, and points in VA (except points in Clark County). *Veneer*, from Martinsburg, WV, to Louisville, KY, and points in MD, NC, SC, and points in VA (except points in Clark County). Restriction: The operations authorized above are limited to a transportation service to be performed, under a continuing contract(s) with Erath Veneer Corp., of Martinsburg, WV. *Veneer*, between Martinsburg, WV, on the one hand, and, on the other, points in VA (except points in Clark County) and MD. From points in NC, to points in VT. From Martinsburg, WV, to points in AR. Between Martinsburg, WV, on the one hand, and, on the other, points in IN, KY, NC, SC, and PA. From Martinsburg, WV, to points in VT. Restriction: The operations authorized immediately above are limited to a transportation service to be performed under a continuing contract(s) with Erath Veneer Corp. and Berkeley Face Veneers, Inc., both of Martinsburg, WV. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-29164 Filed 10-13-78; 8:45 am]

[7035-01-M]

[Notice No. 189]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 2, 1978.

The following area 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 15558 (Sub-7 TA), filed July 31, 1978. Applicant: WARWOOD TRANSFER CO., 2233-41 Warwood Avenue, Wheeling, WV 26003. Representative: James M. Burtch, 100 East Broad Street, Suite 1800, Columbus, OH 43215. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by retail discount, department or variety stores*, between the facilities of Sears, Roebuck & Co., located in Belmont County, OH, on the one hand, and, on the other, points in Muskingum, Guernsey, Coshocton, Holmes, Tuscarawas, Stark, Columbiana, Jefferson, Harrison, Belmont, Monroe, Washington, Morgan, Noble, and Carroll Counties, OH; Allegheny, Wash-

ington, Greene, Beaver, and Fayette Counties, PA; and Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, Pleasants, Doddridge, Harrison, Marion, Monogalia, and Taylor Counties, WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Sears, Roebuck & Co., 555 East Lancaster Avenue, St. Davids, PA 19087. Send Protests to: J. A. Nigemyer, District Supervisor, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, WV 26003.

MC 24379 (Sub-46 TA), filed August 3, 1978. Applicant: LONG TRANSPORTATION CO., 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 with usual exceptions from the plantsites of Ford Motor Co., located at Detroit, MI and commercial zone area as described in Ex parte MC 37 (Sub-26), to the plantsites of Ford Motor Co., located at or near Norfolk, VA; (2) empty pallets or racks, and returned or rejected materials from the plantsite of Ford Motor Co., at or near Norfolk, VA to the plantsites of Ford Motor Co., located at Detroit, MI and commercial zone area as described in Ex parte MC 37 (Sub-26), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Ford Motor Co., One Parklane Boulevard, Parklane Towers-East, Suite 200, Dearborn, MI 48216. Send protest to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

MC 30114 (Sub-6TA), filed August 8, 1978. Applicant: MOLA TRUCKING, INC., d.b.a. MITCHKO TRUCKING, Rainbow Trail, Mountain Lakes, NJ 07046. Representative: George A. Olsen, Box 357, Gladstone, NJ 07934. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Plastic articles and equipment, materials and supplies used in the manufacture and sale of plastic articles (except commodities in bulk), between the facilities of IMCO Container, subsidiary of the Ethyl Development Corp., located at Belvidere, Rockaway, Plainfield, NJ; Lewistown, PA; Harrisonburg, VA; and Pittsfield, MA, on the one hand, and, on the other, points in the States of NJ, NY, PA, CT, DE, MD, MA, and VA, and DC, restricted against tacking at origin, or destination, for 180 days. Applicant has also filed an underlying ETA seek-

ing up to 90 days of operating authority. Supporting Shipper: IMCO Container Co., 75th and Cleveland, Kansas City, MO 64132. Send protests to: Joel Morrows, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 63562 (Sub-57TA), filed August 8, 1978. Applicant: BN TRANSPORT, INC., 6675 East Evans Avenue, P.O. Box 22694, Wellshire Station, Denver, CO 80224. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Iron and steel articles, from Keystone Consolidated Industries, Inc., at Peoria, IL, points in ID, MN, MT, ND, OR, SD, WA, and WY, for 180 days. Supporting Shippers: Keystone Consolidated Industries, Inc., Peoria, IL. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 491 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 106401 (Sub-48TA), filed August 8, 1978. Applicant: JOHNSON MOTOR LINES, INC., 2426 North Graham Street, P.O. Box 10877, Charlotte, NC 28201. Representative: Thomas G. Sloan, P.O. Box 10877, Charlotte, NC 28234. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Plastic and/or clay pipe, and articles required for installation thereof, from the facilities of Can-Tex Industries, Division of Harsco Corp., at or near Mineral Wells, TX, points in LA, for 180 days. Supporting Shippers: Can-Tex Industries, Division of Harsco Corp., P.O. Box 340, Mineral Wells, TX 76067. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 111729 (Sub-142TA), filed July 26, 1978. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park NY 11040. Representative: Elizabeth L. Menoch, Purolator Courier Corp., 3333 New Hyde Park Road, New Hyde Park NY 11040. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Exposed and processed film and prints; complimentary replacement film; incidental dealer handling supplies and advertising literature moving therewith (except motion picture film used primarily for commercial theatre and television exhibition), between Blytheville, AR, on the one hand, and, on the other, points in MO, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shippers: Mellers Photo Labs, Inc., 1929 East

Bennett, Springfield, MO 65804. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 113106 (Sub-58TA), filed August 4, 1978. Applicant: THE BLUE DIAMOND CO., 4401 East Fairmount Avenue, Baltimore, MD 21224. Representative: Chester A. Zyblut, 1030-15th Street NW., Washington, DC 20005. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Glass containers, between the facilities of Midland Glass Co., at or near Cliffwood, NJ, on the one hand, and, on the other, Williamsburg, VA, and points within its commercial zone and the facilities of Midland Glass Co. at or near Newport News and Suffolk, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: B. Stein, Director of Transportation, Midland Glass Co., Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

MC 113651 (Sub-250TA), filed August 8, 1978. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggins Road, Muncie, IN 47305. Representative: Glen L. Gissing, P.O. Box 552, Riggins Road, Muncie, IN 47305. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Foodstuffs in mechanically refrigerated vehicles, from Bradenton, FL, to points in CT, IL, IN, KY, MI, MN, NY, OH, PA, TN, WV, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tropicana Products, Inc., P.O. Box 338, 1001-13th Avenue East, Bradenton, FL 33506. 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 114457 (Sub-427TA), filed August 8, 1978. Applicant: DART TRANSIT CO., 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: Metal containers and container lids, from Tampa, FL, to Plover and Markesan, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Del Monte Corp., P.O. Box 89, Rochelle, IL 61068. Send protests to: Delores A. Poe, Transporta-

tion Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 116519 (Sub-53TA), filed July 31, 1978. Applicant: FREDERICK TRANSPORT LTD., R.R. No. 6, Chatham, ON, Canada M7M 5J6. Representative: Jeremy Kahn, Kahn & Kahn, Suite 733, Investment Building, Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt lawn and leisure product dealers (except commodities in bulk), between the facilities of Deere & Co., located in IL, WI and IA, on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada located in MI, NY, VT, NH, and ME, restricted (1) to foreign commerce, and (2) to traffic originating at or destined to the facilities and/or dealers of John Deere Ltd. in PQ, PE, NS, NB, and NF, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Deere & Co., John Deere Road, Moline, IL. Send protests to: Interstate Commerce Commission, District Office, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.*

MC 117730 (Sub-22TA), filed July 26, 1978. Applicant: KOUBENIC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Albert A. Andrin, 180 North LaSalle Street, Chicago, IL 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, 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 M.C.C. 209 and 766 (except hides and commodities in bulk), and (2) Dairy products, as described in section B of Appendix I to the report in Motor Carrier Certificates, 61 M.C.C. 209 and 766 and Foodstuffs when moving in mixed loads with articles listed in (1) above, all moving in mechanically refrigerated equipment, between the facilities of Oscar Mayer & Co., Inc., at Davenport, IA and all points in Cook, DuPage, Will, Kane, and Lake Counties, IL, and Jefferson, WI, and from the facilities of Oscar Mayer & Co., Inc., at Davenport, IA, and Beardstown, IL, to all points in IN, Lower MI, OH, and Madison, WI, restricted to traffic originating at named origins and destined to named points or States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.*

Supporting shipper: Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 53707. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 118089 (Sub-26TA), filed August 7, 1978. Applicant: ROBERT HEATH TRUCKING, INC., P.O. Box 2501, Lubbock, TX 79408. Representative: Charles M. Williams, 350 Capitol Life Center, 1800 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Articles dealt in by convenience stores and supermarkets, when moving in trailers equipped with mechanical refrigeration units, (1) from points in CA, and AZ, to Albuquerque, NM, and points in its commercial zone, and (2) from points in AZ, and CA (except the facilities of McCormick & Sons, at or near Salinas, CA; to Phoenix, AZ; and El Paso, Amarillo, and Lubbock, TX; and points in their respective commercial zones, restricted to traffic destined to facilities utilized by Furr's, Inc., for 180 days. Supporting shipper: Furr's Inc., 1708 Avenue G, Lubbock, TX 79408. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.*

MC 123061 (Sub-101TA), filed August 3, 1978. Applicant: LEATHAM BROTHERS, INC., 46 Orange Street, P.O. Box 16026, Salt Lake City, UT 84104. Representative: Harry D. Pugsley, 310 South Main, Salt Lake City, UT 84101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick and clay tile from ports of entry on the International Boundary line between the United States and Canada at points at or near Blaine and Sumas, WA, Everett, and Spokane, WA, Pueblo, Trinidad, and Denver, CO, to UT and ID, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Miller Brick Co., 3451 South Third West, P.O. Box 151105, Salt Lake City, UT 84115. Send protests to: L. D. Helfer, District Supervisor, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.*

MC 123263 (Sub-10 TA), filed August 8, 1978. Applicant: FLOYD R. WANGERIN AND LORRAINE C. WANGERIN a partnership, d.b.a. WANGERIN TRUCKING CO., Rural Route No. 2, Stephenson, MI 49887. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Di-*

mension stock, from the facilities of Dufferin Bros., Inc., at or near Wallace, MI, to Forth Smith, AR, Houston and Brownsville, TX, and Hickory and Lincoln, NC, for 180 days. Supporting shipper: Dufferin Bros., Inc., P.O. Box 26, Wallace, MI 49893. Send protests to: C. R. Flemming District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 123285 (Sub-8 TA), filed August 3, 1978. Applicant: CLETEX TRUCKING, INC., P.O. Box 812, Cleburne, TX 76031. Representative: Clint Oldham, 1108 Continental Life Building, Ft. Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime, in bulk, from Batesville, AR to Valliant, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Texas Lime Co., P.O. Box 851, Cleburne, TX 76031. Send protests to: Robert J. Kirspe, District Supervisor, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.*

MC 124078 (Sub-849 TA), filed August 3, 1978. Applicant: SCHWERMANN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite clay, in bulk, in tank vehicles, from Schwerman Distribution Center, Milwaukee, WI to points in IL, IN, IA and Upper Peninsula of MI for 180 days. Supporting shipper: Larpin Supply Co., Inc., 5501 West State Street, Milwaukee, WI 53208, Thomas H. Seeboth. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.*

MC 124078 (Sub-850TA), Applicant: SCHWERMANN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement, from Middle Branch, OH to Fort Wayne, IN for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Masolite Concrete Products, Inc., 2200 LaFontaine Street, Fort Wayne, IN 46804, Richard D. Weyler. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Op-*

erations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 129282 (Sub-37 TA), filed August 8, 1978. Applicant: BERRY TRANSPORTATION, INC., P.O. Box 2147, Longview, TX 75601. Representative: Fred S. Berry (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Malt beverages and nonalcoholic beverages and materials and supplies* used in the manufacture, sale, and distribution thereof, including empty containers, between Houston, TX, on the one hand, and Covington, LA, on the other, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Champagne Beverage Co., Inc., P.O. Box 818, 619 N. Tyler St., Covington, LA 70433. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 133360 (Sub-3 TA), filed August 8, 1978. Applicant: UNION TRACTOR CO., INC., P.O. Box 1426, Havre, MT 59501. Representative: George Robert Crotty, Jr., 400 First National Bank Building, Great Falls, MT 59401. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Plumbing fixtures and fittings and related equipment*, from the facilities of American Standard at (1) Plainfield, CT; Trenton, NJ; Salem, OH; Kokomo, IN, and Tiffin, OH, to points in and west of MT, WY, CO and NM; and (2) Piscataway, NJ, to Stockton, CA, for 180 days. Supporting shipper: Gregory J. Decker, Manager, Rates American Standard, Inc., P.O. Box 2003, New Brunswick, NJ 08903. Send protests to: Paul J. Labane District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 133501 (Sub-4 TA), filed July 31, 1978. Applicant: DELTA EXPRESS, INC., Old River Road, P.O. Box 776, Natchitoches, LA 71457. Representative: D. E. Lester (same address as applicant). Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill, forest and wood products, plywood and particleboard, preservative treated or untreated*, from the plant sites of Willamette Industries, Incorporated at Dodson, Danville, Minden, Zwolle, Ruston, Simsboro, LA, and Emerson, AR, to AL, AR, MS, MO, OK, TN, TX, and LA, and products essential to the manufacture of these commodities, additionally, returned products manufactured by Willamette Industries, Inc., from

points in AL, AR, MS, MO, OK, TN, TX and LA, to the plant sites of Willamette Industries, Inc., at Dodson, Danville, Minden, Natchitoches, Zwolle, Ruston, Simsboro, LA, and Emerson, AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Willamette Industries, Inc., P.O. Box 606, Ruston, LA 71270. Send protests to: Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133590 (Sub-18 TA), filed July 31, 1978. Applicant: WESTERN CARRIERS, INC., P.O. Box 925, 71060 Millbury Street, USS Industrial Park, Worcester, MA 01613. Representative: David M. Marshall, Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Sporting goods and apparel, and materials, supplies and equipment* used in the manufacture, distribution and sale of such commodities (except in bulk), from (1) Boston, Chicopee and Westfield, MA, and New York, NY, to the facilities of Western Carriers, Inc., at Worcester, MA; and (2) from the facilities of Western Carriers, Inc., at Worcester, MA, to points in the United States (except AK and HI), for 180 days under a continuing contract or contracts with Questor Corp. Restriction: Service from Boston, MA, and New York, NY, shall be restricted to the transportation of shipments having a prior movement by water and service from Chicopee and Westfield, MA, shall be restricted to service from the facilities of the A. G. Spalding Division of Questor Corp. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Questor Corp., 102 First Avenue, Chicopee, MA 01020. Send protests to: David M. Miller District Supervisor, Interstate Commerce Commission, 333 Federal Building and U.S. Courthouse, 436 Dwight Street, Springfield, MA 01103.

MC 134919 (Sub-6TA), filed August 8, 1978. Applicant: A & D EXPRESS, INC., Upper Jersey Avenue, Box 52, North Brunswick, NJ 08902. Representative: William J. Augello, 120 Main Street, P.O. Box A, Huntington, NY 11743. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Newark, NJ, to Baltimore, MD, for the account of Terminal Distributing Co., Inc., under a continuing contract, or contracts, with Terminal Distributing Co., Inc., for 180 days. Supporting shipper: Terminal Distributing Co., Inc., 7670 Canton Center Drive, Baltimore, MD

21224. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 138741 (Sub-48TA), filed August 8, 1978. Applicant: AMERICAN CENTRAL TRANSPORT, INC., 2005 North Broadway, Joliet, IL 60435. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Treated lumber and lumber products*, from the facilities of Jennison-Wright Corporation at Granite City, IL, to points in IN, IA, and KY, for 180 days. Supporting shipper: The Jennison-Wright Corp., Doris Mathews, Traffic Manager, P.O. Box "J", Granite City, IL 62040. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 139234 (Sub-4TA), filed July 27, 1978. Applicant: BRUCE'S TRANSPORT SERVICE, INC., 5721 North Ventura Avenue, Ventura, CA 93001. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Barium sulfate*, in dry bulk form, from Humboldt and Landen Counties, NV and Kern, Ventura and Los Angeles Counties, CA to Douglas County, OR, for 180 days. Supporting shipper: IMCO Services, a division of Halliburton Co., 3711 Long Beach Blvd., Suite 521, Long Beach, CA. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 139638 (Sub-5TA), filed August 8, 1978. Applicant: N. L. MONTGOMERY, INC., Route 1, Box 37-A, Wirtz, VA 24184. Representative: W. T. Jones, P.O. Box 626, Rocky Mount, VA 24151. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Lumber*, from Belmont, Franklin, Gauga, Guernsey, Holmes, Jackson, Ross, Washington, and Wayne Counties, OH, to points in NC, VA, and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W. M. Cramer Lumber Co., Hickory, NC 28601. (2) S. W. Barnes, Inc., Crozet, VA 22932. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 140025 (Sub-2TA), filed July 31, 1978. Applicant: L & T, INC., 2650 W. Beaver Street, Jacksonville, FL 32205. Representative: McCarthy Crenshaw,

21 W. Church Street, 1205 Universal Marion Building, Jacksonville, FL 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in containers or trailers (except motor vehicles, building and construction materials, commodities in bulk, and those requiring specialized handling or rigging), restricted to traffic having an immediately prior or subsequent movement by water carrier not regulated by Part III of the Interstate Commerce Act between the steamship piers in the City of Jacksonville, FL, on the one hand, and, on the other, all points within the City of Jacksonville, FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: (1) Sea and Services, Inc., P.O. Box 1050, Elizabeth, NJ 07207. (2) Puerto Rico Maritime Shipping Authority, P.O. Box 26483, 10001 Lake Forest Blvd., 4th Floor, New Orleans, LA 70186. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 W. Bay Street, Jacksonville, FL 32202.

MC 140243 (Sub-1 TA), filed August 3, 1978. Applicant: IDEAL CONTRACT CARRIERS INC. (a Delaware Corporation), 89 Main Street, P.O. Box 2, Medway, MA 02053. Representative: Grove, Jaskiewicz, Gilliam & Cobert, 1730 M Street, Suite 501, Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic materials*, except commodities in bulk, between Holliston, MA, on the one hand, and, on the other, points in Athens, Birmingham, Dothan, Guntersville, Huntsville, Lafayette, Mobile, Montgomery, AL; Phoenix, Prescott, Tucson, AZ; Little Rock, Waldo, AR; Burbank, Encinitas, Huntington Park, La Habra, Lakewood, Los Angeles, Mountain View, Oakland, San Diego, San Francisco, Santa Ana, Upland, CA; Colorado Springs, Denver, Wheatridge, CO; Avon, Bridgeport, Bristol, Hamden, Hartford, Milford, New Haven, Norwalk, Orange, Southington, Stratford, West Haven, Westbrook, Winstead, CT; Wilmington, DE; Daytona Beach, Fort Lauderdale, Fort Meyers, Gainesville, Jacksonville, Melbourne, Miami, Ocala, Orlando, Pensacola, Pinellas Park, Saint Petersburg, Sunrise, Tallahassee, Tampa, Temple Terrace, West Palm Beach, FL; Albany, Atlanta, Decatur, Norcross, Roswell, Woodstock, GA; Chicago, Dixon, Milan, Morton Grove, Rockford, Springfield, IL; Evansville, Fort Wayne, Greenwood, Indianapolis, Mishawaka, Richmond, South Bend, Terre Haute, IN; Cedar Rapids, Des Moines, Waterloo, IA; Wichita, KS;

Lexington, Louisville, KY; Baton Rouge, Lafayette, Monroe, New Orleans, Shreveport, LA; Baltimore, Forestville, Greenbelt, MD; Ada, Detroit, Flint, Grand Rapids, Niles, MI; Detroit Lakes, Minneapolis, MN; Gulfport, Jackson, Tupelo, MS; Joplin, Kansas City, Saint Louis, MO; Omaha, NE; Englewood, Lakewood, Newark, Paramus, Saddle Brook, Sewell, Summit, West Deptford, Woodbridge, NJ; Artesia, NM; Albany, Binghamton, Brooklyn, Buffalo, East Patchogue, Farmingdale, New York, Ozone Park, Rochester, NY; Charlotte, Greensboro, Raleigh, NC; Canton, Columbus, Strongsville, Youngstown, OH; Muskegon, Oklahoma City, Tulsa, OK; Allentown, Ardmore, Erie, Philadelphia, York, PA; Charlestown, Florence, SC; Chattanooga, Johnson City, Knoxville, Memphis, Nashville, TN; Amarillo, Dallas, El Paso, Fort Worth, Houston, Lubbock, Pasadena, San Antonio, Wichita Falls, TX; Lynchburg, Richmond, VA; and Milwaukee, WI.

MC 140686 (Sub-2TA), filed July 31, 1978. Applicant: V S M TRUCKING, INC., 901 N. Montoe Street, Abingdon, IL 61410. Representative: Robert or Howard Sampson, 211 South Main Street, Abingdon, IL 61410. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plumbers' goods, bathroom and lavatory fixtures and supplies, therefore, to include the materials and supplies used in the manufacture of said products*, between the plantsite of Briggs Mfg. Co., at Abingdon, IL, on the one hand, and points and places in the States of AL, AR, CO, FL, GA, IN, IA, KY, MD, MI, MN, MO, NE, NC, OH, PA, SC, TN, TX, VA, WV, WI on the other hand, under a continuing contract, or contracts, with Jim Walter Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James D. Harrison Material Manager, Jim Walter Corp., 801 N Main Street, Abingdon, IL 61410. Send protests to: Charles D. Little District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 141913 (Sub-1TA), filed July 25, 1978. Applicant: V.N. TRANSPORTATION CO., INC., 37 Doctors' Park, 2000 N. 14th Street, Cape Girardeau, MO 63701. Representative: Richard D. Kinder, P.O. Box 643, Cape Girardeau, MO 63701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *All products used in the operation and maintenance of a hospital*, from St. Louis, MO, to all points in IL on and south of a line as follows: Begin at the point where Interstate Hwy 80 crosses the Mississippi River on the

western boundary of IL and continue with Interstate 80 until its intersection with Interstate Hwy 55, thence south on Interstate 55 to its intersection with Illinois State Hwy 17, thence follow IL State Hwy 17 to the point where such highway crosses the IL-IN State boundary, together with return of shipments by consignees, also from St. Louis, MO, to all points in KY on and west of a line described as follows: Begin at Smithland, KY, and continue with KY Hwy 453 to its intersection with The Trace (formerly Hwy 453); thence south on The Trace until it crosses the KY-TN State boundary together with return of shipments by consignees, also from St. Louis, MO, to Obion County, TN, and Cherokee County, KS together with return of shipments by consignees, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Norman A. Associates, Inc., 37 Doctor's Park, Cape Girardeau, MO 63701. Send protests to: Peter E. Binder Acting District Supervisor, Interstate Commerce Commission, 210 N. 12th Street, Room 1465, St. Louis, MO 63101.

MC 142874, filed August 4, 1978. Applicant: FREYMILLER TRUCKING, INC., P.O. Box 188, Shullsburg, WI 53586. Representative: Mark C. Ellison, P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese and cheese products*, from Kahoka, MO; Nauvao and Minonk, IL; Luana and St. Olaf, IA; Hillsboro, La Farge, Sherry and Argyle, WI, and their commercial zones to Atlanta, GA; Atlantic City, NJ; Boston, MA; Chicago, IL; Cincinnati and Cleveland, OH; Denver, CO; Detroit and Grand Rapids, MI; Houston, TX; Hyde Park and Logan, UT; Kansas City, MO; Los Angeles, CA; Miami, FL; New York, NY; Philadelphia, PA; and Washington, DC, and their commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C.M.O. Co., 10010 Cheviot Drive, Los Angeles, CA 90064. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 143127 (Sub-9TA), filed July 26, 1978. Applicant: K. J. TRANSPORTATION, INC., 1000 Jefferson Road, P.O. Box 9764, Rochester, NY 14623. Representative: S. Michael Richards, Raymond A. Richards, Webster, NY 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* (1) from the facilities of

Curtice-Burns, Inc., at Alton, Egypt, Leicester, LeRoy, Phelps, Oakfield, Red Creek, Rushville, Shortsville, S. Dayton and Waterloo, NY, to all points in AL, GA, FL, NC and SC; and (2) from the facilities of Duffy-Mott Co., Inc., at Hamlin, and Williamson, NY, to all points in AL, GA, FL, NC and SC; and (3) from the facilities of Marion Foods Corp., Division of Seneca Foods Corp., at Dundee, Marion, Newark, Oaks Corners, Williamson and E. Williamson, NY, to all points in AL, GA, FL, NC and SC, restricted to traffic originating at the above-named facilities and destined to the destination states, for 180 days. Supporting shipper: (1) Curtice-Burns, Inc., Lent Avenue, LeRoy, NY 14482. (2) Duffy-Mott Co., Inc., 370 Lexington Avenue, New York, NY 10017. (3) Marion Foods Corp., Division of Seneca Foods Corp., 60 S. Main Street, Marion, NY 14505. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Building, 100 S. Clinton Street, Room 1259, Syracuse, NY 13260.

MC 143159 (Sub-2TA), filed August 8, 1978. Applicant: BRICK HAULERS, INC., Route 1, Box 407, Forest City, NC 28043. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) Brick, from Augusta, GA; Blacksburg, Columbia, Gaffney, Ninety-Six and Van Wyck, SC, and Elizabethton, Johnson City and Kingsport, TN, and points in their Commercial Zones, (2) Cement and mortar mix, in bags, from Cayce, SC, (3) Concrete block, from Spartanburg, SC, and points in its Commercial Zone, and (4) Sand, in bulk, in dump vehicles, from Dixiana and Pageland, SC, and points in their Commercial Zones, to points in Cleveland and Rutherford Counties, NC, under a continuing contract, or contracts, with Clyde H. Robbins Brick & Concrete Products Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Clyde H. Robbins Brick & Concrete Products Co., Inc., Rte 1, Box 407, Forest City, NC 28043. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 143163 (Sub-9TA), filed August 4, 1978. Applicant: RICHARDSON TRUCKING, INC., 3380 East 8th Street, P.O. Box 967, Greeley, CO 80631. Representative: Wm. Fred Cantonwine (same address as applicant). Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) Canned and packaged animal food,

from facilities of Kal Kan Foods, Inc., in Los Angeles, CA, to Amarillo, Dallas, El Paso, Ft. Worth, Garland, Houston, Lubbock, and San Antonio, TX; and (2) Inedible meat and meat by-products, from facilities of Consolidated Pet Foods, Denver, CO, to facilities of Kal Kan Foods, Inc., Los Angeles, CA, under a continuing contract, or contracts, with Kal Kan Foods, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kal Kan Foods, Inc., 3386 East 44th Avenue, Vernon, CA 90058. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 143552 (Sub-6TA), filed August 8, 1978. Applicant: CELEWEND ASSOCIATES, INC., 1 Whitfield Street, Caldwell, NJ 07006. 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: Washing, cleaning, and scouring compounds, (except in bulk), fabric or textile softeners, contained or impregnated in foam, cellular or expanded plastic sheets or sheeting, from points in NJ to Los Angeles, CA; Tacoma, WA; Dallas, TX; Denver, CO; New Orleans, LA; Atlanta, GA; Auburn, FL; Salem, Roanoke, VA; Bristol, PA; Boston, MA; Toledo, OH; St. Louis, MO; Chicago, IL; and St. Paul, MN, under a continuing contract, or contracts, with Purex Corp., Carson, CA, for 180 days. Supporting shipper: Purex Corp., 24600 Main Street, Box 6200, Carson, CA 90749. Send protests to: Joel Morrows, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 143677 (Sub-3TA), filed August 8, 1978. Applicant: JIMMIE W. LEE, d.b.a. LEE'S LOWBOY SERVICE, 13506 Giles Road, Omaha, NE 68138. Representative: Joseph Winter, 33 North LaSalle Street, Chicago, IL 60602. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Concrete and concrete products, (except commodities in bulk), from the facilities of Kroeger Precast, Inc., at Omaha, NE, to Campbell County, WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Donald Kroeger, President, Kroeger Precast, Inc., 13800 Giled Road, Omaha, NE. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 143687 (Sub-4TA), filed August 8, 1978. Applicant: DAVID DALE TRANSPORT, INC., 2 Franklin Street, West Medway, MA 02053. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) Plastic articles (except in bulk) and cushioned envelopes, from Hyannis, MA, to points in AZ, CA, FL, GA, IA, IL, MD, MN, MO, NE, NC, OH, SC, TX, and VA; and (2) Equipment, materials, and supplies used in the manufacture and distribution of plastic articles and cushioned envelopes (except in bulk), from the above-named destinations to the above-named origin, under a continuing contract or contracts with Sentinel Foam Products, Inc., located at Hyannis, MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sentinel Foam Products, Inc., Airport Road, Hyannis, MA 02601. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

MC 144057, filed August 3, 1978. Applicant: WHITEHALL TRANSPORT, INC., 1200 Main Street, P.O. Box 387, Whitehall, WI 54773. Representative: Ronald V. Dreckman, P.O. Box 162, Whitehall, WI 54773. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Machinery, equipment, corn cribs, grain bins, feed boxes, watering troughs, parts and attachments used in farming and agricultural industries, from plantsite and storage facilities of Sioux Steel Co. at or near Hull, IA; Lennox and Sioux Falls, SD to points in MT, ND, SD, IA, IL, NE, KS, MO, MN, CO, and WI. Materials supplies and equipment used in the conduct of business by Sioux Steel from MT, ND, SD, IA, IL, NE, KS, MO, MN, CO, and WI, to plantsites and storage facilities of Sioux Steel at or near Hull, IA; Lennox and Sioux Falls, SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sioux Steel Co., 196 1/2 E. 6th Street, Sioux Falls, SD 57102. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 144425 (Sub-2TA), filed August 8, 1978. Applicant: CLIFTON A. WOOD, R.F.D. No. 1, Fairfield Center, ME 04937. Representative: Clifton A. Wood (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Crushed cars and scrap metals, from points in

Maine to Portsmouth, Madbury and Greenfield, NH, and Charlestown, Everett and Easton, MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Isadore T. Miller Co., P.O. Box 12, Auburn, ME 04210. Send protests to: Interstate Commerce Commission, Bureau of Operations, 76 Pearl Street, Room 305, Portland, ME 04111.

MC 144906 (Sub-2TA), filed August 4, 1978. Applicant: NORTH OPERATING CO., 39 Little Brook Road, Springfield, NJ 07081. Representative: John L. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in or used by chain grocery or department stores, from Paramus and South Hackensack, NJ, to Bay Shore, Binghamton, Cortland, Endicott, Plattsburgh, Rome and Vestal, NY; Norristown, Sunbury and West Chester, PA; and Burlington, VT.* Restriction: Under a continuing contract, or contracts, with Grand Way and Grand Distributors, Division of Grand Union, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Grandway and Grand Distributors, Divisions of Grand Union, 100 Broadway, Elmwood Park, NJ 07047. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 145060 (Sub-1TA), filed August 8, 1978. Applicant: LEE PAINTER, 1454 Luna Drive, Fountain, CO 80817. Representative: Lee Painter, 1454 Luna Drive, Fountain, CO 80817. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum wall board, from Western Gypsum Co., near Rosario, NM, to Denver, CO, and (10 mile radius thereof), under a continuing contract, or contracts, with Dry Wall Supply, Inc., for 180 days.* Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dry Wall Supply, Inc., 1805 West Irvington Place, Denver, CO. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145061 (Sub-1TA), filed August 8, 1978. Applicant: BILL J. FOUCHÉ, 713 Ohio, Canon City, CO 81212. Representative: Bill J. Fouché, 731 Ohio, Canon City, CO 81212. Authority sought to operate as *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum wall board, from Western Gypsum Co., at Rosario, NM, to Denver, CO, and 10*

mile radius thereof, under a continuing contract, or contracts, with Dry Wall Supply, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dry Wall Supply, Inc., 1805 West Irvington Place, Denver, CO. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 145125 (Sub-1TA), filed August 4, 1978. Applicant: LAUREL MOUNTAIN OVERLAND EXPRESS, INC., P.O. Box 327, Milroy, PA 17063. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Brass, bronze, copper and nickel products, brass, and copper alloys, and copper billets from Reading and Ontelaunee, PA, to points in CA; and (2) materials, supplies and equipment used in the manufacture, sale and distribution of the commodities described in (1) above, from points in CA, to Reading and Ontelaunee, PA, for 180 days.* Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Reading Industries, Inc., P.O. Box 1126, Reading, PA 19603. Send protests to: Charles F. Myers District Supervisor, Interstate Commerce Commission, P.O. Box 869 Federal Square Station, Harrisburg, PA 17108.

MC 145150 (Sub-1TA), filed August 3, 1978. Applicant: HAYNES TRANSPORT CO., INC., P.O. Box 9, Rural Route No. 2, Salina, KS 67401. Representative: Clyde N. Christey, Kansas Credit Union Building, Suite 110L, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia, in bulk from the facilities of Chevron Chemical Company near Friend, KS, to CO, NE, OK, TX, and WY, for 180 days.* Applicant states it does not intend to tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chevron Chemical Co., 3001 LBJ Freeway, Suite 139, Dallas, TX 75234. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 256 Federal Building & U.S. Courthouse, Topeka, KS 66683.

MC 145155 (Sub-1TA), filed August 8, 1978. Applicant: TRANS-SWEET, INC., 3401 Rochester Road, Lakeville, NY 14480. Representative: A. Michael Richards, Raymond A. Richards, 44 North Avenue, P.O. Box 225, Webster, NY 14580. Authority sought to oper-

ate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sweeteners, (in bulk, in tank vehicles), from Lakeville, NY, to all points in CT, MA, MI, NJ, OH, PA, and RI, for 180 days.* Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Western New York Syrup Corp., 3401 Rochester Road, Lakeville, NY 14480. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Bldg., 100 S. Clinton Street, Syracuse, NY 13260.

MC 145180TA, filed August 8, 1978. Applicant: THREE TRANSPORTATION, A Division of Polk Welding and Erection Co., Inc., 1909 East Hemlock Avenue, P.O. Box 2698, Tampa, FL 33619. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberglass and plastic gasoline storage tanks, preconditioners, ducts, and industrial ventilating equipment, from the facilities of the Fiberglass Equipment Division of Dart Environmental Services Company at Bartow, FL, to points in AL, AR, GA, KY, LA, MS, NC, SC, TN and VA, 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: Dart Industries, Inc., P.O. Box 3157, Terminal Annex, Los Angeles, CA 90051. Send protests to: Donna M. Jones Transportation Assistant, Interstate Commerce Commission, Montreux-Building, Suite 101, 8410 NW., 53d Terrace, Miami, FL 33166.

MC 145184TA, filed August 3, 1978. Applicant: HILL DISTRIBUTING, Martin Terrace, Berkeley Springs, WV. Representative: Loy, Shingleton and Caryl, 206 West Burke Street, Martinsburg, WV. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *West Virginia spring water products, from Berkeley Springs, WV to south, central and north FL, under a continuing contract or contracts with A West Virginia Spring Water Co., for 180 days.* Supporting shipper: A West Virginia Spring Water Co., 206 Burke Street, Martinsburg, WV 25401. Send protests to: W.C. Hersman, District Supervisor, Interstate Commerce Commission, 12th & Constitution Avenue NW., Washington, DC 20423.

MC 145185TA, filed August 3, 1978. Applicant: DOYEN & SONS, East Highway 212, Clark, SD 57225. Representative: Doyen & Sons (same as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting:

French fried potatoes, from Clerk, SD to Watertown, SD for subsequent movement by railroad, under a continuing contract or contracts with Midwest Foods Corp., for 180 days. Supporting shipper: Midwest Foods Corp., Clark, SD 57225, Joseph Roe, President. Send protests to: J.L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 145192TA, filed August 8, 1978. Applicant: AUTO EXPRESS MEXICANO, DIV., PACIFICO, S.A. De C.V. CORP.-MEX ARROYO DE GUADALUPE NO. 86, Fraccionamiento La Escalera, Mexico, 14, D.F. Representative: Paul F. Sullivan, 710 Washington, Building, Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except household goods, dangerous explosives, commodities in bulk and those requiring special equipment), for 180 days. Supporting shipper: There are approximately (25) statements of support attached to this 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: Richard H. Dawkins District Supervisor, Interstate Commerce Commission, Room B-400 Federal Bldg., 727 E. Durango Street, San Antonio, TX 78206.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-29165 Filed 10-13-78; 8:45 am]

[7035-01-M]

[Notice No. 190]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 2, 1978.

The following are notices of filing of applications for temporary authority under Section 210(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, DC, and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 2135 (Sub-15TA), filed August 9, 1978. Applicant: D. J. McNICHOL CO., 6951 Norwitch Drive, Philadelphia, PA 19153. Representative: Harold P. Boss, 1100 17th Street NW., Washington, DC 20036. Authority sought to operate as a *contract 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, in connection therewith, equipment, materials and supplies used in the conduct of such business between Philadelphia, PA, on the one hand, and, on the other, Endicott, Horseheads, Ithaca, Margaretville (Delaware County), and Painted Post, NY, including points in their commercial zones, under a continuing contract or contracts with The Greater Atlantic & Pacific Tea Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Greater Atlantic & Pacific Tea Co., Inc., 2 Paragon Drive, Montvale, NJ 07645. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.*

MC 5227 (Sub-42TA), filed August 9, 1978. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: Lavern R. Holdeman of Peterson, Bowman, Larsen & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Buildings, knocked down and in sections, building sections, building panels, and metal prefabricated structural components, and materials and supplies used in the manufacture and distribution thereof, between the facilities of American Buildings Co., at or near*

Carson City, NV, on the one hand, and on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY, for 180 days. Supporting shipper: American Buildings Co., Thomas J. Maggert, Plant Manager, P.O. Box 1768, 2401 Conestoga Drive, Carson City, NV 89701. Send protests to: Max Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Building, 100 Centennial Mall North, Lincoln, NE 68508. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 13134 (Sub-58TA), filed August 9, 1978. Applicant: GRANT TRUCKING, INC., Ohio State Route 93 North, P.O. Box 256, Oak Hill, OH 45656. Representative: James M. Burtch, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Packaged hydraulic cement (calcium aluminate cement) from Chesapeake, VA to points in IN, IL, OH, MI, MO, KY, and that portion of PA west of Interstate 81, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. P. Edwards, Traffic Manager, Lone Star Lafarge, Inc., 18 Koger Executive Center, Suite 220, Norfolk, VA 23502. Send protests to: Miss Frances A. Ciccarello, Secretary, Interstate Commerce Commission, 3108 Federal Office Building, 500 Quarrier Street East, Charleston, WV 25301.*

MC 51146 (Sub-623TA), filed August 9, 1978. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers from the facilities of Hoover Universal, at or near Lenexa, KS, to points in CT, DE, DC, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hoover Universal, Beverage Bottle Division, Route 2, Tri Port Road, Georgetown, KY 40324 (Thomas E. Gould). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.*

MC 56664 (Sub-4TA), filed July 14, 1978. Applicant: C. W. KEITH TRANSFER & WAREHOUSE CO., 2100 South 15th Avenue, Phoenix, AZ

85007. Representative: Charles R. Hallam, 3550 North Central Avenue, Suite 1700, Phoenix, AZ 85012. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Repair parts, pipe fittings, materials used for home construction and maintenance, all types of fasteners, and maintenance supplies*, over the public highways designated as those between points in Arizona with a base of operations at Phoenix, AZ, for 180 days. Restricted to service for Cyprus Mines Corp. Applicant intends to interline at Phoenix, AZ. Supporting shipper: Cyprus Bagdad Copper Co., P.O. Box 245, Bagdad, AZ 86321. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 57239 (Sub-39TA), filed August 9, 1978. Applicant: RENNER'S EXPRESS, INC., 1350 South West Street, P.O. Box 882, Indianapolis, IN 46206. Representative: B. V. Beaman (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cigars, cigarettes, snuff or manufactured tobacco, and related articles*, serving Detroit, MI, and its commercial zone as an off-route point in connection with applicant's presently authorized regular route service, restricted to traffic originating at Louisville, KY, and its commercial zone, for 180 days. Supporting shipper: Phillip Morris, U.S.A., P.O. Box 26603, Richmond, VA 23261. Brown & Williamson Tobacco Corp., 1600 West Hill Street, Louisville, KY 40232. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 71642 (Sub-18TA), filed July 27, 1978. Applicant: CONTRACTUAL CARRIERS INC., Harmony Industrial Park, Newark, DE 19711. Representative: Samuel W. Earnshaw, 833 Washington Boulevard, Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products* (except commodities in bulk) between Newark, DE, on the one hand, and, on the other, Milford, CT, Montgomery, IL, Leominster, MA, Des Moines, Mount Pleasant, Iowa City, IA, and Pittsburgh, PA, under a continuing contract or contracts with Westvaco Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Westvaco Corp., 2000 Ogletown Road, Newark, DE 19711. Send protests to: T. M. Esposito,

Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 89617 (Sub-19TA), filed August 9, 1978. Applicant: LEWIS TRUCK LINES, INC., P.O. Box 1494, Conway, SC 29526. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, paneling, composition board, iron and steel articles* from Charleston, SC, and points within its commercial zone to points in GA, NC, and SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately (7) 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: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

NOTE.—SC traffic is in foreign commerce.

MC 106603 (Sub-181 TA), filed August 10, 1978. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street SW., P.O. Box 8099, Grand Rapids, MI 49508. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcium Chloride* (except in bulk), from Ludington and Midland, MI, to points in IL, IN, IA, KY, MO, OH, PA, WV, and WI, for 180 days. Supporting shipper: Dow Chemical Co., 690 Traffic Operations Building, Midland, MI 48640. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Lansing, MI 48933.

MC 107515 (Sub-1164 TA), filed August 9, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., 3901 Jonesboro Road, Forest Park, GA 30050. Representative: Alan E. Serby and Richard M. Tettelbaum, Serby & Mitchell, P. C., Fifth Floor, Lenox Towers South, 3390 Peachtree Road NE., Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from facilities of Louisville Freezer Center, Louisville, KY, to points in AL, AR, DE, GA, IL, IN, IA, MD, MI, MN, MO, NE, NJ, NY, NC, OH, OK, PA, SC, TN, VA, WV, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating au-

thority. Supporting shipper: Louisville Freezer Center, 2000 South Ninth Street, Louisville, KY 40208. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 111201 (Sub-32 TA), filed August 9, 1978. Applicant: J. N. ZELLNER & SON TRANSFER CO., P.O. Box 91247, East Point, GA 30364. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit juice in glass quart containers*, from Miami, FL, to Atlanta, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Russell Fruit Juice Co., Inc., 2154 Northwest 10th Avenue, Miami, FL 33127. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 112304 (Sub-149 TA), filed August 9, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. 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: *Building materials and cement pipe containing asbestos fibre*, from the plantsite of Johns-Manville Sales Corp., at or near Waukegan, IL, to MD, NJ, NY, OH, PA, VA, and WV, for 180 days. Supporting shipper: Johns-Manville Sales Corp., Edwin T. Sinclair, Regional Traffic Manager, Oak Brook, IL 60521. 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 112963 (Sub-1 TA), filed August 9, 1978. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, MA 01866. Representative: Leonard E. Murphy (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferric chloride*, in bulk, in tank vehicles from Springfield and West Springfield, MA to points in NY, CT, VT, NH, RI, and ME, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hampden Color & Chemical Co., 128 Memorial Drive, Springfield, MA 01101. Send protests to: Paul A. Roberts, District Supervisor, Interstate Commerce Commission,

150 Causeway Street, Boston, MA 02114.

MC 114457 (Sub-401TA), filed August 9, 1978, Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients and additives* from Sherburne, NY to points in the United States in and east of the States of WI, IL, KY, TN, MS, and LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kal Kan Foods Inc., 3386 East 44th Street, Vernon, CA 90058. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 114457 (Sub-419TA), filed August 9, 1978, Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty plastic containers* from Cleveland, OH to Chicago and Danville, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Continental Group, Inc., 1 Landmark Square, Stamford, CT 06901. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 114457 (Sub-426TA), filed August 9, 1978, Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers* from Arden Hills, MN to Tulsa, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Continental Can Co., 10050 Regency Circle, Omaha, NE 68114. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 114604 (Sub-55TA), filed August 9, 1978, Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer 1, Building 33, State Farmers Market, Forest

Park, GA 30050. 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: *Foodstuffs* (except in bulk), when moving in mechanically refrigerated equipment, from the facilities of Munford Refrigerated Warehouse, Division of Munford Inc., at or near Atlanta, GA and from the facilities of Commercial Cold Storage, Inc., at or near Atlanta, GA to points in MS, TN (except Chattanooga), LA, FL (except points in and north of Levy, Marion, Putnam, and Flagler Counties and Daytona Beach), VA, WV, and KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Munford Refrigerated Warehouse, Division of Munford, Inc., 6150 Xavier Drive SW., Atlanta, GA 30336; Commercial Cold Storage, Inc., 4300 Pleasantdale Road, Atlanta, GA 30340. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 115496 (Sub-101TA), filed August 9, 1978, Applicant: LUMBER TRANSPORT, INC., Highway 23, P.O. Box 111, Cochran, GA 31014. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, plywood, and fiberboard*, from the facilities of Holly Hill Lumber Co., at Walterboro and Holly Hill, SC to points in the United States in and east of ND, SD, NB, KS, OK, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Holly Hill Lumber Co., P.O. Box 128, Holly Hill, SC 29059. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 115496 (Sub-102TA), filed August 9, 1978, Applicant: LUMBER TRANSPORT, INC., Highway 23, P.O. Box 111, Cochran, GA 31014. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition board*, from Blountstown, FL to points in AL, CT, DE, DC, FL, GA, IL, IN, KY, ME, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WI, and WV, for 180 days. Supporting shipper: Abitibi Corp., 3250 West Big Beaver Road,

Troy, MI 48084. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 115496 (Sub-103TA), Filed: August 9, 1978, Applicant: LUMBER TRANSPORT, INC., Post Office Box 111, Cochran, GA 31014. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and fittings*, from the facilities of Charlotte Pipe & Foundry Co., at Charlotte and Bakers, NC, to points in the United States in and east of ND, SD, NE, KS, OK, and TX, for 180 days. Applicant has also filed corresponding emergency temporary authority application for identical authority for 30 days. Supporting shipper: Charlotte Pipe & Foundry Co. Send protests to: Ms. Sarah K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 115904 (Sub-126TA), filed August 3, 1978, Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill products, forest products, sawmill products, wood products, and composition board*, (1) from ID, MT, OR, and WA, to IL, IN, IA, KS, MI, MN, MO, NE, NM, ND, OH, SD, and WI; (2) from CA to IL, IN, IA, KS, MI, MN, MO, NE, NM, OH, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: North Pacific Lumber Co., P.O. Box 3915, Portland, OR 97208; Hampton Lumber Sales Co., 901 Terminal Sales Building, Portland, OR 97205; Louisiana Pacific Corp., 1300 Southwest Fifth Avenue, Portland, OR 97201; Weyerhaeuser Co., Tacoma, WA 98401; St. Regis Paper Co., 1203 East D Street, Tacoma, WA 98401; and Continental Forest Products, Inc., P.O. Box 159, Lake Oswego, OR 97034 and American International Forest Products, P.O. Box 4166, Portland, OR 97208. Send protests to: Barney L. Hardin, District Supervisor, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 116164 (Sub-10TA), filed August 1, 1978, Applicant: ARROW TRANSPORTATION, 1911 58th Avenue, Des Moines, IA 50313. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract car-*

rier, by motor vehicle, over irregular routes, transporting: *Brick* from the facilities of Midland Brick Sales Co., at or near Utica, MO to points in IA, NE, MN, and WI, under a continuing contract or contracts with Midland Brick Sales Co., Chillicothe, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midland Brick Sales Co., Box 428, Chillicothe, MO 64601. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 116459 (Sub-71TA), filed July 19, 1978. Applicant: RUSS TRANSPORT, INC., P.O. Box 4022, Chattanooga, TN 37405. Representative: Charles T. Williams, P.O. Box 4022, Chattanooga, TN 37405. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, in tank or dump type vehicles, from Memphis, TN to points in AR, MO, and MS, for 180 days. Supporting shipper: International Salt Co., Inc., 1600 Tullie Circle NE., Suite 133, Atlanta, GA 30329. Send protests to: Glenda Kuss, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 119917 (Sub-51TA), filed August 9, 1978. Applicant: DUDLEY TRUCKING CO., INC., 724 Memorial Drive SE., Atlanta, GA 30316. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products* (other than frozen), (1) from the facilities of Keebler Co., at Cincinnati, OH and Grand Rapids, MI, to the facilities of Keebler Co., at Alsip, IL, and (2) from the facilities of Keebler Co., at Alsip, IL, to the facilities of Keebler Co., at Appleton and Milwaukee, WI, Omaha and Hastings, NE, Fargo and Minot, ND, St. Paul, MN, and St. Louis and Kansas City, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Keebler Co., One Hollow Tree Lane, Elmhurst, IL 60126. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., room 300, Atlanta, GA 30309.

MC 120761 (Sub-40TA), filed August 9, 1978. Applicant: NEWMAN BROS. TRUCKING CO., 6559 Midway Road, P.O. Box 18728, Fort Worth, TX 76118. Representative: Clint Oldham, 1108 Continental Life Building, Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: *Building and roofing materials* (except in bulk) from the facilities of Bird & Son, Inc., Shreveport, LA to points in TX, for 180 days. Supporting shipper: Bird & Son, Inc., Washington Street, East Walpole, MA 02032. Send protests to: Robert J. Kirspe, District Supervisor, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 121626 (Sub-6TA), filed August 8, 1978. Applicant: BAYVIEW TRUCKING, INC., 7080 Florin-Perkins Road, Sacramento, CA 95828. Representative: Ann M. Pougiales, Loughran & Hegarty, 100 Bush Street 21st Floor, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Such merchandise* as is dealt in by wholesale, retail, chain grocery, and food business houses and (b) *exempt commodities* when shipped in the same vehicle with the commodities described in (a) above, with transportation in (a) and (b) above, restricted to that moving in vehicles equipped with mechanical refrigeration, from the facilities of Servicecraft Warehouse at Buena Park, CA to points in the commercial zones of Phoenix and Tucson, AZ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Standard Brands, Inc., 1633 Bayshore Highway, Burlingame, CA 94010. Send protests to: District Supervisor A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 121654 (Sub-14TA), filed August 9, 1978. Applicant: COASTAL TRANSPORT & TRADING CO., Post Office Box 458, Forest Park, GA 30050. Representative: Richard M. Tettelbaum, Serby & Mitchell, P.C., Fifth Floor, Lenox Towers I, 3390 Peachtree Road, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gypsum and gypsum products*, and (2) *materials, equipment, and supplies* used in the manufacture, packaging, distribution, or installation of commodities in (1) above (except commodities in bulk), from the facilities of Georgia-Pacific Corp., at or near Brunswick, GA, to points in FL, NC, and SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Georgia-Pacific Corp., Gypsum Division, 1602 Lancaster Avenue, Rosemont, PA 19010. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 123255 (Sub-172TA), filed August 9, 1978. Applicant: B & L MOTOR FREIGHT, INC., 140 Everett Avenue, Newark, OH 43055. Representative: C. F. Schnee, Jr., Vice President, Traffic (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Kitchen cabinets, vanities, and related articles* used in the installation thereof, from the facilities of IXL, Division of Triangle Pacific Corp., at or near Elizabeth City, NC, to points in the States of CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Triangle Pacific Corp., 4255 LBJ Freeway, Dallas, TX 75234. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

MC 124078 (Sub-851TA), filed August 9, 1978. Applicant: SCHWERTMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oil and vegetable oil products*, from Macon, GA to points in CT, DE, FL, MD, MA, NE (except Grand Island), NJ, NY (except Staten Island), NC, RI, PA, SC, VA, and WV, for 180 days. Supporting shipper: Procter & Gamble Co., P.O. Box 599, Cincinnati, OH 45201. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 127974 (Sub-12TA), filed August 9, 1978. Applicant: P. LIEDTKA TRUCKING, INC., 110 Patterson Avenue, Trenton, NJ 08610. Representative: Alan Kahn, Esq., 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation board*, from the facilities of Celotex Corp. in Pennsauken, NJ to points in PA on and west of U.S. Hwy 15 and points in WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Celotex Corp., 1500 North Dale Mabry, Tampa, FL 33607. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 133168 (Sub-7TA), filed August 9, 1978. Applicant: DELTA EXPRESS,

INC., Old River Road, P.O. Box 776, Natchitoches, LA 71457. Representative: D. E. Lester (address same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill, and forest products* from the plantsites of Vancouver Plywood Co., Inc., at Fisher, Florien and Oakdale, LA to MS, TN, TX, OK, MO, AR, LA, and products essential to the manufacture of these commodities additionally returned products manufactured by Vancouver Plywood Co., Inc., from points in MS, TN, TX, OK, MO, AR, and LA to the plantsites of Vancouver Plywood Co., Inc., at Fisher, Florien, and Oakdale, LA, for 180 days. Supporting shipper: Vancouver Plywood Co., Inc., P.O. Box 128, Florien, LA 71429. Send protests to: Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133221 (Sub-33TA), filed August 9, 1978. Applicant: OVERLAND CO., INC., 1991 Buford Hwy., Lawrenceville, GA 30245. Representative: Alvin Button, 1644 Tullie Circle NE., Suite 102, Atlanta, GA 30329. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper articles, floral pots, molded pulp, and peat products*, from the Keyes Fibre Co. facility at New Iberia, LA to points in the United States (except AK and HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Keyes Fibre Co., Waterville, ME 04901. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 133221 (Sub-34TA), filed August 9, 1978. Applicant: OVERLAND CO., INC., 1991 Buford Hwy., Lawrenceville, GA 30245. Representative: Alvin Button, 1991 Buford Hwy., Lawrenceville, GA 30245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rigid polystyrene* from the facilities of Southeastern Foam Products Inc., at Conyers, GA, Adamstown, MD, Bartersville, IN, Burlington, NC, Elkhorn, WI, Foglesville, PA, Jonesboro, TN, New Middleton, OH, Ocala, FL, Petersburg, VA, Wentzville, MO, to points in the United States (except AK and HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Southeastern Foam Products, Inc., P.O. Box 406, Conyers, GA 30207. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West

Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 133221 (Sub-35TA), filed August 9, 1978. Applicant: OVERLAND CO., INC., 1991 Buford Hwy., Lawrenceville, GA 30245. Representative: Alvin Button, 1644 Tullie Circle NE., Suite 102, Lawrenceville, GA 30245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molded pulp and peat articles, paper articles, styrofoam products, plastic plates, knives, and spoons* (except in bulk) from the facilities of Keyes Fibre Co. at Hammond, IN, Waterville, ME, Welsch, WA, and Florin, CA, and Huntsman Container Corp. at Troy, OH, and Fullerton, CA to points in the United States (except AK and HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Keyes Fibre Co. and Huntsman Container Corp. (a subsidiary), Waterville, ME 04901. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 133566 (Sub-119TA), filed August 9, 1978. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Charles W. Beinhauer, Suite 4959, One World Trade Center, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery*, in vehicles equipped with mechanical refrigeration, from the facilities of Schrafft Candy Co. at or near Boston, MA; Middlesex, Norfolk, Essex and Suffolk Counties, MA, to points in the States of AR, CO, IN, IA, KS, LA, NE, OK, TN, and TX, for 180 days. Restricted to traffic originating at the named origins and destined to points in the named destinations. Supporting shipper: Schrafft Candy Co., 629 Main Street, Cambridge, MA 02100. 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 133920 (Sub-17TA), filed August 9, 1978. Applicant: HOWARD SHEPPARD, INC., P.O. Box 755, Sandersville, GA 31082. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carbide lime slurry*, in bulk, in tank vehicles, from Atlanta, Macon, Waycross, and Albany, GA to Pontotoc, MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting ship-

per: Southeastern Industrial Products, Inc., P.O. Box 755, Sandersville, GA 31082. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 134467 (Sub-30TA), filed August 9, 1978. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 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) *Paper and paper products*, of natural or synthetic fibers, except in bulk, and (2) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities named in (1) above, from the facilities of Scott Paper Co., at or near Chester, PA and Landisville, NJ, to the facilities of Scott Paper Co. at or near Rogers, AR, for 180 days. Supporting shipper: Scott Paper Co., Scott Plaza 1, Philadelphia, PA 19113. Send protests to: District Supervisor, William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 135364 (Sub-30TA), filed August 9, 1978. Applicant: MORWALL TRUCKING, INC., R.D. No. 3, Box 76-C, Moscow, PA 18444. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18617. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, from Norfolk, VA, and Scranton, PA, to points in AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, and WI, under a continuing contract, or contracts, with General Foam Plastics Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Foam Plastics Corp., 3321 East Princess Anne Road, Norfolk, VA 23502. Send protests to: District Supervisor, Paul J. Kenworthy, Interstate Commerce Commission, 314 U.S. Post Office Building, Scranton, PA 18503.

MC 136220 (Sub-60TA), filed August 9, 1978. Applicant: ROY SULLIVAN d.b.a. SULLIVAN TRUCKING CO., 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: *Alfalfa pellets and alfalfa meal* (in bulk, in dump vehicles), from the facilities of Western Alfalfa Corp., at Wellington, Belle Plaine, Oxford, and Douglass, KS, to

points in TX, for 180 days. Supporting shipper: Western Alfalfa Corp., P.O. Box 69, Shawnee Mission, KS 66201. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 136848 (Sub-20TA), filed August 10, 1978. Applicant: JAMES BRUCE LEE & STANLEY LEE, d.b.a. LEE CONTRACT CARRIERS, Old Route 66, P.O. Box 48, Pontiac, IL 61764. Representative: Edward F. Stanula, Attorney, 837 East 162d Street, South Holland, IL 60473. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel hot rolled bars* from the facilities of Wisconsin Steel, in Chicago, IL, to Anderson, Muncie, New Castle, and Indianapolis, IN, under a continuing contract or contracts with Wisconsin Steel, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wisconsin Steel, 2800 East 106th Street, Chicago, IL 60617. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn, Chicago, IL 60604.

MC 141124 (Sub-25TA), filed August 7, 1978. Applicant: EVANGELIST COMMERCIAL CORP., P.O. Box 1709, Wilmington, DE 19899. Representative: Boyd B. Ferris of Muldoon, Pemberton & Ferris, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products and materials, equipment and supplies* (except commodities in bulk), dealt in by manufacturers or converters of paper and paper products, between the plantsites and facilities of Paper Manufacturers Co., Inc., at or near Indianapolis, IN, and Philadelphia, PA, on the one hand, and on the other, points in ME, CT, RI, NY, MA, VT, NH, PA, NJ, WV, DE, MD, VA, MI, KY, IN, OH, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Paper Manufacturers Co., Inc., 9800 Bustleton Avenue, Philadelphia, PA 19115. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Philadelphia, PA 19106.

MC 141160 (Sub-4TA), filed August 9, 1978. Applicant: NEWTON TRANSPORTATION, INC., R.D. No. 1, Orwigsburg, PA 17961. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wire and*

cable, from Bossier City, LA, to points in the United States (except Alaska and Hawaii), (2) *plastic pellets*, from Frackville, PA, to Bossier City, LA, under a continuing contract or contracts with Cadillac Cable Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cadillac Cable Corp., P.O. Box 695, Pottsville, PA 17901. Send protests to: District Supervisor Paul J. Kenworthy, Interstate Commerce Commission, 314 U.S. Post Office Building, Scranton, PA 18503.

MC 142248 (Sub-34TA), filed July 31, 1978. Applicant: GORSKI BULK TRANSPORT, INC., R.R. No. 4, Harrow, ON, Canada NOR 1G0. Representative: Thad. A. Gorski, 843 Central Avenue, Windsor, ON, Canada N8Y 4S2. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol, alcoholic liquors, neutral spirits, distilled spirits, wine and brandies* between the international boundary of Canada and the United States on one hand, and, on the other to Scobeyville, NJ, Lawrenceville, NJ, Clifton, NJ, Bardstown, KY, and Burlingame, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hiram & Sons, Ltd., P.O. Box 518, Windsor ON, Canada. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

MC 142668 (Sub-14TA), filed August 9, 1978. Applicant: AERO DISTRIBUTING CO., INC., 7259 Delta Circle, Mableton, GA 30336. Representative: K. Edward Wolcott, Suite 1200 Atlanta Gas Light Tower, 235 Peachtree Street NE, Atlanta, GA 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is marketed by home products distributors for the account of Shaklee Corp.*, from Chicago, IL, to points in MI (except Detroit, MI), under a continuing contract or contracts with Shaklee Corp. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Shaklee Corp., 2036 National Avenue, Hayward, CA 94545. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW, Room 300, Atlanta, GA 30309.

MC 143103 (Sub-3TA), filed August 9, 1978. Applicant: CHEROKEE LINES, INC., P.O. Box 152, Cushing, OK 74023. Representative: Donald L.

Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration, from the facilities of Avoset Foods Corp., at Gustine, CA, to points in IL, IN, MI, OH, KY, WV, VA, MD, DC, DE, PA, NY, NJ, CT, RI, MA, VT, NH, MO, IA, MN, WI, NE, KS, and CO, under a continuing contract, or contracts, with Avoset Foods Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Avoset Foods Corp., 299 Fifth Avenue, Gustine, CA 95322. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 144428 (Sub-3TA), filed August 7, 1978. Applicant: TRUCKADYNE, INC., Route 16 (Uxbridge Road), Mendon, MA 01756. Representative: S. L. Watts, T.D.S., 1050 Waltham Street, Lexington, MA 02173. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionary products* (except in bulk service) and *materials used in the manufacture of the above products in the return direction between the facilities of Nabisco Confections, Inc.*, located in Cambridge, MA, Manfield, MA, and Ashton, RI, on the one hand, and the States of GA, NC, FL, TX, IL, CO, CA, OR, VA, MI, PA, TN, UT, on the other, under a continuing contract or contracts with Nabisco Confections, Inc., for 180 days. Supporting shipper: Nabisco Confections, Inc., 810 Main Street, Cambridge, MA 02139. Send protests to: David M. Miller, District Supervisor, Interstate Commerce Commission, 436 Dwight Street, Room 333, Springfield, MA 01103.

MC 14436TA, filed July 27, 1978. Applicant: VICTOR & SON TRUCKING, INC., 15855 East Edna Place, Irwindale, CA 91706. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bidets*, from the facilities of Rusco American Bidet Corp. at Burbank, CA, to points in the United States (except Alaska and Hawaii), under a continuing contract or contracts with Rusco American Bidet Corp., for 180 days. Supporting shipper: Rusco American Bidet Corp., 3000 North San Fernando Boulevard, Burbank, CA 91504. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building,

300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144965 (Sub-1TA), filed July 27, 1978. Applicant: RONALD ASHBY, Route One, Giltner, NE 68841. Representative: Ronald Ashby (same as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Internal combustion engines, parts and components thereof; and parts, components and accessories* used in connection with internal combustion engines, from Detroit, Marysville, and Farmington, MI, Jamestown, NY, Beaver Dam, WI, Rockford, ILL, Canton, OH, Omaha, NE, Lubbock, TX, and the commercial zones thereof to facilities of Industrial-Irrigation Services at or near Hastings, NE, under a continuing contract or contracts with Industrial-Irrigation Services, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John C. Osborne, President, Industrial-Irrigation Services, 221 East J Street, Hastings, NE 68901. Send pro-

tests to: Max H. Johnston, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

MC 145015TA, filed August 10, 1978. Applicant: P. M. E., LTD., P.O. Box 181, Group 261, R.R. No. 2, Winnipeg, MB, Canada R3C 2E6. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Carbonated beverages*, from the facilities of G. Helleman Brewing Co., Inc., located at or near St. Paul, MN to ports of entry on the International Boundary Line between the United States and Canada at Noyes, MN, Portal, ND, Sweetgrass, MT and Blaine and Port Angeles, WA, under a continuing contract or contracts with Oppenheimer Bros., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Oppenheimer Bros. (Distribution Ltd.), 4405 Canada Way, Burnaby, BC, V5G 1J5. Send protests to: Ronald R. Mau,

District Supervisor, Interstate Commerce Commission, Room 268, U.S. Post Office, Federal Building, Fargo, ND 58102.

MC 145178TA, filed August 9, 1978. Applicant: CHARLES INKS d.b.a. CHARLES INKS TRUCKING, 12400 Cypress, Space 37, Chino, CA 91710. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic materials*, from Bay City, Beaumont, and Houston, TX and Lake Charles, LA to points in Los Angeles and Orange Counties, CA for 180 days. Supporting shipper: C.B.M. Enterprises, 14120 Alondra Avenue, Suite F, Santa Fe Springs, CA 90670. Sent protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Los Angeles, CA 90012.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-29166 Filed 10-13-78; 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

	Items
Commodity Futures Trading Commission	1, 2
Federal Communications Commission	4, 5
Federal Energy Regulatory Commission	6, 7
Federal Reserve System Board of Governors	3
Renegotiation Board	8
Securities and Exchange Commission	9, 10
United States Metric Board	11

[6351-01-M]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., October 17, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2070-78 Filed 10-12-78; 11:23 am]

[6351-01-M]

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., October 20, 1978.

PLACE: 2033 K Street NW., Washington, D.C. 8th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2071-78 Filed 10-12-78; 11:23 am]

[6210-01-M]

3

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 46417, October 6, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, October 11, 1978.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item was added:

Review of Federal Reserve Bank employee conflict of interest regulation and of property ownerships under such regulation. (This matter was originally announced for a meeting on Friday, October 6, 1978.)

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: October 11, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2074-78 Filed 10-12-78; 1:30 pm]

[6712-01-M]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, October 18, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special closed Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

General-1-Briefing on preparations of WARC '79, including status of consultations with foreign countries.

This is a continuation of the special closed meeting of October 3, 1978 (Public Notice No. 7830).

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: October 10, 1978.

[S-2079-78 Filed 10-12-78; 3:37 pm]

[6712-01-M]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, October 18, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special closed Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

General-2-Internal personnel matter.

This is a continuation of the discussion at the closed meeting of October 5, 1978 (Public Notice No. 7854).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

If additional information is required concerning this meeting it may be obtained from FCC Public Information Office, telephone 202-632-7260.

Issued: October 11, 1978.

[S-2080-78 Filed 10-12-78; 3:37 pm]

[6740-02-M]

6

OCTOBER 11, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., October 18, 1978.

PLACE: 825 North Capitol Street NE., Washington, D.C., Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information.

GAS AGENDA—166TH MEETING, OCTOBER 18, 1978, REGULAR MEETING

CAG-1. Docket No. CP78-136, Transcontinental Gas Pipe Line Corp.

CAG-2. Docket No. CI76-230, Sun Oil Co.

CAG-3. Docket No. CI77-133, CIG Exploration, Inc. Docket No. CI77-448, Amoco Production Co.

CAG-4. Docket No. CI78-1020, CIG Exploration, Inc.

CAG-5. Docket No. CI76-323, HNG Oil Co.

CAG-6. Docket No. CI78-931, Amoco Production Co.
 CAG-7. Docket No. CI78-1071, Kerr-McGee Corp.
 CAG-8. Docket No. CI64-156, Marathon Oil Co. Docket No. CI78-631, J. M. Huber Corp. Docket No. CI78-671, Ashland Exploration, Inc. Docket No. CI78-446, Amoco Production Co. Docket No. CI77-660, Texaco, Inc.
 CAG-9. Docket No. CP77-567, Michigan Wisconsin Pipe Line Co. Docket No. CP78-155, Texas Eastern Transmission Corp. Docket No. CP78-200, Texas Eastern Transmission Corp. Docket No. CP75-19, Trunkline Gas Co.
 CAG-10. Docket No. CI77-139, Amoco Production Co. Docket No. CI77-711, Transco Exploration Co. Docket No. CI78-141, Getty Oil Co. Docket No. CI78-492, Placid Oil Co. Docket No. CI78-508, Sun Oil Co. Docket No. CI78-1058, HNG Oil Co. Docket No. CI78-1049, Cabot Corp. Docket No. CI78-1048, Cities Service Co. Docket No. CI78-986, Exxon Co., U.S.A. Docket No. CI78-615, Cities Service Co. Docket No. CI78-592, Champlin Petroleum Co. Docket No. CI78-571, Atlantic Richfield Co. Docket No. CI78-564, Cities Service Co. Docket No. CI78-505, Pioneer Production Co. Docket No. CI78-1110, Marathon Oil Co. Docket No. CI78-27, Exxon Corp. Docket No. CI78-691, Ashland Exploration, Inc. Docket No. CI78-656, American Natural Gas Production Co. Docket No. CI78-660, American Natural Gas Production Co. Docket No. CI78-708, American Natural Gas Production Co. Docket No. CI78-709, American Natural Gas Production Co. Docket No. CI78-1124, Terra Resources, Inc. Docket No. CI77-777, Mobil Oil Corp. Docket No. CI77-789, Mobil Oil Corp. Docket No. CI78-426, Continental Oil Co. Docket No. CI78-390, Cabot Corp. Docket No. CI78-395, Cabot Corp. Docket No. CI78-69, Mobil Oil Corp. Docket No. CI78-999, Atlantic Richfield Co. Docket No. CI78-973, Northwest Production Corp. Docket No. CI77-303, Transco Exploration Co. Docket No. CI78-1060, Transco Exploration Co.
 CAG-11. Docket Nos. CI78-208 and CI78-851, Chevron U.S.A. Inc.
 CAG-12. Docket Nos. G-11299, et al., Atlantic Richfield Co. (operator), et al.
 CAG-13. Docket Nos. G-4614, et al., Southland Royalty Co.
 CAG-14. Docket Nos. RI76-139, et al., Dorchester Gas Producing Co., et al.
 CAG-15. Docket No. RI78-21, Braden-Deem, Inc.
 CAG-16. Docket No. CP78-528, Northwest Pipeline Corp.
 CAG-17. Docket No. CP77-499, Columbia Gulf Transmission Co. and Northern Natural Gas Co.
 CAG-18. Docket No. CP78-428, Northern Natural Gas Co., Texas Eastern Transmission Corp., Transcontinental Gas Pipe Line Corp., and United Gas Pipe Line Co.
 CAG-19. Docket No. CP78-375, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
 CAG-20. Docket No. CP78-396, Panhandle Eastern Pipe Line Co.
 CAG-21. Docket No. CP78-312, Transcontinental Gas Pipe Line Corp.
 CAG-22. Docket No. CP78-497, Transcontinental Gas Pipe Line Corp.
 CAG-23. Docket Nos. CP76-257, CP76-520, CP76-521 and CP76-522, Texas Gas Transmission Corp. Docket No. CP78-417, Transcontinental Gas Pipe Line Corp.

I. PIPELINE RATE MATTERS

RP-1. Docket No. RP78-92, Southwest Gas Corp.
 RP-2. Docket Nos. CP75-372 and CP75-373, Tennessee Gas Pipeline Co., a division of Tenneco Inc.

II. PRODUCER MATTERS

CI-1. Docket No. CI75-45, Tenneco Oil Co. Docket Nos. CI75-107 and CI75-684, Shell Oil Co.
 CI-2. Docket No. CI74-78, Freeport Oil Co.
 CI-3. Docket No. CP73-184, Colorado Interstate Gas Co. Docket No. CI73-485, CIG Exploration, Inc.

III. PIPELINE CERTIFICATE MATTERS

CP-1. Docket No. CP76-500, Cities Service Gas Co.
 CP-2. Docket No. RP77-137-1, South Georgia Natural Gas Co. (Great Southern Paper Company).
 CP-3. Docket No. CP73-340, Colorado Interstate Gas Co. Docket No. CP74-243, Northern Natural Gas Co. Docket No. CI74-430, Colorado Oil and Gas Corp. and Gas Producing Enterprises, Inc.
 CP-4. Transcontinental Gas Pipe Line Corp.
 CP-5. Docket Nos. CI77-163 and CI77-164, McCulloch Gas Processing Corp. Docket Nos. CP76-121 and CP77-1, McCulloch Interstate Gas Corp. Docket No. CP76-494, Colorado Interstate Gas Co.

POWER AGENDA—166TH MEETING, OCTOBER 18, 1978, REGULAR MEETING

M-1. Docket No. RM78-10, Procedures for Review by the Federal Energy Regulatory Commission of remedial order issued by the Secretary of Energy.
 M-2. Docket No. RM78-23, State of Louisiana first use tax in pipeline rate cases.

MISCELLANEOUS AGENDA—166TH MEETING, OCTOBER 18, 1978, REGULAR MEETING

CAP-1. Docket No. ER78-35, et al., Connecticut Light & Power Co., Hartford Electric Light Co.
 CAP-2. Docket No. ER78-500, Indiana Gas & Electric Co.
 CAP-3. Docket No. 78-582, Upper Penninsula Power Co.
 CAP-4. Docket Nos. ER78-563 and ER78-564, Central Vermont Public Service Corp.
 CAP-5. Project No. 1107, City of Ashland, Oreg.

I. ELECTRIC RATE MATTERS

ER-1. Docket No. E-9520, Illinois Power Co.
 ER-2. Docket Nos. ER76-39, ER76-340, and ER76-363, Kansas Power & Light Co.
 ER-3. Docket No. ID-1709, Willis C. Pitkin. Docket No. ID-1710, William Cyrus Macinnes.
 ER-6. Docket No. ER76-813, Jersey Central Power & Light Co.
 ER-7. Docket Nos. ER76-714, ER76-715, and ER76-716, Indiana & Michigan Electric Co.
 ER-8. Docket No. ER76-495, (AFUDC Issue), Carolina Power & Light Co.
 ER-9. Docket Nos. ER78-508, et al., Florida Power & Light Co.

KENNETH F. PLUMB,
 Secretary.

[S-2075-78 Filed 10-12-78; 1:30 pm]

[6740-02-M]

7

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 46626, published October 10, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 11, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CAG-20. RP77-138, United Gas Pipe Line Co.

KENNETH F. PLUMB,
 Secretary.

[S-2073-78 Filed 10-12-78; 11:23 am]

[7910-01-M]

8

RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, October 17, 1978; 10 a.m.,

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 through 3 are open to public observation. Matters 4 and 5 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting held October 11, 1978, and other Board meetings if any.
2. Exemption recommendations (ACE List 3007):
 - A. Champion International Corp., fiscal year ended September 30, 1976.
 - B. DeLaval Turbine Inc., fiscal year ended September 30, 1976.
 - C. General Foods Corp., fiscal year ended September 30, 1976.
3. Recommended clearances without assignment (List 1922):
 - A. Eaton Corp., fiscal year ended December 1975.
 - B. American Microwave Industries, Inc., fiscal year ended May 18, 1976.
 - C. Morris Bean and Co., fiscal year ended March 31, 1976.
 - D. Airco, Inc., fiscal year ended December 31, 1975.
 - E. General Battery Corp., fiscal year ended December 31, 1975.
4. Approval of agenda for meeting to be held October 31, 1978.
5. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: October 10, 1978.

GOODWIN CHASE,
Chairman.

[S-2072-78 Filed 10-12-78; 11:23 am]

[8010-01-M]

9

SECURITIES AND EXCHANGE COMMISSION.

STATUS: Closed meeting.

DATE AND TIME: Thursday, October 12, 1978, immediately following the open meeting scheduled for 10 a.m.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

The following items will be considered by the Commission at a closed meeting scheduled for Thursday, October 12, 1978, immediately following the open meeting:

Administrative proceeding.
Bankruptcy legislation.
Settlement of injunctive action.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A), and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Pollack determined that Commission business required consideration of the matter and that no earlier notice thereof was possible.

OCTOBER 12, 1978.

[S-2077-78 Filed 10-12-78; 3:37 pm]

[8010-01-M]

10

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 16, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, October 17, 1978, at 10 a.m. Open meetings will be held on Wednesday, October 18, 1978, at 2:30 p.m., and on Thursday, October 19, 1978, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Pollack determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 17, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive action.
Settlement of administrative proceedings of an enforcement nature.
Other litigation matters.

The subject matter of the open meeting scheduled for Wednesday, October 18, 1978, at 2:30 p.m., will be:

Oral argument on the application of the First National Bank of Chicago and the Midwest Association of Credit Unions for an exemption from the provisions of the Investment Company Act of 1940. For further information, please contact R. Moshe Simon at 202-755-1530.

The subject matter of the open meeting scheduled for Thursday, October 19, 1978, at 10 a.m., will be:

1. Consideration of the Municipal Securities Rulemaking Board's proposed Rules of Fair Practice. For further information, please contact John M. McNally at 202-755-1368.

2. Consideration of whether or not to approve proposed rules submitted by the Securities Investor Protection Corporation ("SIPC"), relating to the determination and treatment of separate customer accounts for purposes of SIPC protection under the Securities Investor Protection Act of 1970, as amended. For further information, please contact Linda Kurjan at 202-376-7470.

3. Consideration of whether or not to propose for comment several regulatory initiatives designed to improve the manner in which last sale data and quotation information are disseminated and displayed. For further information, please contact George T. Simon at 202-755-1388.

4. Consideration of a proposed agreement between the National Association of Securities Dealers, Inc. ("NASD") and the Securities and Exchange Commission concerning the administration by the NASD of the Municipal Securities Rulemaking Board's Municipal Securities Representative Qualification Examination to SECO personnel and associated persons of certain banks. For further information, please contact Marcia L. MacHarg at 202-755-1369.

5. Consideration of whether or not staff procedures designed to reduce the time needed to process certain routine investment company filings should be adopted. The expedited procedures under consideration would affect review of annual updating post-effective amendments and preliminary proxy material. For further information,

please contact Anthony A. Vertuno at 202-755-1192.

6. Consideration of a release requesting comments on proposed amendments to the schedules relating to the beneficial ownership of certain classes of equity securities. The purpose of the amendments is to enable the Commission to satisfy its statutory obligation to tabulate and promptly make available the information contained in the beneficial ownership reports filed with it. For further information, please contact J. Rowland Cook at 202-755-1750.

7. Consideration of an objection by the U.S. Trust Co. to the mailing to holders of the 6½ percent Convertible Subordinated Debentures due 1996 of the Chase Manhattan Mortgage and Realty Trust of a proposed communication from three of the holders. The grounds of the objection is that the mailing of such statement is not in the best interest of the debentures. For further information, please contact Norman Schou at 202-755-1240.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Mark Goldfus at 202-755-1129.

OCTOBER 10, 1978.

[S-2078-78 Filed 10-12-78; 3:37 p.m.]

[3510-13-M]

11

U.S. METRIC BOARD.

TIME AND DATE: 10 a.m., Thursday, October 19, 1978; 8:30 a.m., Friday, October 20, 1978.

PLACE: Department of Labor, 200 Constitution Avenue NW., Room 3437N, Washington, D.C. 20210.

STATUS: The portion of the Thursday, October 19, 1978, meeting between 10 a.m. and 12 noon will be closed to the public; the Thursday afternoon portion, beginning at 1:30 p.m., and the Friday, October 20, 1978, portion will be open to the public.

MATTERS TO BE CONSIDERED:

Portion closed to the public—October 19, 1978.

Personnel matters.

Budget review.

Portion open to the public—October 19 and 20, 1978.

Review of minutes of August 16-18, 1978 meeting.

Approval of agenda.

Reports.

National Metric Week.

Program review.

Appointment of Committees.

Approval of Board policies.

Presentation on Study of Statutes, Regulations and Other Laws Impacted by Conversion to Metric Units.

Presentation on proposed Uniform Metric System Act.

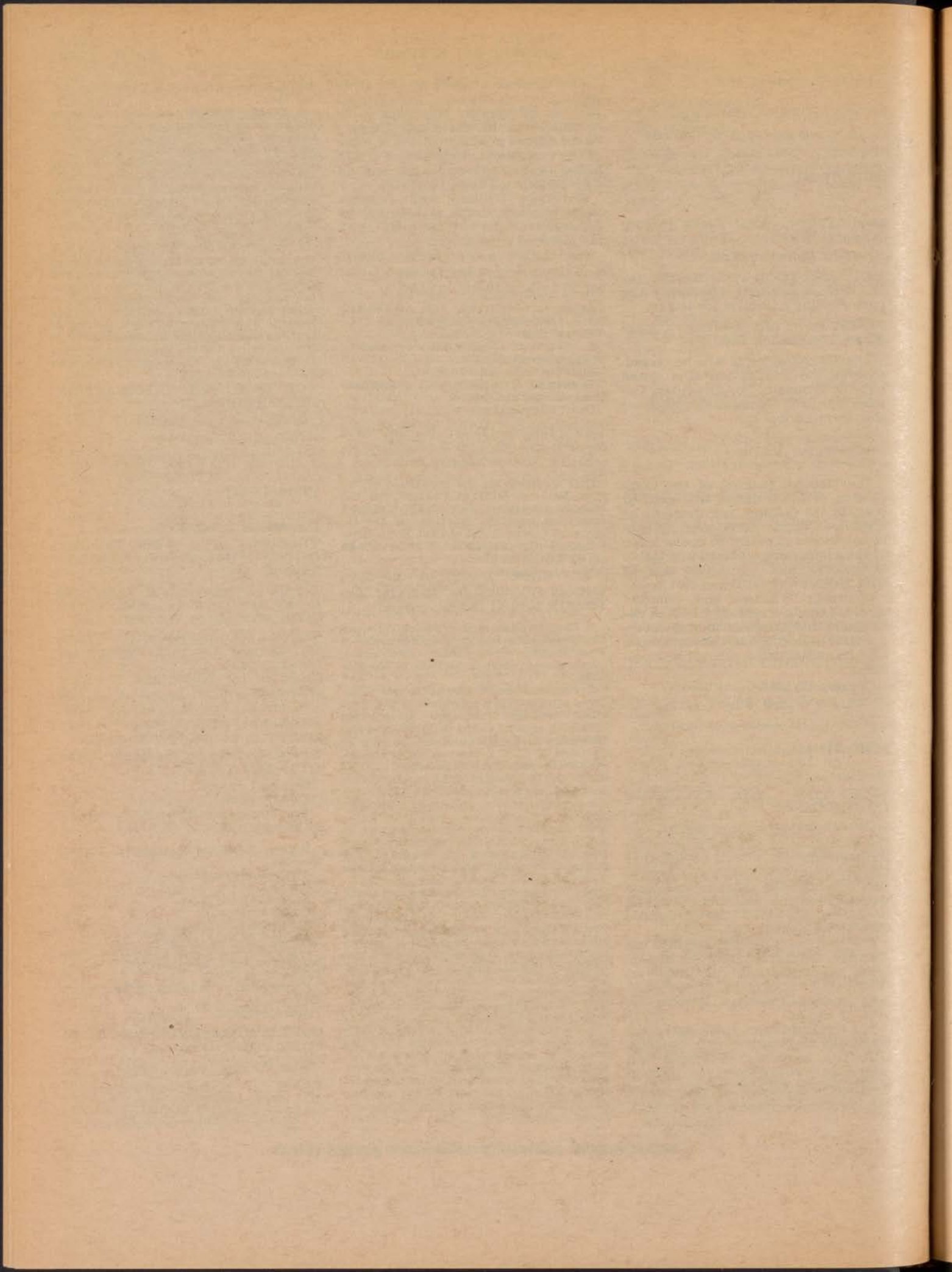
Board meetings.

CONTACT PERSON FOR MORE INFORMATION:

Joan Phillips, 703-235-1934.

Dr. LOUIS F. POLK,
Chairman, U.S. Metric Board.

[S-2076-78 Filed 10-12-78; 1:30 pm]



Registered
Product

MONDAY, OCTOBER 16, 1978
PART II



**CONSUMER
PRODUCT SAFETY
COMMISSION**



**CLASSIFICATION AS
BANNED HAZARDOUS
SUBSTANCES OF
CERTAIN TOYS AND
OTHER ARTICLES
PRESENTING
MECHANICAL HAZARDS
DUE TO SMALL PARTS;
PROPOSED REGULATION**

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Parts 1500 and 1501]

CLASSIFICATION AS BANNED HAZARDOUS SUBSTANCES OF CERTAIN TOYS AND OTHER ARTICLES PRESENTING MECHANICAL HAZARDS DUE TO SMALL PARTS

Proposed Regulation

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed regulation.

SUMMARY: The Commission is proposing a regulation that would classify as banned hazardous substances certain toys and other articles intended for use by children under 3 years of age. It would cover products which present a choking, aspiration or ingestion hazard, based on their failure to comply with specified size criteria. By banning these products, the regulation would reduce the risks to children under three from choking, aspirating, or ingesting small parts.

DATES: Comments must be received no later than December 15, 1978. The proposed effective date is 6 months following publication of the regulation in final form. All products introduced into interstate commerce after this date would be subject to the regulation.

ADDRESS: Send comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, located at 1111 18th Street NW.

FOR FURTHER INFORMATION CONTACT:

Elaine Besson, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-492-6453.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Commission regulates the safety of toys and other children's articles under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 et seq.). Before the Commission began operating in May 1973, the Food and Drug Administration (FDA) regulated toy safety under FHSA authority.

In 1970 the FDA issued two toy safety regulations which addressed the aspiration, ingestion, and choking hazards presented by particular small parts, such as noisemaking components in rattles, on toys (these regulations are now codified with the Commission's regulations at 16 CFR 1500.18(a) (1) and (2)). Under the au-

thority of these regulations, the FDA and later the Commission took many actions against particular toys which contained loose, small objects that could injure children.

In January 1973 the FDA proposed for public comment a comprehensive regulation designed to (1) identify toys and other articles intended for use by children under 3 years of age which present a mechanical hazard from small parts, (2) identify mouth-actuated toys intended for use by children under 8 years of age which present a mechanical hazard from small parts, and (3) classify all such products as "banned hazardous substances" under the FHSA (38 FR 2179-80, Jan. 22, 1973).

The proposed regulation used a truncated, hollow cylinder of specified dimensions to determine which products were too small (or had components that were too small). In addition, the proposal referenced "use and abuse" test procedures to simulate the "normal use" and "reasonably foreseeable damage or abuse" that is part of the statutory definition of a mechanical hazard (section 2(s) of FHSA, 15 U.S.C. 1261(s)).

Some products which are normally intended by the manufacturer for children over 3 years of age may not be readily recognized by the purchaser as potentially unsuitable for younger children due to the presence of small parts. The FDA proposal therefore provided an exemption for those products if they had the "negative" label "Caution: Not Recommended for Children Under 3 Years Old." A similar exemption based on cautionary negative labeling was proposed for mouth-actuated toys "not generally recognized as being suitable for use only by children 8 years of age or older."

The proposal contained additional exemptions for chalk, crayons, and books made entirely from paper because the FDA believed the developmental benefits that children derive from the use of these products outweigh the potential danger of their being aspirated or ingested. In addition, parents and other adults who might give a child a piece of chalk or a crayon would be likely to recognize that the article is small and is capable of becoming smaller through normal use or breakage. These adults would be expected to take adequate precautions to prevent such products from being placed in the mouths of very young children.

In response to its proposal, the FDA received over 90 comments from manufacturers, distributors, trade associations, the American Academy of Pediatrics, and individual consumers. Many of these comments were exten-

sive and extremely critical. They addressed: The very broad and undefined scope of the regulation; the lack of documentation for establishing the size and configuration of the test device; the vagueness of the labeling provisions and the exaggerated size requirements of lettering; the adverse effect of negative labeling; and the adequacy of lead time for compliance. In addition, the comments included requests for 20 different product class exemptions.

In proposing its revised small parts banning regulation, the Commission has taken into consideration the comments received in response to the FDA's January 1973 proposal.

Neither the FDA nor the Commission has previously taken action to withdraw or finalize the January 1973 proposed small parts regulation. Nevertheless, the cylinder it described has been used as the basis of voluntary toy safety efforts by FDA and Commission staff members. In addition, the Toy Manufacturers of America (TMA) incorporated the cylinder into its Voluntary Product Toy Safety Standard PS 72-76 (1976).

INJURY DATA

The Government and industry toy safety efforts directed at small parts have been effective in reducing the risk of injury presented by small parts on toys and other articles intended for use by children under 3 years of age.¹ Nevertheless, the Commission believes that an unreasonable risk still exists and should be addressed by a mandatory and comprehensive regulation. In particular, the fact that many of the injuries are fatal to children supports the finding of the unreasonableness of the risk from small parts.

During calendar year 1976, more than 7,000 children under 10 years of age were treated in U.S. hospital emergency rooms for injuries related to small parts. This is a Commission estimate which is based on data from a statistical sample of 119 hospitals comprising the National Electronic Injury Surveillance System (NEISS). A number of Commission efforts have led to additional injury information that focuses on the hazard which small parts present to children under 3:

(a) *Special study.* Between December 24, 1976 and February 9, 1977 the Commission's epidemiological staff conducted a special study of small

¹ The risk is presented by articles intended for use by children under 3 years of age, as well as toys. However, in an effort to simplify the preamble discussion, the term toy(s) will be used inclusively for both toys and other articles intended for use by children.

parts injuries reported through NEISS. The staff investigated and analyzed the injuries and found 153, representing an estimated 3,800 nationwide injuries for that period, which were verified to be ingestions, throat lodgments, or foreign body lodgments in ears or noses. Forty-six percent of these injuries were to children under 3 years of age, and 79 percent of all choking incidents were to children under three. (The complete study "Injuries Associated with Small Objects" is available from the Office of the Secretary.)

(b) *Bendix study.* In 1976 the Commission contracted with the Bendix Co. to conduct an investigation into the size of toys/small parts which have caused choking deaths or incidents in children under the age of 6 years. Bendix solicited information from the membership of the National Association of Medical Examiners.

Death certificates and injury reports obtained by Bendix indicated that toys, toy parts, and other objects ranging in size from $\frac{3}{16}$ inch to $\frac{1}{4}$ inches in greatest diameter can produce fatal obstruction of the air passage. (Copies of this Bendix report are available from the Office of the Secretary.)

(c) *Data on deaths associated with small parts.* The staff has compiled data, from its own files and from those of the Bendix Co., on deaths associated with small parts. Between March 1973 and March 1977 the Commission received 113 death certificates in which the cause of death was related to small parts. Forty-five deaths were associated with 14 different types of children's toys and nurseries products.

The following causes of death were among those revealed by the certificates: (1) Lodgment of an object in the pharynx or larynx area in the throat, which blocked the air passage and resulted in suffocation; (2) drowning when an object became lodged, the victim attempted to vomit, and the gastric contents were unable to exit through the mouth or nose and thus entered the lungs; (3) swallowed sharp or pointed objects which cut or pierced internal organs; (4) aspiration of an object into a bronchus or lung.

Approximately half of the victims in the Commission's death certificate file on small parts were under 3 years of age. In the Bendix Co. data on deaths associated with choking, more than two-thirds of those who died were children under 3 years of age.

(d) *Other data bases.* The Commission also reviewed over 200 in-depth investigations and consumer complaints in its files which involved injuries from small parts. These involved foreign body throat lodgments, ingestions, and aspirations, as well as foreign body ear and nose lodgments. The throat lodgments cut off the breath-

ing of many of the victims, and some children survived only because an adult was present to remove the object. Some of the victims died of suffocation. All of the victims who aspirated objects required hospital in-patient treatment.

PROPOSED REGULATION

(a) *Statutory framework.* Under section 2(f)(1)(A) of the FHSA, the definition of "hazardous substance" includes "[a]ny toy or other article intended for use by children which the [Commission] by regulation determines . . . presents an electrical, mechanical, or thermal hazard." Under section 2(s) of the FHSA, "[a]n article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness . . . because the article (or any part or accessory thereof) may be aspirated or ingested . . . or . . . because of any other aspect of the article's design or manufacture."

The Commission is proposing to define as hazardous substances certain toys and other articles intended for use by children under 3 years of age, based on the small parts hazard they present. If the Commission issues a final regulation defining them as "hazardous substances," they are automatically "banned hazardous substances" under section 2(q)(1)(A) of the FHSA, because they would be "[t]oys or other article[s] intended for use by children which [are] hazardous substance[s]."

Under section 3(e) of the FHSA, the Commission must follow the informal notice and comment rulemaking procedures of 5 U.S.C. 553 to determine that a toy presents a mechanical hazard, unless it elects alternative procedures. In this small parts proceeding the Commission will follow the 5 U.S.C. 553 procedures.

(b) *Scope.* The Commission is proposing the small parts regulation to apply to nearly all toys and other articles intended for children under 3 years of age. All children and adults are potential victims of the hazard presented by small parts, but children under 3 are particularly susceptible.

Children under 3 indiscriminately put things into their mouths and do not have the knowledge of cause and effect relating to protecting themselves from potential hazards as does an older child or adult (this is discussed fully in an April 17, 1978 staff report entitled "Normal Developmental Behavior in Young Children and Their Relationship to Potential Hazards" which is available from the Office of the Secretary). In addition, very small parts on toys that are in-

tended for use by children under 3 usually serve a limited or no functional purpose.

Finally, it is easier to control the products to which children under 3 have access than to control the products to which older children have access. Children under 3 could, of course, encounter and choke on a coin, hairpin, or other adult item or on toys intended for use by their older brothers and sisters. However, the Commission believes that a regulation directed at toys intended to be used by children under 3 will have a positive impact in reducing injuries.

In determining which toys and other articles are intended for children under 3, the Commission will consider such factors as the manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising, promotion, and marketing of the toy; and whether the toy is commonly recognized as being intended for children under 3. None of these factors will necessarily be determinative. It should be noted that products which are intended both for children under 3 and for older children will fall within the scope of the regulation.

The proposed regulation covers all toys and other articles intended for use by children under 3 that are included in a long list of product categories (§ 1501.2). The list has been developed from a number of sources including the Toy Manufacturers of American classification system, published commercial promotional materials, and a retail store survey conducted by the Commission staff. While this list is not intended to be exhaustive, the Commission believes that the vast majority of toys covered by the regulation will fall within at least one of these categories. Because the scope of the proposed regulation is very broad, the list of product categories should be helpful to industry representatives and to consumers who want to focus on the products that the Commission intends to regulate. The Commission emphasizes that, even if a toy does not fall within a category on the list, it will be covered by the regulation as long as it is intended for use by children under 3 and is not specifically excluded from coverage.

The Commission has proposed exemptions for a number of products (§ 1501.3) whose utility or educational value far outweigh any possible hazard from small parts. In some cases, compliance with the small parts regulation would mean drastic redesign of useful everyday products at substantial cost to the consumer and very little additional safety. In other cases, compliance would be physically impossible because the product could not perform its function if redesigned.

As examples, books made of paper and writing materials are educational and are associated with no significant injuries based on their size. Children's clothing and accessories, such as shoe lace holders and buttons, are functional and present a similarly insignificant injury pattern. Modeling clay and fingerpaints cannot practicably be manufactured so that small bits of these substances will never break off. (Under the FHSA, any such products which are harmful to children because of their toxicity, as an example, are automatically banned.)

The Commission also proposes to exempt marbles and balloons from the small parts regulation. Although these products have been involved in some choking and ingestion incidents (especially when infants swallow and choke on deflated balloons), such incidents are relatively rare when compared with the billions of such products that have been in use. If the regulation covered marbles and balloons, they would be effectively banned. In addition, the Commission believes that marbles, when used in the game of "marbles," are generally intended for children over 3. However, the proposed regulation does cover any marbles which are part of a toy that is intended for children under 3.

Finally, the Commission proposes to exempt pacifiers and rattles from the small parts regulation. The Commission's existing regulations for these products both contain requirements which specifically address the risk of injury presented by small parts (see 16 CFR Part 1510 for the rattle regulation and 16 CFR Part 1511 for the pacifier regulation).

A comment to the January 1973 proposal requested an exemption for vending machine products. This was based on the claim that these products are not intended for children under 3 because such children cannot activate the machines. The Commission believes that some vending machine products are nevertheless intended for children under 3. In fact, it is likely that parents buy these inexpensive products for their children, for example to keep them occupied while the parent is shopping. The proposed regulation does not exempt vending machine products as a broad category. They will therefore be evaluated individually as to whether they are intended for use by children under 3.

(c) *Regulatory criteria.* The proposed small parts regulation centers on a measuring device—a truncated, hollow cylinder—which separates toys and their components into two classes, according to size and shape (§ 1501.4(a)). If a toy or component fits entirely within the cylinder, the Commission believes that it is too small for

children under 3 and must therefore be banned.

The dimensions of the cylinder, as proposed below, are identical to those proposed by FDA in January 1973. Data obtained by the Commission and analyses performed since 1973 confirm that a cylinder with these dimensions is the most meaningful, effective, and practical way to identify toys and components that present unreasonable risks of choking, aspiration, and ingestion to children under 3 years of age.

The Commission staff first evaluated the relevant medical data found in the existing literature. These data on the actual dimensions of air and food passages in humans are sparse and alone are probably insufficient to support the determination that objects of a particular size are hazardous. However, the data proved useful in establishing certain approximate size boundaries.

The staff then evaluated the sizes and shapes of the objects known to be involved in choking, aspiration, or ingestion incidents in children under 3. Many of these objects were identified in the Bendix contract report. The staff found that the cylinder would "screen out" the vast majority of such objects.

The staff also evaluated a test device with dimensions used by the Commission (43 FR 22002, May 23, 1978) and the Canadian government to define hazardous rattles. This device also screened out many objects which were involved in actual choking, aspiration, or ingestion incidents. However, the rattle test device additionally screened out a large number of products not so involved and not otherwise believed by the staff to be hazardous. Based on this analysis, the Commission decided to incorporate the test cylinder into its proposed regulation.

A June 5, 1978, Commission staff report, entitled "Human Factors Analysis of Ingestion, Aspiration, and Choking Injuries," discusses in some detail the link between the cylinder and the risks of injury it addresses. In particular, the report (which is available from the Office of the Secretary) traces the evolution of the cylinder and its dimensions.

Briefly, the design of the cylinder is derived from two screening devices originally proposed by the Toy Manufacturers of America (TMA). These devices consisted of a hollow sphere with an inside diameter of 1 1/4 inches and a long narrow cylinder having an inside diameter of 1/2-inch and a length of 2 1/4 inches. The intent of the sphere and the cylinder was to eliminate objects which had been involved in ingestions, aspirations, and airway obstructions. However, use of the two devices incorrectly implied that two separate and distinct problems existed. Therefore,

FDA combined the two TMA devices into a single measuring tool, a truncated cylinder, which incorporated the dimensions of each. The truncated cylinder screens long slender objects such as pins, as well as bulkier objects such as small balls. It also screens small objects with unusual shapes, which may present the identified risks of injury.

The diameter of the cylinder is based upon a set of recommendations of the Accident Prevention Committee of the American Academy of Pediatrics. As stated in this committee's correspondence, the 1 1/4-inch dimension is intended to prevent acute tracheal occlusion. The depth of the cylinder is based upon data and medical literature available to the Commission which indicate that the vast majority of objects involved in injuries to children under 3 years of age were less than 2 1/4 inches in length.

The regulation proposed below also references certain "use and abuse" test procedures which the Commission published in final form in the *FEDERAL REGISTER* on January 7, 1975 (40 FR 1484-85) and which appear at 16 CFR 1500.51 and 1500.52 (excluding the bite test procedure—section (c) of both provisions). These procedures are intended to simulate the normal use and reasonably foreseeable damage or abuse to which a toy for children under three would be subjected. As mentioned in the Background section above, this concept is contained in the statutory definition of a mechanical hazard.

Under the proposed regulation, toys (and detached components) are tested as potential small parts by being placed in the cylinder. They must be large enough so that they do not fit entirely within the cylinder. If a toy does not fit entirely within the cylinder, it is then subjected to the referenced "use and abuse" procedures. The toy is again tested by being placed in the cylinder. In addition, any components or pieces that have become detached from the toy during the "use and abuse" procedures are separately tested in the cylinder. If any toy or any component or piece of a toy fails the test criteria (by being small enough to fit entirely within the cylinder), the toy is a banned hazardous substance.

(d) *Labeling.* The regulation proposed below does not contain any labeling requirements. The Commission has considered and rejected the "negative" labeling approach that FDA used in its 1973 proposal. According to that proposed regulation, any toy not intended for children under 3, which contained small parts, had to be labeled with the warning "Caution: Not Recommended for Children Under 3 Years Old."

The 1973 labeling proposal, although never issued by the FDA or the Commission, prompted many manufacturers and importers to apply this label to many of their products. Such labeling was apparently designed to exempt products automatically from coverage of any final small parts regulation that might be applied to toys intended for children under 3. The Commission believes that the label has been used indiscriminately and without regard for the intentions of the original proposal. For example, certain items, such as squeeze toys and stuffed animals which are clearly intended for infants, have been distributed in commerce bearing the label.

Needless to say, the Commission strongly discourages improper use of age labeling on children's products. The Commission will disregard any label on a toy clearly intended for children under 3 that states otherwise. However, the Commission encourages the use of proper age labeling, and this will be one factor it will consider before determining whether a particular toy is intended for use by children under 3 years of age (as discussed in the Scope section above).

The Commission believes that a negative labeling requirement is not needed because the proposal below clearly states the intended scope of the regulation.

(e) *Effective date.* The Commission believes that a 1-year lead time is consistent with the design-production cycle followed by most companies whose products would be subject to the regulation. This cycle is fully discussed in the May 1978 staff report entitled "Economic Assessment of the Proposed Small Parts Regulation," which is available from the Office of the Secretary.

However, the Commission would like to make the regulation effective sooner than 1 year after it is published in final form in the *FEDERAL REGISTER*. The test cylinder has been available since 1973 to toy companies, most of which already produce complying products (see economic discussion in section (f), below).

The Commission is proposing that the small parts regulation become effective 6 months after it is published in final form. The affected industry and consumers are especially invited to submit comments on this proposed effective date.

The regulation would apply to all covered toys which are introduced into interstate commerce after the effective date, and it includes an explanation of when this occurs (see § 1500.18(a)(9)).

(f) *Economic considerations.* The Commission expects the industrywide economic impact of the small parts regulation to be small. The results of a

standardized retail store survey suggest that the vast majority of toys and children's articles already meet the requirements of the proposed regulation.

In part because of the existing voluntary standard (discussed in the Background section above) and the specific exemptions of certain toys under section 1501.3, only a small fraction of toys would be affected by the small parts regulation proposed below.

Of those firms whose products do not currently meet the requirements, the majority are expected to need only minor changes to bring their products into compliance. Frequently, the necessary adjustments will simply involve removal from the product of a small part which does not change the basic nature or function of the product. Alternatively, the manufacturer could redesign the product so that the small part is larger and thus complies with the regulation.

In some cases the regulation will pose problems for manufacturers of products which contain small parts that a child can easily detach from a toy. The Commission believes that existing technology can solve such problems because nearly identical products exist which do not have such easily-detached small parts. More glue, rivets, or other such solutions may be sufficient to bring a product into compliance, with only minor cost increases.

The Commission does not expect small businesses to face undue hardship in meeting the requirements of the regulation, as proposed. The economic considerations concerning the small parts proposal are fully discussed in the May 1978 staff report cited in the discussion of the effective date, above.

(g) *Environmental considerations.* An assessment of the potential environmental impact has been made of the small parts regulation proposed below. The Commission concludes that there are no potentially significant environmental impacts associated with it. Therefore, there is no need for an environmental impact statement. A copy of the environmental assessment is available from the Office of the Secretary.

CONCLUSION

The Commission finds preliminarily that certain toys and other articles intended for use by children under 3 years of age present an unreasonable risk of injury to children in this age group. Available injury data show that chokings, aspirations, and ingestions are caused by the small size of these products and by their components. The Commission believes that all products which are covered by the proposed regulation, and which fail to meet the test criteria, present an un-

reasonable risk of injury to children under 3 years of age. This preliminary finding of unreasonable risk is based on the belief that the relatively small economic impact that would result from regulation of these products is far outweighed by the reduction of the risk that will also result from the regulation.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), 2(q)(1)(A), 2(s), 3(e)(1), and 10, 74 Stat. 372, 374, 375 as amended 80 Stat. 1304-05, 83 Stat. 187-89 (15 U.S.C. 1261, 1262, 1269)), in accordance with the provisions of 5 U.S.C. 553, and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a))), the Commission proposes to amend title 16, chapter II, subchapter C by adding a new paragraph (a)(9) to § 1500.18 and by adding a new part 1501, as follows:

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

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

(9) Any toy or other article intended for use by children under 3 years of age which presents a choking, aspiration, or ingestion hazard because of small parts as determined by part 1501 of this chapter and which is introduced into interstate commerce after the date that is 6 months following publication of the final regulation in the *FEDERAL REGISTER*. For purposes of this regulation, introduction into interstate commerce is defined as follows: A toy or children's article manufactured outside the United States is introduced into interstate commerce when it is first brought within a U.S. port of entry. A toy or children's article manufactured in the United States is introduced into interstate commerce (1) at the time of its first interstate sale, or (2) at the time of its first intrastate sale if one or more of its components and/or raw materials were received interstate, whichever occurs

earlier. Part 1501 defines the term "toy or other article intended for use by children under 3," as used in this regulation, and exempts certain products from banning under this regulation.

PART 1501—METHOD FOR IDENTIFYING TOYS AND OTHER ARTICLES INTENDED FOR USE BY CHILDREN UNDER 3 YEARS OF AGE WHICH PRESENT CHOKING, ASPIRATION, OR INGESTION HAZARDS BECAUSE OF SMALL PARTS

Sec.

1501.1 Purpose.

1501.2 Scope.

1501.3 Exemptions.

1501.4 Size requirements and test procedure.

AUTHORITY: Sec. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), and 10; 74 Stat. 372, 374, 375 as amended 80 Stat. 1304-05, 83 Stat. 187-89; (15 U.S.C. 1261, 1262, 1269).

§ 1501.1 Purpose.

Section 1500.18(a)(9) of this chapter classifies as a banned hazardous substance, any toy or other article intended for use by children under 3 years of age which presents a choking, aspiration, or ingestion hazard because of small parts. This part 1501 describes certain such articles which are subject to § 1500.18(a)(9); lists certain such articles which are specifically exempted; and provides a test method for determining whether such an article is hazardous to children under 3 because it, or one of its components which can be detached or broken off during normal or reasonably foreseeable use, is too small.

§ 1501.2 Scope.

(a) This regulation (1500.18(a)(9) and the criteria described in § 1501.4 below) applies to all toys and other articles intended for use by children under 3 years (36 months) of age that are introduced into interstate commerce after the effective date. Such articles include, but are not limited to: Squeeze toys; teething rings; crib exercisers; crib gyms; crib mobiles; other toys or articles intended to be affixed to a crib, stroller, playpen, or baby carriage; pull and push toys; pounding toys; blocks and stacking sets; bathtub, wading pool and sand toys; rocking, spring, and stick horses and other figures; chime and musical balls and carousels; jacks-in-the-box; stuffed, plush, and flocked animals and other figures; preschool toys, games and puzzles intended for use by children under 3; riding toys intended for use by children under 3; infant and juvenile furniture articles which are intended for

use by children under 3 such as cribs, playpens, baby bouncers and walkers, strollers and carriages; dolls which are intended for use by children under 3 such as baby dolls, rag dolls, and bean bag dolls; toy cars, trucks, and other vehicles intended for use by children under 3. In addition, such articles include any other toys or articles which are intended, marketed or labeled to be entrusted to or used by children under 3 years of age.

(b) This regulation does not apply to toys or articles which are solely intended for use by children 3 years of age or older. In addition, it does not apply to all articles to which children under 3 years of age might have access simply because of presence in a household. Certain articles which are specifically exempted from this regulation are listed in § 1501.3 below.

§ 1501.3 Exemptions.

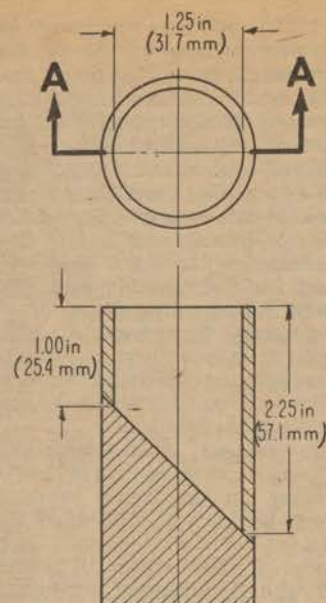
Although often used by children under 3 years of age, the following articles are exempt from this regulation (§§ 1500.18(a)(9) and 1501.4 below):

- (a) Balloons;
- (b) Marbles (except as components of an article intended for use by children under 3 years of age);
- (c) Books and other articles made of paper;
- (d) Writing materials such as crayons, chalk, pencils, and pens;
- (e) Children's clothing and accessories, such as shoe lace holders and buttons;
- (f) Grooming, feeding, and hygiene products such as diaper pins and clips, barrettes, toothbrushes, drinking glasses, dishes, and eating utensils;
- (g) Records;
- (h) Modeling clay and similar products;
- (i) Fingerpaints, watercolors and other paint sets;
- (j) Rattles (as defined at 16 CFR 1510.2); and
- (k) Pacifiers (as defined at 16 CFR 1511.2(a)).

§ 1501.4 Size requirements and test procedure.

(a) No toy or other children's article subject to § 1500.18(a)(9) and to this part 1501 shall be small enough to fit entirely within a cylinder with the dimensions shown in figure 1, when tested in accordance with the procedure in paragraph (b) of this section. In testing to ensure compliance with this regulation, the dimensions of the Commission's test cylinder will be no greater than those shown in figure 1. (In addition, for compliance purposes, the English dimensions shall be used. The metric approximations are included only for convenience.)

(b)(1) Place the article, without compressing it, into the cylinder. If the article fits entirely within the cylinder, in any orientation, it fails to comply



Section A-A

FIG 1—SMALL PARTS CYLINDER

with the test procedure. (Test any detached components of the article the same way.)

(2) If the article does not fit entirely within the cylinder, subject it to the appropriate "use and abuse" tests of 16 CFR 1500.51 and 1500.52 (excluding the bite tests of §§ 1500.51(c) and 1500.52(c)). Any components or pieces (excluding paper, fabric, yarn, or fuzz) which have become detached from the article as a result of the use and abuse testing shall be placed into the cylinder, one at a time. If any such components or pieces fit entirely within the cylinder, in any orientation and without being compressed, the article fails to comply with the test procedure.

Interested people are invited to submit, on or before December 15, 1978, written comments on this proposal. The Commission will consider late comments to the extent practicable. Comments and any accompanying data or materials should be submitted, preferably in five copies, to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, 1111 18th Street NW., Washington, D.C. during working hours Monday through Friday.

Dated: October 11, 1978.

SADYE E. DUNN,
Secretary, Consumer
Product Safety Commission.

[FR Doc. 78-29136 Filed 10-13-78; 8:45 am]

Register
.gov
Federal

MONDAY, OCTOBER 16, 1978
PART III



**ENVIRONMENTAL
PROTECTION
AGENCY**

**STANDARDS FOR
HAZARDOUS AIR
POLLUTANTS**

Delegation of Authority for
the State of Rhode Island

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 987-71]

STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of Rhode Island

On December 23, 1971 (36 FR 24876), March 8, 1974 (38 FR 9308), August 6, 1975 (40 FR 33152), September 23, 1975 (40 FR 43850), January 15, 1976 (41 FR 2232 and 2332), January 26, 1976 (41 FR 3826), May 4, 1976 (41 FR 18498), February 23, 1978 (43 FR 7568), and March 7, 1978 (43 FR 9452), under section 111 of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency (EPA) promulgated regulations establishing Standards of Performance for New Stationary Sources (NSPS). On April 6, 1973 (39 FR 8820) and October 21, 1976 (41 FR 46560), under section 112 of the Clean Air Act, as amended, the Administrator promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPS) for four pollutants. Sections 111(c) and 112(d) direct the Administrator to delegate his authority to implement and enforce NSPS and NESHAPS to any State which has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the State.

On May 20, 1977, Dr. Joseph E. Cannon, Director of the Rhode Island Department of Health (the Department), submitted a request for delegation of authority for the NSPS and NESHAPS programs. This request was for the authority to administer, but not enforce, the provisions of section 111 and 112 of the Clean Air Act Amendments of 1970. The request letter cited the appropriate Rhode Island Statutes and the Department regulations which demonstrated the adequacy of the State's procedures. Also included in the State's request was a statement that the Counsel to the Department of Health, who co-signed the request letter, had reviewed the Rhode Island Division of Air Pollution Control's (DAPC) legal authority and agreed that the DAPC had the authority necessary to carry out any obligations created by the requested delegations. Subsequent to this, the State of Rhode Island transferred the responsibilities of the NSPS and NESHAPS programs from the Department of Health to the Department of Environmental Management (DEM). After a review of Rhode Island's request, the Regional Administrator has determined that for the source categories

set forth in paragraphs (A) and (B) of the following official letter to Mr. Edward Wood, Director of the Department of Environmental Management, delegation is appropriate, subject to the conditions set forth in items (1) through (11) of that letter:

Mr. EDWARD WOOD,
Director,
Department of Environmental Management,
83 Park Street, Providence, R.I. 02908.

DEAR MR. WOOD: This is in response to Dr. Cannon's May 20, 1977 letter requesting delegation of authority for the administration of the New Source Performance Standards (NSPS) and the administration of the National Emission Standards for Hazardous Air Pollutants (NESHAPS) to the Rhode Island Department of Environmental Management (Department), Division of Air Resources (DAR). The enforcement portion of this program, including advising sources of the results of evaluations, issuance of any necessary approval/disapproval actions and initiating any necessary litigation, will be retained by the Environmental Protection Agency (EPA), Region I.

We hereby grant delegation of the administrative and technical portion of the NSPS and NESHAPS programs to the Rhode Island Department of Environmental Management, Division of Air Resources as follows:

A. Authority for all sources located in the State of Rhode Island subject to the following Standards of Performance for New Stationary Sources as promulgated in 40 CFR Part 60 as of May 20, 1977: Fossil fuel-fired steam generators; incinerators; Portland cement plants; nitric acid plants; sulfuric acid plants; asphalt concrete plants; petroleum refineries; storage vessels for petroleum liquids; secondary lead smelters, secondary brass and bronze ingot production plants; iron and steel plants; sewage treatment plants; primary copper, zinc, and lead smelters; primary aluminum reduction plants; wet process phosphoric acid superphosphate plants; granular triple superphosphate storage facilities; coal preparation plants; ferroalloy production facilities; and electric arc furnaces.

B. Authority for all sources located in the State of Rhode Island subject to the following National Emission Standards for Hazardous Air Pollutants as promulgated in 40 CFR Part 61 as of May 20, 1977: asbestos (§§ 61.20, 61.21, 61.22, paragraph (c) only, §§ 61.23 and 61.24); beryllium; mercury; and vinyl chloride.

This delegation is based upon the following conditions:

1. The DAR will continue to submit semi-annual reports to EPA as required.

2. The authority to enforce the NSPS and NESHAPS programs in the State of Rhode Island will continue to be the responsibility of the EPA. If in the course of the implementation of any delegated NSPS or NESHAPS, the DAR becomes aware of a violation of any applicable federal regulations, the DAR will immediately notify EPA in writing, in order that EPA may exercise its retained enforcement authority.

3. Acceptance of this delegation of enumerated presently promulgated NSPS and NESHAPS does not commit the Rhode Island Department of Environmental Management, DAR to request or accept delegation of future standards and requirements. A new request for delegation will be re-

quired for any standards not included in the State's request of May 20, 1977, and for any delegated NSPS and NESHAPS which are revised subsequent to May 20, 1977. In addition, a new request will be required should the Department desire delegation of the enforcement of any NSPS and NESHAPS provision.

4. The DAR has the authority to approve or disapprove the construction of sources. This authority will guarantee that the DAR will be informed of the construction or modification of all sources subject to the delegated standards. EPA will retain its authority for approving or disapproving the construction or modification of sources subject to NESHAPS. The DAR will be responsible for receiving and evaluating requests for such approval.

5. The DAR will at no time grant a variance or waiver for compliance with applicable NSPS and NESHAPS (40 CFR Parts 60 and 61). Should the DAR grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such relief by the DAR shall also constitute grounds for revocation of the delegation by EPA.

6. The delegation to the State of Rhode Island does not include the authority to implement and enforce NSPS and NESHAPS for sources owned or operated by the United States which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Parts 60 and 61.

7. The DAR and EPA will develop a system of communication sufficient to guarantee that each office is fully informed regarding the current compliance status of subject sources in the State of Rhode Island and regarding the interpretation of applicable regulations. EPA will make determinations regarding unique questions of applicability of delegated standards when requested by the DAR or at other times as determined by EPA. The DAR will provide the following information, as a minimum, to EPA: The name and address of each facility subject to NSPS and/or NESHAPS; the operational status of each facility; the compliance status of each facility with accompanying explanations of noncompliance where applicable; surveillance actions undertaken for such facility; and the results of all reports relating to emission data.

8. The DAR will release emission data obtained from owners and operators of stationary sources for public inspection as requested. If at any time a conflict arises between this agreement and any DAR regulations or State laws regarding this matter, the DAR will immediately notify EPA in order that EPA may exercise its concurrent authority. In addition, if at any time a member of the public requests data which the DAR feels cannot be released, the DAR will refer the person requesting such information to EPA.

9. If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR Parts 60 and 61), the Federal regulation must be applied if it is more stringent than that of the State.

10. The DAR will utilize the methods specified in 40 CFR Parts 60 and 61 in discussions with sources concerning the performance tests that are required by the NSPS and NESHAPS regulations. No ex-

emptions or exceptions will be allowed except as specifically permitted by EPA regulations. EPA has primary responsibility for all activities directly related to source testing; i.e., pretest conference, observation of sampling, and evaluation of test results. The DAR will participate in these activities as resources permit. If the DAR desires legal responsibility for source testing, it must submit a request for such delegation of authority by EPA. If at any time a conflict arises between this agreement and any other DAR regulation or State law, the DAR will immediately notify EPA so that EPA may exercise its concurrent authority.

11. If the Regional Administrator determines that a State procedure for administration of NSPS and NESHAPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Department.

A notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The notice will state, among other things, that, effective immediately, all reports required pursuant to the Federal NSPS and NESHAPS from sources located in the State of Rhode Island should be submitted to the Rhode Island Department of Environmental Management, Division of Air Resources.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within ten (10) days of the receipt of this letter, the State will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

WILLIAM R. ADAMS, Jr.,
Regional Administrator, Region I.

Therefore, under the authority delegated to him by the Administrator, the Regional Administrator notified Mr. Wood on March 31, 1978, that authority to implement specified Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants was delegated to the State of Rhode Island Department of Environmental Management, Division of Air Resources.

Subsequent to the March 31, 1978 notification, Mr. Wood formally requested that the Department of Environmental Management be named as the agency responsible for the admin-

istration of the NSPS and NESHAPS programs. On June 12, 1978, Region I amended the March 31, 1978, notification to reflect this change.

Copies of the request for delegation of authority are available for public inspection at the U.S. Environmental Protection Agency, Region I, Room 2113, John F. Kennedy Federal Building, Boston, Mass. 02203.

Effective immediately, all reports required under the National Emission Standards for Hazardous Air Pollutants and the Standards of Performance for New Stationary Sources listed in the above letter should be submitted to EPA, Region I and should also be submitted to the Department at the following address: Rhode Island Department of Environmental Management, 83 Park Street, Providence, R.I. 02908.

(Secs. 111, 112, Clean Air Act, as amended, (42 U.S.C. 7411 and 7412).)

Dated: September 18, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator, Region I.

[FR Doc. 78-29104 Filed 10-13-78; 9:49 am]

[6560-01-M]

Title 40—Protection of Environment**CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY.****SUBCHAPTER C—AIR PROGRAMS**

[FRL 987-8]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**Delegation of Authority for State of
Rhode Island**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment.

SUMMARY: The delegation of authority to the State of Rhode Island for the standards of performance for new stationary sources (NSPS) was made on March 31, 1978. This amendment which adds the address of the Rhode Island Department of Environmental Management, reflects this delegation. A notice announcing this delegation is published today in the FEDERAL REGISTER.

EFFECTIVE DATE: October 16, 1978.

FOR FURTHER INFORMATION CONTACT:

John Courcier, Air Branch, EPA Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203, 617-223-4448.

SUPPLEMENTARY INFORMATION: Under the delegation of authority for the standards of performance for new stationary sources (NSPS) to the State of Rhode Island on March 31, 1978, EPA is today amending 40 CFR 60.4, Address, to reflect this delegation. A notice announcing this delegation is published today elsewhere in this (43 part of the FEDERAL REGISTER. The amended § 60.4, which adds the address of the Rhode Island Department of Environmental Management to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must also be addressed, is set forth below.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective

immediately in that it is an administrative change and not one of substantive content. No additional burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on March 31, 1978, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of section 111 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: September 18, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

Part 60 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4 paragraph (b) is amended by adding subparagraph (OO) to read as follows:

§ 60.4 Address

* * * * *

(b) * * *

(OO) State of Rhode Island, Department of Environmental Management, 83 Park Street, Providence, R.I. 02908

[FR Doc. 78-29105 Filed 10-13-78; 9:49 am]

[6560-01-M]

[FRL 988-1]

**PART 61—NATIONAL EMISSION
STANDARDS FOR HAZARDOUS AIR
POLLUTANTS****Delegation of Authority for State of
Rhode Island**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment.

SUMMARY: The delegation of authority to the State of Rhode Island for national emissions standards for hazardous air pollutants (NESHAPS) was made on March 31, 1978. This amendment, which adds the address of the Rhode Island Department of Environmental Management, reflects this delegation. A notice announcing this delegation is published today in the FEDERAL REGISTER.

EFFECTIVE DATE: October 16, 1978.
FOR FURTHER INFORMATION CONTACT:

John Courcier, Air Branch, EPA Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203, 617-223-4448.

SUPPLEMENTARY INFORMATION: Under the delegation of authority for the national emission standards for hazardous air pollutants (NESHAPS) to the State of Rhode Island on March 31, 1978, EPA is today amending 40 CFR 61.04, Address, to reflect this delegation. A notice announcing this delegation is published today elsewhere in this part of the FEDERAL REGISTER. The amended § 61.04, which adds the address of the Rhode Island Department of Environmental Management to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must also be addressed, is set forth below.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on March 31, 1978, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7411.

Dated: September 18, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

Part 61 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

In § 61.04 paragraph (b) is amended by adding subparagraph (OO) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(OO) State of Rhode Island, Department of Environmental Management, 83 Park Street, Providence, R.I. 02908

[FR Doc. 78-29106 Filed 10-13-78; 9:49 am]

Testis
order

MONDAY, OCTOBER 16, 1978
PART IV



DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE

Health Resources
Administration

Public Health Service



GRANTS FOR
PREDOCTORAL,
GRADUATE, AND
FACULTY DEVELOPMENT
EDUCATIONAL
PROGRAMS IN FAMILY
MEDICINE

Interim-Final Regulations, Public
Hearing, and Guidelines

[4110-83-M]

Title 42—Public Health

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

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in Family Medicine

AGENCY: Public Health Service, HEW.

ACTION: Interim-final regulations.

SUMMARY: These regulations set forth requirements for grants to schools of medicine or osteopathy, hospitals, and other public or private nonprofit entities to plan, develop and operate or participate in predoctoral, graduate, or faculty training programs in family medicine.

DATES: These regulations are effective immediately. As discussed below, comments on the regulations are invited. To be considered, comments must be received on or before December 15, 1978.

ADDRESSES: Written comments should be addressed to the Director, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Center Building, 4th floor, Hyattsville, Md. 20782. All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Roberet F. Knouss, M.D., Director, Division of Medicine, Bureau of Health Manpower, room 4-44, at the above address, telephone 301-436-6418.

SUPPLEMENTARY INFORMATION: On October 12, 1976, the Health Professions Educational Assistance Act of 1976, Pub. L. 94-484, added a new section 786(a) to the Public Health Service Act (42 U.S.C. 295g-6(a)). The Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, is establishing a new subpart Q of 42 CFR Part 57 entitled "Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in Family Medicine" in order to implement this new statutory authority.

Funds are authorized in fiscal years 1978, 1979, and 1980 for grants and contracts for schools of medicine or osteopathy or other public or private nonprofit entities to support approved professional training programs (including continuing education and residency or internship programs) in family medicine for medical and osteopathic students, interns, and residents.

Authority is also added for training physicians to teach family medicine and for traineeships and fellowships to these physicians. Osteopathic internship training is specifically made eligible for assistance.

Timely implementation is essential if eligible applicants are to have adequate time to comply with the requirements of this subpart for grants made prior to September 30, 1978. Therefore, the Secretary has determined in accordance with 5 U.S.C. 553 and Department policy that it would be impracticable and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Notwithstanding the omission of the proposed rulemaking procedures, interested persons are invited to submit written comments or data relating to these regulations to the Director of the Bureau of Health Manpower at the address given above. All relevant materials received not later than 60 days after publication of these regulations in the FEDERAL REGISTER will be considered, and following the close of the comment period, the regulations will be revised as warranted by the public comments received. It is intended that any revision of the regulations arising from these comments will be published within 90 days of the close of the comment period.

Furthermore, the Department is publishing guidelines related to the project requirements set forth in § 57.1605 of the Interim-Final regulations for public comment. These guidelines relate to family medicine education for medical students (including preceptorships and student assistantships), for interns and residents (including allopathic family practice residencies, osteopathic internships and osteopathic general practice residencies), and for physicians who plan to teach in family medicine (faculty development). The guidelines provide public guidance as to the minimum standards and criteria that the Department considers desirable, but are neither required nor sufficient, by themselves, for project approval and conduct. They are intended to provide guidance for improving the resources available for family medicine education and for expanding institutional commitment to family medicine. The guidelines are published separately elsewhere in this part.

The regulations as set forth below will be effective on October 16, 1978.

Accordingly, a new subpart Q of 45 CFR Part 57 is adopted as set forth below.

Dated: September 14, 1978.

JULIUS B. RICHMOND,
Assistant Secretary
for Health.

Approved: October 5, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in Family Medicine

Sec.

- 57.1601 To what projects do these regulations apply?
- 57.1602 Definitions.
- 57.1603 What entities are eligible to apply for a grant?
- 57.1604 How must an entity apply for a grant?
- 57.1605 What requirements must a project meet?
- 57.1606 What are the criteria for deciding which applications will be funded?
- 57.1607 How will grant awards be made?
- 57.1608 How will grant payments be made?
- 57.1609 Purposes for which grant funds may be spent.
- 57.1610 What nondiscrimination requirements apply to grantees?
- 57.1611 How must grantees account for grant funds received?
- 57.1612 What additional regulations apply to grantees?
- 57.1613 What recordkeeping, audit, and inspection requirements apply to grantees?
- 57.1614 What additional conditions apply to grantees?

AUTHORITY: Sec. 215 of the Public Health Service Act, 58 Stat. 690 as amended by 63 Stat. 35 (42 U.S.C. 216); Sec. 786(a) of the Public Health Service Act, 90 Stat. 2316 (42 U.S.C. 295g-6(a)).

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in Family Medicine

§ 57.1601 To what projects do these regulations apply?

The regulations of this subpart apply to the award of grants under section 786(a) of the Public Health Service Act (42 U.S.C. 295g-6(a)) to schools of medicine or osteopathy, hospitals, and other public or private nonprofit entities to meet the cost of projects to: (a) Plan, develop, and operate, or participate in predoctoral, graduate, or faculty development educational programs in family medicine; and (b) provide financial assistance to trainees participating in predoctoral or graduate educational programs who are in need of financial assistance and who plan to work in the practice of family medicine or to trainees in facul-

ty development programs who plan to teach in family medicine training programs.

§ 57.1602 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Budget period" means the interval of time into which an approved activity is divided for budgetary purposes, as specified in the grant award document.

"Clerkship" means supervised clinical training in a specific field of medicine for predoctoral medical or osteopathic students.

"Faculty development program" means a systematic training program to increase faculty competence in teaching skills and in other areas related to academic responsibilities.

"Family medicine" includes "osteopathic general practice" and means the field of medicine in which the physician:

(1) Serves as a physician of first contact with families and with patients of all ages and provides a means of entry into the health care system;

(2) Evaluates the patient's total health needs, provides personal medical care within one or more fields of medicine, and refers the patient, when indicated, to appropriate sources of care while preserving the continuity of care;

(3) Assumes responsibility with the patient for comprehensive and continuous health care and acts as a leader or coordinator of others providing health services; and

(4) Considers the patient's total health care within the context of her or his environment, including the community and the family or comparable social units.

"Hospital" means a public or other nonprofit hospital which is accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association.

"Nonprofit" as applied to any school or entity means one which is a corporation of association or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

"Osteopathic internship program" means an internship which emphasizes family medicine and is approved or provisionally approved by the American Osteopathic Association.

"Preceptorship" means an educational experience in which the trainee works individually with a designated physician, the preceptor, who teaches and personally supervises clinical activity.

"Predoctoral training program" means an educational program in

family medicine, including courses, clerkships, or preceptorships in family medicine, which is part of a course of study leading to the degree of doctor of medicine or osteopathy, and student assistantships in family medicine.

"Project period" means the total time for which support for a project has been approved, as specified in the grant award document including any extensions.

"Residency training program" means a residency program in family practice which is fully or provisionally accredited by the Liaison Committee on Graduate Medical Education, or a postdoctoral program in osteopathic general practice which emphasizes family medicine and is approved or provisionally approved by the American Osteopathic Association.

"School of medicine or osteopathy" means a public or private nonprofit school which provides training leading respectively to a degree of doctor of medicine or to a degree of doctor of osteopathy and which is accredited as provided in section 772(b) of the Act (42 U.S.C. 295f-5).

"Secretary" means the Secretary of Health, Education, and Welfare, and any other officer or employer of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"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.

"Student assistantship" means a research program in family medicine for predoctoral medical or osteopathic students.

"Trainee" means a medical or osteopathic student, an intern, resident, or physician participating in a training program supported by a grant under this subpart.

§ 57.1603 What entities are eligible to apply for a grant?

(a) In the case of predoctoral training programs, an applicant must be a school of medicine or osteopathy located in a State.

(b) In the case of graduate and faculty development training programs, an applicant must be located in a State and be a school of medicine or osteopathy, a hospital, or a public or private nonprofit entity which has the provision of health or educational programs as one of its major functions.

§ 57.1604 How must an entity apply for a grant?

(a) Each applicant desiring a grant under this subpart must submit an application in the form and at the time as the Secretary may require.¹

¹Applications, instructions, and program guidelines are available from the Grants

(b) The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award including the regulations of this subpart.

(c) In addition to other pertinent information as the Secretary may require, an application for a grant under this subpart must contain:

(1) A full and adequate description of the proposed project and of the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart; and

(2) A budget and a justification for the funds requested, including evidence that grant funds will not be used to supplant other available funds.

If the applicant requests funds for stipend support of interns or residents, the applicant must provide evidence showing that income available from other sources, including income derived from services of the interns or residents in the program, will be insufficient to pay their salaries. If an applicant requests funds for stipend support of trainees in faculty development programs, the applicant must provide evidence that income available from other sources will be insufficient to pay the trainees' salaries comparable to those of physician faculty with similar years of postdoctoral experience.

§ 57.1605 What requirements must a project meet?

(a) *General requirements.* A project supported under this subpart must be conducted in accordance with the following requirements:

(1) Each project must have a project director who works full time at the grantee institution, has relevant training and experience and has been approved by the Secretary to direct the project being supported under this subpart.

(2) Each project must have an appropriate administrative and organizational plan and appropriate faculty, staff, and facility resources for the achievement of stated objectives.

(3) Each project must systematically evaluate the educational program, including the performance of competence of trainees and faculty including preceptors, the administration of the program, and the degree to which program and educational objectives are met.

(4) Each project must use ambulatory care settings in which family medicine is practiced and in which an adequate portion of the clinical training is conducted.

Management Officer, Bureau of Health Manpower, Health Resources Administration, Center Building, 4th Floor, 3700 East-West Highway, Hyattsville, Md. 20782.

(5) Each project, other than a faculty development project, must have a family medicine curriculum which:

(i) Is appropriate for the academic level of the trainees and the specific length and nature of the educational program;

(ii) Supplements any practical (including clinical) experiences with related educational activities;

(iii) Emphasizes subjects pertinent to:

(A) Ambulatory care;
(B) Psychosocial skills and topics; and

(C) Related nonclinical areas relevant to the practitioner of family medicine.

(b) *Additional requirements for predoctoral training programs.* In addition to the requirements of paragraph (a) of this section, projects for predoctoral training programs must also meet the following additional requirements:

(1) The training program must be sponsored and supervised by an appropriate administrative unit in family medicine, the faculty of which participates in the preparation and presentation of the preclinical curriculum and required courses and activities, for which faculty may be interdisciplinary, such as physical diagnosis, and clinical pathological conferences, and which coordinates the predoctoral offering of clerkships and other clinical experiences oriented to family medicine.

(2) Each training program must be part of an integrated institutional strategy to provide education and training in family medicine designed to encourage an appropriate percentage of its graduates, annually, to seek graduate (or predoctoral) training in family medicine and eventually to enter a career in family medicine.

(3) In the case of projects which include preceptorships in family medicine:

(i) The project must provide medical or osteopathic students with ambulatory care training in a community setting.

(ii) Preceptors must have practices which are consistent with the principles of family medicine and must be selected by the administrative unit in family medicine.

(iii) Stipend support from grant funds may only be given to trainees who incur extraordinary expenses resulting from participation in the preceptorship and who engage in the preceptorship full time for at least 4 consecutive weeks. This support may only be given to trainees who have indicated an interest in working in the field of family medicine.

(4) In the case of projects for student assistantships:

(i) The assistantship must not be a requirement for a degree nor be used to satisfy requirements for elective credit.

(ii) A family medicine faculty member of the administrative unit, identified under paragraph (b)(1) of this section, must supervise each student assistant.

(iii) The grantee must give preference in admission to the training program to applicants considering a career in academic family medicine.

(iv) Trainees must engage in student assistantship activities for at least 8 full-time consecutive weeks to be eligible for stipend support. This support may only be given to trainees who have indicated an interest in working in the field of family medicine.

(c) *Additional requirements for graduate training projects* (except faculty development). In addition to the requirements of paragraph (a) of this section, projects for approved residency training programs and approved osteopathic internship programs must meet the following additional requirements:

(1) Each program must have a full-time supervisor of training with appropriate experience and training who is responsible for coordination and supervision of training in the program.

(2) Each program must use an appropriate resident or intern recruitment and selection process, which assures that residents and interns in the program have applied specifically for training in the approved graduate training program.

(3) Each program must provide education for a sufficient number of interns or residents to provide an adequate collegial environment for the educational program and to enhance cost efficiency.

(4) Each program must have an adequate number of qualified faculty with training and experience in family medicine, and of behavioral sciences and liaison faculty in related specialties, for the number of interns or residents in the program. The faculty of the program must engage in periodic educational activities to improve their teaching skills.

(5) Each program must provide an appropriate amount of clinical training for each intern or resident in ambulatory care settings emphasizing family medicine in each year of the training program. This training will be for the purpose of assuring an adequate education in the principles of the practice of family medicine throughout the program. In addition, each program must provide clinical training in other ambulatory care settings relevant to family medicine, such as emergency units.

(6) Each program must have adequate facilities for the provision of the

educational activities and, in particular, have family medicine ambulatory care space sufficient to provide an adequate clinical experience for the interns or residents.

(7) Each intern or resident must serve a sufficient number of families and individual patients with a variety of health care needs to provide the resident with a broad clinical experience.

(d) *Additional requirements for faculty development programs.* (1) Each project must have a curriculum which:

(i) Directly applies to family medicine training programs;

(ii) Emphasizes improvement of pedagogical skills for clinical and classroom settings; and

(iii) Uses didactic and nondidactic teaching strategies.

(2) Only physicians who teach or intend to teach in family medicine are eligible to participate as trainees in the program.

(3) Each program must have a sufficient number of trainees participating during the conduct of any educational activities to provide a collegial environment and to make the program cost efficient.

(4) Each program must be no longer than 1 calendar year for any trainee.

(5) To be eligible for financial assistance from grant funds, a trainee must be an individual not currently in a full-time faculty position and must:

(i) Intend to teach in a family medicine training program on a full-time basis; and

(ii) Be a full-time participant in the training program for at least 3 consecutive months.

§ 57.1606 What are the criteria for deciding which applications will be funded?

(a) The Secretary, after consultation with the National Advisory Council on Health Professions Education established by section 702 of the act, will approve or disapprove applications filed in accordance with § 57.1604, taking into consideration, among other pertinent factors:

(1) The potential effectiveness of the proposed project in carrying out training purposes of section 786(a) of the Act and this subpart;

(2) The degree to which the proposed project adequately provides for the project requirements set forth in § 57.1605;

(3) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis after the period of grant support.

(b) In determining the priority for funding applications approved under paragraph (a) of this section, the Secretary will consider (1) the relative

merit of the proposed project based upon the factors in paragraph (a) of this section, and (2) the extent to which a proposed project contains any of the following elements:

(1) Substantial training experience in settings which exemplify interdependent utilization of physicians and physician assistants or nurse practitioners.

(2) Substantial portions of the training program are conducted in a health manpower shortage area(s) designated under section 332 of the Act, or in an area health education center funded, at least in part, under section 781 of the Act.

(3) For osteopathic postdoctoral education projects, coordination of training with an affiliated school of osteopathic medicine.

(4) For faculty development projects, emphasis on increasing the number of new faculty who will be teaching on a full-time basis in family medicine.

§ 57.1607 How will grant awards be made?

(a) *General.* (1) Within the limit of funds available for this purpose, the Secretary may award grants to those applicants whose projects will, in his or her judgment, best promote the purposes of section 786(a) of the Act, as determined in accordance with § 57.1606.

(2) All grant awards must be in writing and must set forth the amount of funds granted and the period for which funds will be available for obligation by the grantee.

(3) Neither the approval of any project nor the award of any grant commits or obligates the United States in any way to make additional supplemental, continuation, or other awards with respect to any approved project or any portion of an approved project. For continuation support, grantees must make separate application at this time and in the form which the Secretary may prescribe.

(4) The Secretary may make a grant award for an additional budget period for any previously approved project on the basis of an application and those progress and accounting records which may be required. If the Secretary finds that the project's activities during the current budget period justify continued support of the project for an additional budget period, and the Secretary decides to continue support, the amount of the grant award will be determined in accordance with paragraph (b) of this section.

(b) *Determination of grant amount.* The Secretary will determine the amount of any award under this subpart on the basis of his or her estimate of the sum necessary for the direct and indirect costs of the project. In addition, in determining the amount of stipend support to be made available, the amount of any stipend must be

limited to that portion of the annual amount normally paid to other residents by the applicant which the Secretary determines, on the basis of the documentation required in the application, cannot reasonably be paid from other available funds, including the incomes derived from the trainee's services.

§ 57.1608 How will grant payments be made?

The Secretary will, from time to time, make payments to a grantee of all or a portion of any grant award either in advance or by way of reimbursement.

§ 57.1609 Purposes for which grant funds may be spent.

(a) Any funds granted under this subpart, as well as other funds required as a condition of the grant to be used in the performance of the approved project, may be spent solely for carrying out the approved project in accordance with section 786(a) of the act, the regulations of this subpart, the terms and conditions of the grant award.

(b) Any unobligated grant funds remaining in the grant account at the close of a budget period may be carried forward and be available for obligation during subsequent budget periods of the project period. The amount of the subsequent award will take into consideration the amount remaining in the grant account.

(c) Grants funds may not be used for sectarian instruction or for any other religious purpose.

§ 57.1610 What nondiscrimination requirements apply to grantees?

(a) Recipients of grants under this subpart are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(1) Section 704 of the Act (42 U.S.C. 292d) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs);

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulations, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the ground of race, color, or national origin);

(3) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs); and

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in federal-

ly assisted programs on the basis of handicap).

(b) The grantee may not discriminate on the basis of religion in the admission of individuals to its training programs.

§ 57.1611 How must grantees account for grant funds received?

(a) *Accounting for grant award payments.* The grantee must record all payments made by the Secretary in accounting records separate from the records of all other funds, including funds derived from other grant awards. The grantee must account for the sum total of all amounts paid by presenting or otherwise making available, evidence satisfactory to the Secretary of funds spent for costs meeting the requirements of this subpart.

(b) *Grant closeout.*—(1) *Date of final accounting.* The grantee must submit, with respect to each grant under this subpart, a full account, in accordance with this subpart, as of the date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* The grantee must pay to the Federal Government as final settlement with respect to each grant under this subpart the total sum of (i) any amount not accounted for under paragraph (a) of this section and (ii) any other amounts due in accordance with 45 CFR Part 74 and the terms and conditions of the grant award. This total sum constitutes a debt owed by the grantee to the Federal Government and is recoverable from the grantee or its successors or assigns by set off or other lawful action.

§ 57.1612 What additional regulations apply to grantees?

The relevant provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles apply to all grants awarded under this subpart.

§ 57.1613 What recordkeeping, audit, and inspection requirements apply to grantees?

Each school which receives a grant under this subpart must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning recordkeeping, audit, and inspection.

§ 57.1614 What additional conditions apply to grantees?

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his or her judgment these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 78-29139 Filed 10-13-78; 8:45 am]

[4110-83-M]

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Health Resources Administration

[42 CFR Part 57]

**GRANTS FOR PREDOCTORAL, GRADUATE,
AND FACULTY DEVELOPMENT EDUCATION-
AL PROGRAMS IN FAMILY MEDICINE**

Public Hearing

AGENCY: Health Resources Adminis-
tration.

ACTION: Notice of public hearing.

SUMMARY: The Administrator of the Health Resources Administration, Department of Health, Education, and Welfare, announces a public hearing to be held in Chicago, Ill., on November 16 and 17, 1978, to receive information and views on the Interim-Final regulations and guidelines entitled "Grants for Predoctoral, Graduate and Faculty Development Educational Programs in Family Medicine," authorized under section 786(a) of the Public Health Service Act. The Secretary will consider the administrative record of these hearings in the preparation of final regulations or amendments to the guidelines.

DATES: Public hearing on November 16-17, 1978.

ADDRESS: McCormick Place, John Evers Theater, 23rd Street and Lake Shore Drive, Chicago, Ill. 60616. Notification of participation by calling: Program Coordination Branch, Bureau of Health Manpower, 301-436-7458 by 5 p.m. e.s.t., November 13, 1978.

**FOR FURTHER INFORMATION
CONTACT:**

John Heyob, Acting Chief, Program Coordination Branch, Bureau of Health Manpower, Room 3-22, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7458.

SUPPLEMENTARY INFORMATION: Section 786(a) of the Public Health Service Act authorizes grants to schools of medicine or osteopathy, hospitals, and other public or nonprofit entities to meet the cost of projects to: (a) Plan, develop, and operate, or participate in, predoctoral, graduate, or faculty development educational programs in family medicine; and (b) provide financial assistance to trainees participating in predoctoral or graduate educational programs who are in need of financial assistance and who plan to work in the practice of family medicine or to trainees in faculty development programs who plan to each in family medicine. In this part of the FEDERAL REGISTER, the Secretary of Health, Education, and Welfare published Interim-Final regulations and guidelines implementing this authority. (42 CFR Part 57 Subpart Q).

In view of the importance of this program and the impact of the Interim-Final regulations, the Secretary has determined that, in addition to the 60-day period for written comments on the Interim-Final regulations and guidelines, an informal public hearing will be held in a central geographic area. This hearing is to provide an open forum for the presentation of information and views concerning all aspects of the regulations and guidelines by interested persons, including representatives of organizations.

In preparing a final regulation, or in considering amendments to the guidelines, the Secretary will consider the administrative record of these hearings along with all other written comments received during the comment period specified in the Interim-Final regulations and guidelines. Individuals or representatives of interested organizations are invited to participate in the public hearing in accord with the schedule and procedures set forth below.

The hearings will be held on November 16 and 17, 1978, beginning at 9 a.m., at the McCormick Place, John Evers Theater, 23rd Street and Lake Shore Drive, Chicago, Ill. 60616.

Individuals or representatives of organizations wishing to present their views orally on the Interim-Final regulations and/or the guidelines should register by 5 p.m. e.s.t., November 13, 1978, by calling the Program Coordination Branch, Bureau of Health Manpower, at 301-436-7458. If the schedule permits, speakers will be allowed to register at the door on November 16 and 17 beginning at 8 a.m. When registering, each person must state an approximate amount of time needed for his or her presentation.

Speakers will be scheduled in order of registration. Only one presentation will be permitted for any one organization. In the event that insufficient time is available to accommodate all speakers who wish to testify, the presiding officer will allocate the available time among the persons making oral presentation.

Formal written statements or other written comments (preferably four copies) supplementing or expanding upon the oral presentations will be accepted by the presiding officer for inclusion in the administrative record.

Written comments and transcripts of the hearings will be made available for public inspection, as soon as they have been prepared, on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. at the Program Coordination Branch, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 3-22, 3700 East-West Highway, Hyattsville, Md. 20782.

Dated: October 4, 1978.

ROBERT GRAHAM,
Acting Deputy Administrator.

[FR Doc. 78-29141 Filed 10-13-78; 8:45 am]

[4110-83-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

GRANTS FOR PREDOCTORAL, GRADUATE, AND FACULTY DEVELOPMENT EDUCATION- AL PROGRAMS IN FAMILY MEDICINE

Guidelines

AGENCY: Health Resources Administration.

ACTION: Notice of Guidelines.

SUMMARY: This notice sets forth guidelines for grants under the Public Health Service Act for predoctoral, graduate, and faculty development educational programs in family medicine.

DATES: These guidelines are effective immediately. As discussed below, comments are invited. To be considered, comments must be received on or before December 15, 1978.

ADDRESSES: Written comments should be addressed to the Director, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Center Building, 4th Floor, Hyattsville, Md. 20782. All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Robert F. Knouss, M.D., Director, Division of Medicine, Bureau of Health Manpower, Room 4-44, at the above address (telephone 301-436-6418).

SUPPLEMENTARY INFORMATION: Section 786(a) of the Public Health Service Act (the Act) authorizes grants to schools of medicine or osteopathy, hospitals, and other public or nonprofit entities to meet the cost of projects to: (a) Plan, develop, and operate, or participate in predoctoral, graduate, or faculty development educational programs in family medicine; and (b) provide financial assistance to trainees participating in predoctoral or graduate educational programs who are in need of financial assistance and who plan to work in the practice of family medicine or to trainees in faculty development programs who plan to teach in family medicine. Interim-final regulations, published elsewhere in this part, implementing this authority have been adopted by the Secretary of Health, Education, and Welfare (42 CFR Part 57, Subpart Q).

These guidelines are intended to provide guidance to applicants and grantees concerning the minimum

standards and criteria that the Health Resources Administration considers desirable in meeting selected project requirements set forth in the regulations governing this grant program.

Interested persons are invited to submit written comments or data relating to these guidelines to the Director of the Bureau of Health Manpower at the address given above. All relevant materials received not later than December 15, 1978, will be considered. Furthermore, the Bureau of Health Manpower is considering holding a public hearing on these guidelines in a geographically central location at a time and place to be announced in the FEDERAL REGISTER. Following the close of the comment period and the conduct of the hearing, the guidelines will be revised as warranted by the public comments. Changes in the final regulations will also be incorporated into the guidelines.

GUIDELINES FOR GRANTS FOR TRAINING IN FAMILY MEDICINE

INTRODUCTION

Section 786(a) of the Public Health Service Act (42 U.S.C. 295g-6(a)), authorizes the award of grants to schools of medicine and osteopathy, hospitals, and other public or nonprofit private entities to meet the cost of projects to plan, develop, and operate or participate in predoctoral, graduate, or faculty development educational programs in family medicine. Interim-final regulations governing these grants are published elsewhere in this part (42 CFR Part 57, Subpart Q).

In light of the importance of this grant program, the Bureau of Health Manpower (Bureau) has decided to supplement these regulations with guidelines. The primary purpose of these guidelines is to advise applicants and grantees, in advance, of those activities which will be viewed by the Bureau as meeting the selected regulatory requirements. It should be understood that while applicants and grantees can be assured of meeting the requirements by following these guidelines, activities other than those contained in these guidelines may also meet the regulatory requirements.

In addition, these guidelines also contain a number of recommendations about activities which the Bureau considers desirable.

FAMILY MEDICINE AMBULATORY CARE SETTINGS

Section 57.1605(a)(4) of the regulations requires that each project must use ambulatory care settings in which family medicine is practiced.

The Bureau recommends that these ambulatory care settings should: 1. Primarily attract patients seeking family medicine;

2. Organize personnel, including trainees, into functional units providing family medicine to patients, and providing trainees with experience working with various types of health personnel, such as physician assistants, nurse practitioners, nurses, nutritionists, dietitians, mental health and social services professionals, as well as other staff;

3. Have systems for referring patients to other specialists and subspecialists which assure coordination with the patients' own primary physician(s);

4. Use an appointment system which facilitates the assignment of patients to their primary family physician(s);

5. Use a medical records system which:

a. Gives practitioners ready access to a patient's medical records, including data relating to members of the patient's family which is pertinent to the patient's care,

b. Is suitable for audit, and

c. Assures systematic review of the records.

6. Maintain affiliations so that trainees can routinely follow the clinical course of assigned patients prior to, during, and after hospitalization, and have access to necessary special services; and

7. Have instructors or preceptors who are physicians trained or experienced in the practice of family medicine.

PREDOCTORAL TRAINING PROGRAMS

Section 57.1605(b) of the regulations sets forth requirements for predoctoral training programs in family medicine at schools of medicine and osteopathy. The following material provides guidance as to activities on the part of applicants and grantees which will, in the Bureau's view, meet these requirements, as well as Bureau recommendations concerning desirable activities.

1. Section 57.1605(b)(1) requires that the training program must be sponsored by an appropriate administrative unit.

The Bureau recommends that to meet the requirement a program should:

(a) Have evidence of administrative autonomy, such as a separate budget or the authority to make separate budget decisions;

(b) Have faculty with academic rank comparable to that of faculty in analogous positions in other administrative units of the school; and

(c) Have direct and equitable representation on faculty committees regarding matters of budget, curriculum, faculty appointments and promotions, and student selection.

2. Section 57.1605(b) (1) and (2) set forth requirements for the training

program in which the faculty of the administrative unit participate.

The Bureau recommends that to meet these requirements a training program should include:

(a) At least 100 hours of contact with these faculty for a minimum of 25 percent of the students in each entering class during their period of pre-clinical training (exclusive of full-time preceptorship activities); and

(b) Clerkships and other clinical experiences oriented to family medicine to an extent that a minimum of 25 percent of the students who begin clinical training will have the equivalent of at least four full-time weeks of clinical instruction in family medicine by the date of graduation.

In addition, the Bureau recommends that clerkships in family medicine should provide the opportunity for students to engage in the following activities: Obtain and record a complete history and physical examination, perform initial laboratory studies, follow the course of assigned patients, record events in daily progress notes, participate in diagnostic and therapeutic procedures with faculty and housestaff, and attend and participate in conferences.

3. Section 57.1605(b)(3) sets forth requirements for preceptorships.

The Bureau recommends that these preceptorships should begin prior to the last 5 months of the predoctoral curriculum or otherwise provide the opportunity to affect positively the selection of a family medicine graduate training program by the participating students.

ALLOPATHIC RESIDENCY TRAINING PROGRAMS

Section 57.1605(c) of the regulations sets forth the requirements for graduate training projects (except in faculty development). The following material provides guidance as to activities on the part of applicants and grantees which will in the Bureau's view meet these requirements for allopathic residency training programs.

Section 57.1605(c)(1) requires that the program have a full time supervisor of training.

The Bureau recommends that to meet this requirement, this individual should be certified by the American Board of Family Practice or have satisfied all requirements for certification, if the individual is ineligible for certification due to a potential conflict arising from service on or for this organization.

Section 57.1605(c)(3) requires that each program must provide education for a sufficient number of interns or residents.

The Bureau recommends that to meet this requirement, a program should have at least four residents in

training by the beginning of the second year of grant support under section 786(a) of the act and have at least 12 residents in training by the beginning of the fourth year of support.

It is also recommended that the project plan to have its residents distributed so that there is no decrease in the number of residents from the first to the third year of graduate training.

Section 57.1605(c)(4) requires that each program must have an adequate number of qualified faculty with training and experience in family medicine, and of behavioral sciences and liaison faculty in related specialties, for the number of interns or residents in the program.

The Bureau recommends that to meet this requirement, a program should have in addition to the supervisor of training, the following faculty resources, for every six residents:

(a) One full-time equivalent physician who is certified or experienced in the practice of family medicine;

(b) A reasonable number of physician faculty in the liaison specialties of internal medicine, pediatrics, obstetrics, and gynecology, and surgery; and

(c) An additional one-fourth full-time equivalent instructor with experience and training in behavioral sciences.

Section 57.1605(c)(5) requires that each program must provide an appropriate amount of clinical training for each intern or resident in ambulatory care settings emphasizing family medicine in each year of the training program.

The Bureau recommends that to meet this requirement, a training program should:

(a) Comprise at least 10 percent (i.e., at least one-half day per week) of the resident's training time (excluding vacation time) during each year in the program;

(b) Comprise a reasonable percent (but no less than 25 percent) of the resident's total training time (excluding vacation time) for the entire residency training period; and

(c) Be scheduled in at least 9 months of each year of training.

Section 57.1605(c)(6) requires that each program must have family medicine ambulatory care space.

The Bureau recommends that to meet this requirement, a project should include, in the aggregate, a number of examining rooms sufficient to provide at least two examining rooms for each resident while providing care in the setting, and adequate facilities, such as conference rooms, for teaching purposes.

Section 57.1605(c)(7) requires that each intern or resident must serve a sufficient number of families and individual patients with a variety of

health care needs to provide the resident with a broad clinical experience.

The Bureau recommends that to meet this requirement, a resident should serve a panel of families and individual patients in the ambulatory care setting who recognize the resident as their provider of longitudinal and comprehensive (including preventive and psychosocial) health care.

OSTEOPATHIC RESIDENCY TRAINING PROGRAMS

Section 57.1605(c) of the regulations sets forth the project requirements for graduate training projects (except in faculty development). The following material provides guidance as to activities on the part of applicants and grantees which will in the Bureau's view meet these requirements for osteopathic residency training programs.

Section 57.1605(c)(1) requires that the program have a full time supervisor of training.

The Bureau recommends that to meet this requirement, this individual should be certified by the American Osteopathic Board of General Practice, or have satisfied all requirements for certification if the individual is ineligible for certification due to a potential conflict arising from service on or for this organization.

Section 57.1605(c)(3) requires that each program must provide education for a sufficient number of interns or residents.

The Bureau recommends that to meet this requirement, each program should have at least two residents in training by the beginning of the second year of grant support.

Section 57.1605(c)(4) requires that each program must have an adequate number of qualified faculty with training and experience in family medicine, and of behavioral sciences and liaison faculty in related specialties, for the number of interns or residents in the program.

The Bureau recommends that to meet this requirement, a project should have in addition to a full-time director of medical education or supervisor of training, the following faculty resources, for each resident:

(a) One-sixth full-time equivalent physician experienced in family medicine; and

(b) A reasonable number of physicians experienced in pediatrics, internal medicine, obstetrics and gynecology, and surgery.

Section 57.1605(c)(5) requires that each program must provide an appropriate amount of clinical training for each intern or resident in ambulatory care settings emphasizing family medicine in each year of the training program.

The Bureau recommends that to meet this requirement, each resident

should have substantial supervised ambulatory clinical experience in a family medicine ambulatory care setting during which families and individual patients are followed by the resident. A resident's activities in these settings should comprise a reasonable percent (but no less than 25 percent) of the resident's total training time (excluding vacation time) during each year in the program.

OSTEOPATHIC INTERNSHIP PROGRAMS

Section 57.1605(c) of the regulations sets forth the project requirements for graduate training projects (except in faculty development). The following material provides guidance as to activities on the part of applicants and grantees which will in the Bureau's view meet these requirements for osteopathic internship programs.

The Bureau recommends that, as part of the administrative and organizational plan as required in § 57.1605(a)(2), the director of medical education and the director of the department of osteopathic general practice should systematically coordinate all program elements.

Section 57.1605(c)(3) requires that each program must provide education for a sufficient number of interns or residents.

The Bureau recommends that to meet this requirement, a program

should have at least four interns in training by the beginning of the second year of grant support.

Section 57.1605(c)(5) requires that each program must provide an appropriate amount of clinical training for each intern or resident in ambulatory care settings emphasizing family medicine in each year of the training program.

The Bureau recommends that to meet this requirement, each intern in the program should have a supervised clinical experience in a family medicine ambulatory care setting which comprises at least 10 percent of the intern's training time (excluding vacation time) in the program.

FACULTY DEVELOPMENT PROGRAM

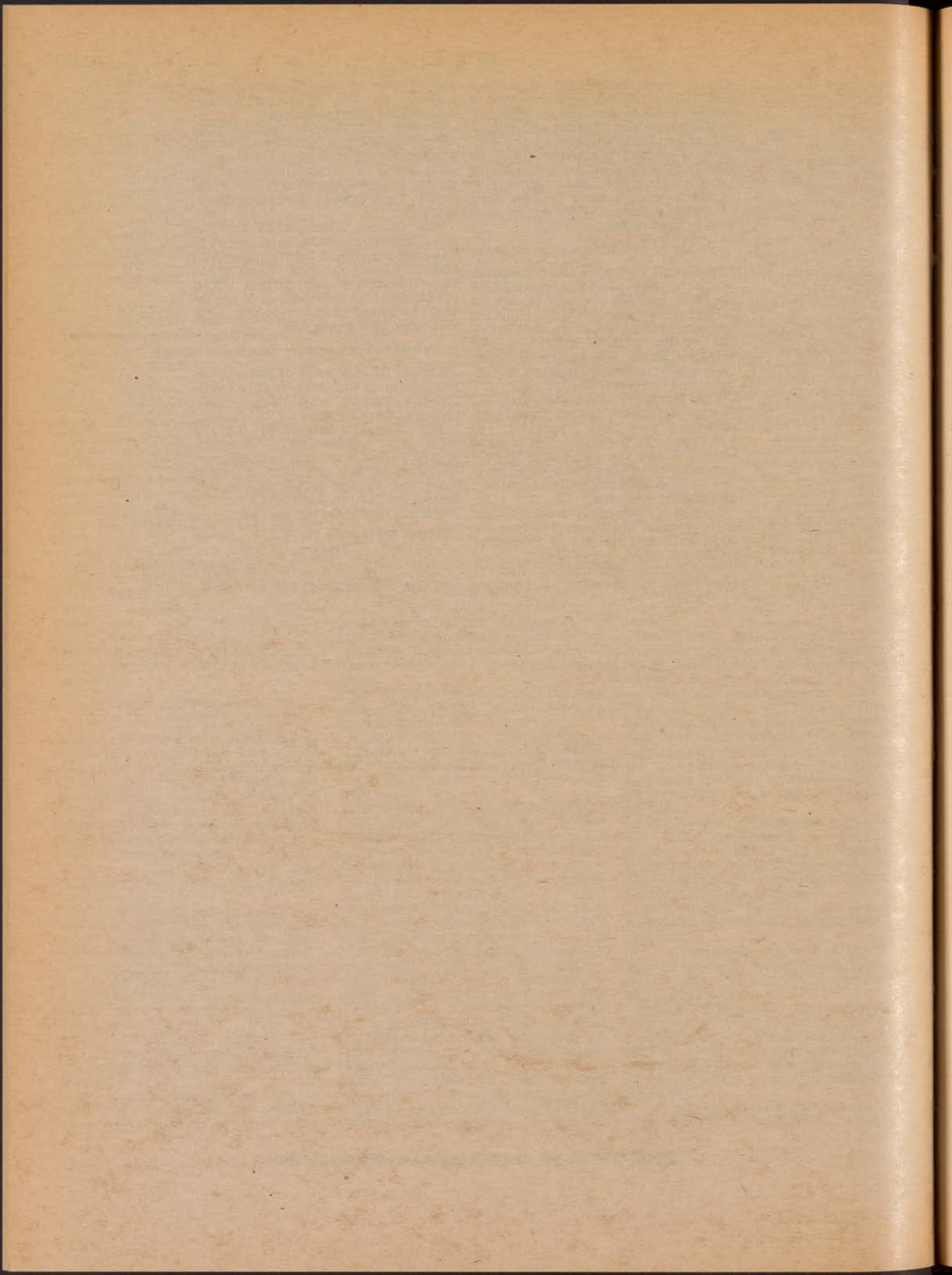
Section 57.1605(d)(3) of the regulations requires that each faculty development program must have a sufficient number of trainees.

The Bureau recommends that to meet this requirement, a program should have at least four trainees participating at any one time. Furthermore, the training program should be operational within 6 months after the beginning of the project period.

Dated: September 11, 1978.

HENRY A. FOLEY,
Administrator.

[FR Doc. 78-29140 Filed 10-13-78; 8:45 am]



Registered
Federal
Property

MONDAY, OCTOBER 16, 1978
PART V



OFFICE OF
MANAGEMENT
AND BUDGET

■

BUDGET DEFERRALS

Report for October 1978

NOTICES

[3110-01-M]

OFFICE OF MANAGEMENT AND
BUDGET

REPORT ON DEFERRALS

October 1978

Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344) Provides for a monthly report listing all budget authority for the fiscal year with respect to which, as of the first day of the month, a special message on rescissions and deferrals has been transmitted to the Congress. Because October 1, 1978, the first day of fiscal year 1979, fell on a Sunday, no funds were reported deferred as of the first day of October. However, the President did transmit a special message on October 2, the first working day of fiscal year 1979, that reported 30 referrals of fiscal year 1979 funds totaling \$1,178.2 million. The attachment contains a listing of each of these items and the amount deferred.

JAMES T. MCINTYRE, Jr.,
Director.

ATTACHMENT

CONTENTS OF FIRST SPECIAL MESSAGE FOR FY 1979
(in thousands of dollars)

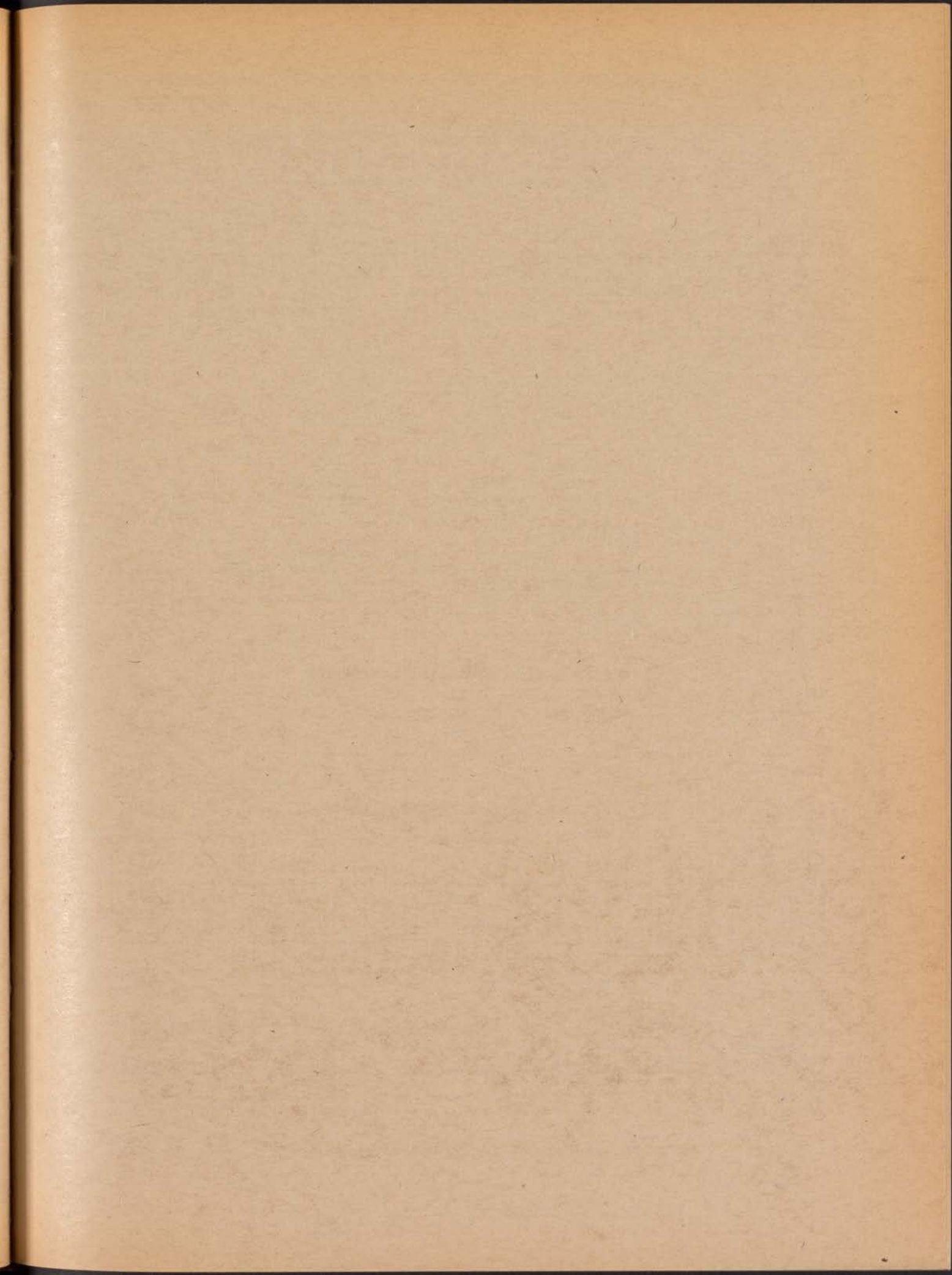
<u>Deferral #</u>	<u>Item</u>	<u>Budget Authority</u>
	Department of Agriculture:	
	Foreign Agricultural Service	
D79-1	Salaries and expenses (special foreign currency program).....	415
	Agricultural Stabilization and Conservation Service	
D79-2	Commodity Credit Corporation.....	3,530
	Forest Service	
D79-3	Permanent appropriations, Expenses, brush disposal.....	32,225
D79-4	Restoration of forest lands and improvements.....	48
	Department of Commerce:	
	National Oceanic and Atmospheric Administration	
D79-5	Construction.....	9,830
	Promote and develop fishery products and research pertaining to American Fisheries.....	12,060
D79-7	Fisheries loan fund.....	5,429
	Department of Defense-Military:	
D79-8	Military construction, all services.....	548,451
	Department of Defense-Civil:	
	Miscellaneous accounts	
D79-9	Wildlife conservation, etc., military reservations.....	458
	Corps of Engineers	
D79-10	Alaska Hydroelectric Power Development fund.....	5,450
	Department of Health, Education, and Welfare:	
	Alcohol, Drug Abuse, and Mental Health Administration	
D79-11	Construction and renovation, St. Elizabeth's Hospital.....	27,577
D79-12	Social Security Administration Limitation on administrative expenses.	1,725
	Department of the Interior:	
	Land Heritage and Conservation Service	
D79-13	Land and water conservation fund.....	30,000
	Geological Survey	
D79-14	Payments from proceeds, sale of water.	36

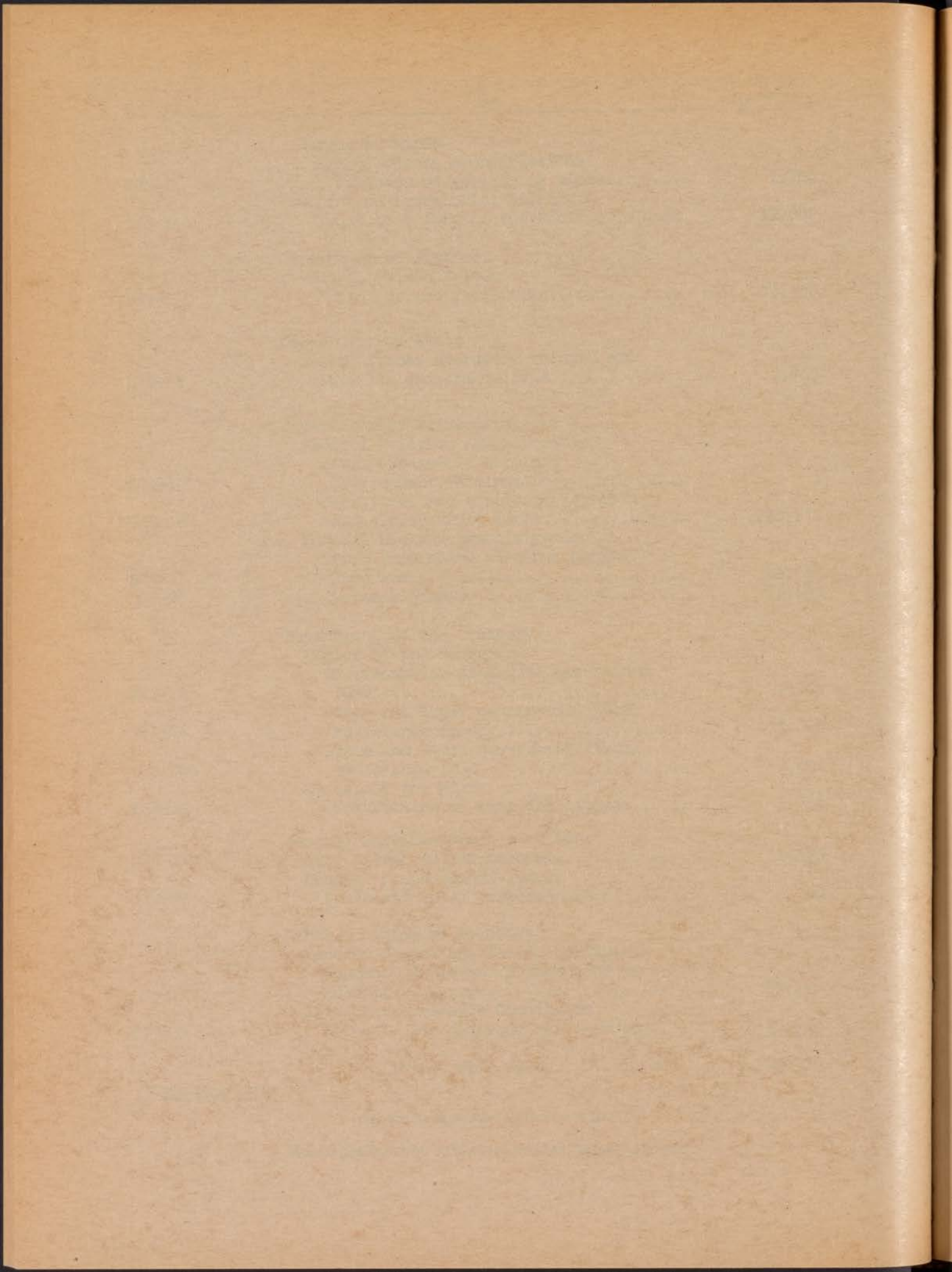
NOTICES

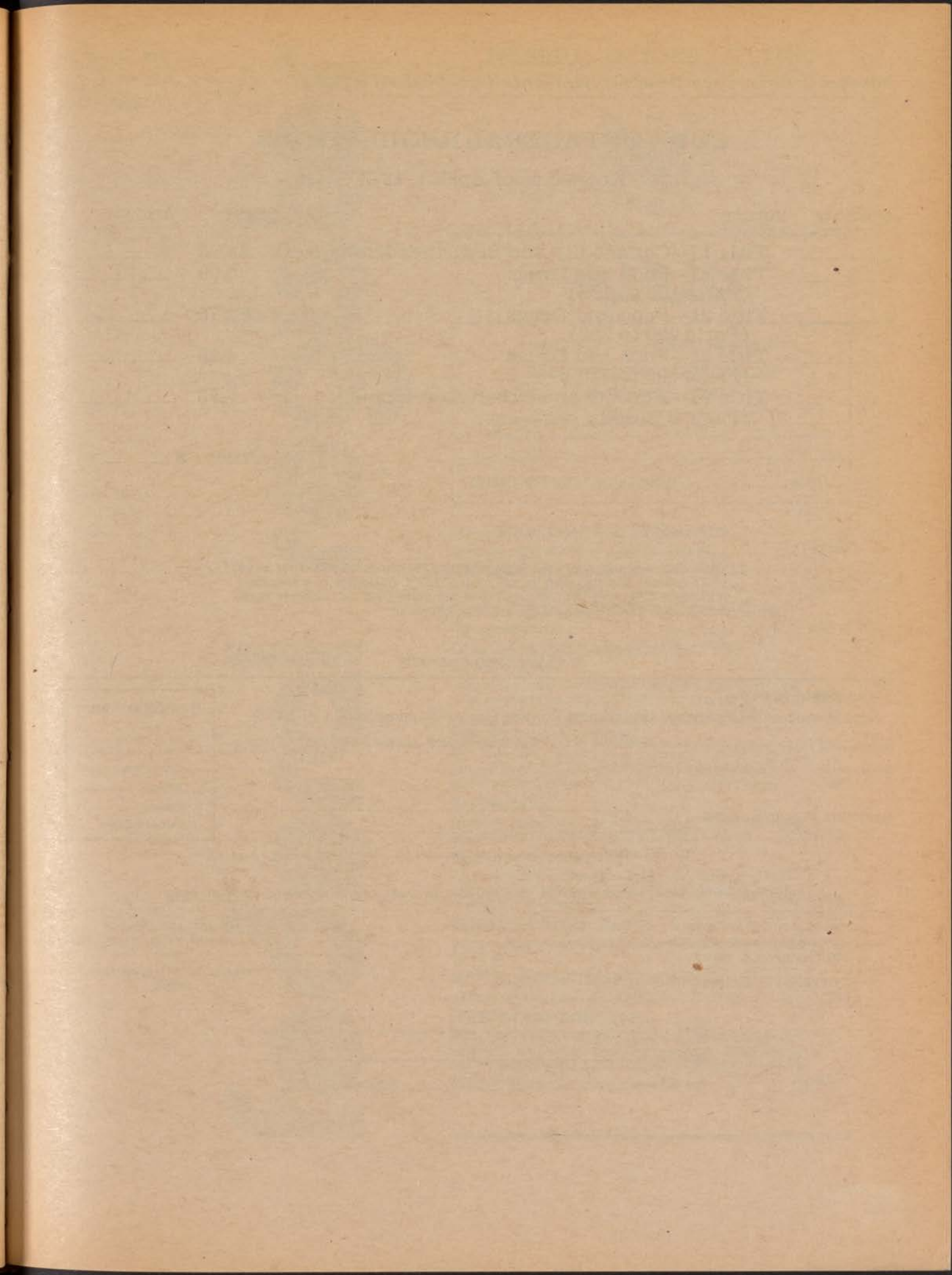
<u>Deferral #</u>	<u>Item</u>	<u>Budget Authority</u>
	Bureau of Mines	
	Miscellaneous appropriations	
D79-15	Drainage of anthracite mines.....	1,700
	Office of Territorial Affairs	
D79-16	Trust territory of the Pacific Islands	12,000
	Department of Justice:	
	Federal Prison System	
D79-17	Buildings and facilities.....	25,300
	Department of State	
	United States emergency refugee and migration assistance fund.....	2,750
	Department of Transportation:	
	Federal Aviation Administration	
	Civil supersonic aircraft development termination.....	3
D79-19	Facilities and equipment (Airport and airway trust fund).....	290,176
D79-20	Federal Highway Administration	
	Trust fund share of other highway programs.....	40,000
D79-21	Overseas highway.....	13,100
D79-22		
	Department of the Treasury:	
	Office of the Secretary	
	Antirecession financial assistance fund.....	2,205
D79-23	State and local government fiscal assistance fund.....	78,489
D79-24	State and local government fiscal assistance fund.....	2,404 ^{1/}
D79-25	Bureau of the Mint	
D79-26	Construction of mint facilities.....	5,730
	General Services Administration:	
D79-27	Rare silver dollar program.....	2,123
	Federal Preparedness Agency	
D79-28	State and local preparedness.....	80
	Other Independent Agencies:	
	Foreign Claims Settlement Commission	
	Payment of Vietnam prisoner of war claims.....	10,945
D79-29	Interstate Commerce Commission	
D79-30	Payments for directed rail service..	13,990
	Total, deferrals.....	1,178,229

1/ Outlays only.

[FR Doc. 78-29241 Filed 10-12-78; 3:30 pm]







Advance Orders are now Being Accepted for Delivery in About 6 Weeks

CODE OF FEDERAL REGULATIONS

(Revised as of April 1, 1978)

Quantity	Volume	Price	Amount
_____	Title 17—Commodity and Securities Exchanges	\$8.25	\$_____
_____	Title 21—Food and Drugs (Parts 100 to 199)	6.00	_____
_____	Title 21—Food and Drugs (Parts 200 to 299)	2.75	_____
_____	Title 21—Food and Drugs (Parts 600 to 1299)	4.25	_____
_____	Title 24—Housing and Urban Development (Parts 0 to 499)	8.25	_____

Total Order \$_____

[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)]

PLEASE DO NOT DETACH

MAIL ORDER FORM To:

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

Enclosed find \$_____ (check or money order) or charge to my Deposit Account No. _____

Please send me _____ copies of:

PLEASE FILL IN MAILING LABEL
BELOW

Name _____
Street address _____
City and State _____ ZIP Code _____

FOR USE OF SUPT. DOCS.

Enclosed _____
To be mailed _____
later _____
Subscription _____
Refund _____
Postage _____
Foreign Handling _____

FOR PROMPT SHIPMENT, PLEASE PRINT OR TYPE ADDRESS ON LABEL BELOW, INCLUDING YOUR ZIP CODE

SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE
375
SPECIAL FOURTH-CLASS RATE
BOOK

Name _____
Street address _____
City and State _____ ZIP Code _____