AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol. 43—No. 223
11-17-78
PAGES
53701-54079

federal register

FRIDAY, NOVEMBER 17, 1978



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For workshops in Washington, D.C. and out of town, see notice on inside front cover.

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WHEN: December 2, 1978, at 9:30 a.m.

WHERE: Moot Court Room, Duquesne University School of Law, Rockwell Hall (7th Floor), 600 Forbes Avenue, Pittsburgh, Pennsylvania.

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

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[3195-01-M]

Title 3—The President

Proclamation 4608 • **November 15, 1978**

Temporary Duty Increase on the Importation Into the United States of Certain High-Carbon Ferrochromium

By the President of the United States of America

A Proclamation

1. Pursuant to section 201(d)(1) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2251(d)(1)), the United States International Trade Commission (USITC) on September 5, 1978, reported to the President (USITC Report 201-35) the results of its investigation under section 201(b)(1) of the Trade Act (19 U.S.C. 2251(b)(1)). The USITC determined that ferrochromium, containing over 3 percent by weight of carbon, provided for in item 607.31 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article. The USITC recommended the imposition of tariff increases on the column 1 rate of 30 percent ad valorem in the first year declining to 20 percent ad valorem in the fifth year of relief.

2. On November 2, 1978, pursuant to section 202(b)(1) of the Trade Act (19 U.S.C. 2252(b)(1)), and after taking into account the considerations specified in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I determined to remedy the injury found to exist by the USITC through the proclamation of a temporary duty increase different from that recommended by the USITC. In accordance with section 203(b)(1) of the Trade Act (19 U.S.C. 2253(b)(1)), I transmitted a report to the Congress setting forth my determination and intention to proclaim a temporary duty increase and stating the reasons why my decision differed from the action recommended by the USITC.

3. Section 203(e)(1) of the Trade Act (19 U.S.C. 2253(e)(1)) requires that import relief be proclaimed and take effect within 15 days after the import relief determination date.

4. Pursuant to section 203(a)(1) of the Trade Act (19 U.S.C. 2253(a)(1)), I am providing import relief through the temporary increase of import duty on ferrochromium, containing over 3 percent by weight of carbon, valued less than 38 cents per pound, as hereinafter proclaimed.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including General Headnote 4 of the TSUS (19 U.S.C. 1202), sections 203 and 604 of the Trade Act (19 U.S.C. 2253 and 2483), and in accordance with Articles I and XIX of the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A 12 and 61 Stat. (pt. 5) A 58: 8 UST (pt. 2) 1786), do proclaim that—

(1) Part I of Schedule XX to the GATT is modified to conform to the actions taken in the Annex to this proclamation.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex to this proclamation.

(3) This proclamation shall be effective as to those articles entered, or withdrawn from warehouse, for consumption on or after November 17, 1978, and before the close of November 16, 1981, unless the period of its effectiveness is earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred seventy-eight, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

ANNEX

Subpart A, part 2 of the Appendix to the TSUS is modified by inserting in numerical sequence the following new provision:

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
923.18	Ferrochromium, containing over 3 percent by weight of carbon, valued less than 38 cents per pound, provided for in item 607.31	4.625¢ per lb. on chromium content	4.625¢ per lb. on chromium content	On or before 11/15/81

[FR Doc. 78-32619 Filed 11-16-78; 10:25 am]

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.

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Defense

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Positions at the Uniformed Services University of the Health Sciences which are established to work on grant-funded projects are excepted under schedule A because it is impracticable to examine for them. For clarity, excepted appointing authorities for the Uniformed Services University of the Health Sciences are placed under a separate headnote and removed from the headnote covering the entire Department.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3106(b)(8) is revoked and (e) (1) and (2) are added as set out below:

§ 213.3106 Department of Defense.

* * * * *

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* * * *

(8) [Revoked]

* * * * *

(e) *Uniformed Services University of the Health Sciences.*

(1) Positions of Dean, Associate Dean, Assistant Dean, faculty member, and teaching/research assistants.

(2) Positions established to perform work on projects funded from grants.

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

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

[FR Doc. 78-32234 Filed 11-16-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

National Endowment for the Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The title of the position of Assistant Director for Project Grants Programs in the Division of Education Programs, National Endowment for the Humanities, is changed to Assistant Director, Higher Education Projects Program, to reflect organizational redesignation.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3282 is amended by revising paragraph (b)(2) as set out below:

§ 213.3282 National Foundation on the Arts and the Humanities.

* * * * *

(b) *National Endowment for the Humanities.* * * *

(2) Until September 30, 1980, Assistant Director, Higher Education Projects Program, Division of Education Programs.

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

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

[FR Doc. 78-32200 Filed 11-16-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

National Endowment for the Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment reflects the change in the title of the Division of Fellowships and Stipends, National Endowment for the Humanities, to Division of Fellowships, and of the Office of Planning and Analysis to Office of Planning and Policy Assessment. The amendment also corrects the titles of two Program Officers, Division of Fellowships, and two Program Officers, Division of Research Grants, which were erroneously listed in the FEDERAL REGISTER and reflects revocation of appointing authorities for several vacant positions which have not been filled.

EFFECTIVE DATE: October 27, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly:

1. 5 CFR 213.3182 is amended by revising paragraph (b) (3), (4), (8), (9), (10), (12), (17), and (25), and revoking (b)(6) and (20) as set out below:

§ 213.3182 National Foundation on the Arts and the Humanities.

* * * * *

(b) *National Endowment for the Humanities.* * * *

(3) Until September 30, 1980, Director, Office of Planning and Policy Assessment, when filled at grade GS-15 and below.

(4) Until September 30, 1980, Director, Division of Fellowships.

* * *

(6) [Revoked]

* * *

(8) Until September 30, 1980, two Program Officers, Division of Fellowships.

(9) Until September 30, 1980, two Program Officers, Division of Research Grants.

(10) Until September 30, 1980, one Assistant to the Director, Office of Planning and Policy Assessment.

* * *

(12) Until September 30, 1980, one Program Officer, Media Program, Division of Public Programs.

* * *

(17) Until September 30, 1980, one Assistant Director, Program Development, Division of Public Programs.

* * *

(20) [Revoked]

* * *

(25) Until September 30, 1980, one Planning Officer, Office of Planning and Policy Assessment.

* * * * *

2.5 CFR 213.3282 is amended by revising paragraph (b)(1) and (16) to read as set out below:

§ 213.3282 National Foundation on the Arts and the Humanities.

* * * * *

(b) *National Endowment for the Humanities.*

(1) Until September 30, 1980, Assistant Director, Research Materials Program, Division of Research Grants.

* * *

(16) Until September 30, 1980, one Humanist Administrator, Youth Programs, Division of Special Programs.

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

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

[FR Doc. 78-32201 Filed 11-16-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Temporary Boards and Commissions

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This authority excepts from the competitive service all positions at grades GS-15 and below on the staff of the President's Commission on Pension Policy with the provision that no one may serve under this authority after December 15, 1979. This exception is granted because it is impracticable to examine for these positions.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

James Edman, 202-632-4533.

Accordingly, 5 CFR 213.3199(w)(1) is added as set out below:

§ 213.3199 Temporary Boards and Commissions.

* * * * *

(w) *President's Commisssion on Pension Policy.*

(1) All positions on the staff of the President's Commission on Pension Policy. No one may serve under this authority after December 15, 1979.

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

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

[FR Doc. 78-32025 Filed 11-16-78; 8:45 am]

[3410-02-M]

Title 7—Agriculture

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

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation imposes pack, container, and inspection requirements on shipments of lettuce grown in the Lower Rio Grande Valley in south Texas. This should promote orderly marketing of such lettuce by standardizing the pack of lettuce shipped to consumers.

EFFECTIVE DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 144 and Marketing Order No. 971 regulate the handling of lettuce grown in the Lower Rio Grande Valley in south Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Lettuce Committee, established under the order, is responsible for its local administration.

Notice was published in the October 24 FEDERAL REGISTER (43 FR 49541) regarding the proposal. It afforded interested persons an opportunity to file written comments by November 8, 1978. None was filed.

This regulation is based upon the recommendations made by the committee at its public meeting in McAllen, Tex., on October 12, 1978.

The recommendations of the committee reflect its appraisal of the 1978-79 lettuce crop and marketing prospects for the season.

The south Texas lettuce industry as well as other lettuce shipping areas are accustomed to operating on a 6-day shipping week. The experience has been that a 6-day shipping week is adequate for 5 days distribution in terminal markets. Therefore "packaging holidays" on Sundays and Christmas Day will promote more orderly marketing.

The pack and container requirements are in accord with the generally accepted commercial practices of the south Texas lettuce industry of packing specified numbers of heads of lettuce in specific sized containers limited to those found acceptable to the trade for safe transportation of the lettuce, and will prevent deceptive practices.

No purpose would be served by regulating the pack or requiring the inspection and assessment of insignificant quantities of lettuce. Therefore, quantities up to two cartons of lettuce per day are exempt from such requirements.

Provisions with respect to special purpose shipments, including export, are designed to meet the different requirements for export and noncommercial domestic trade. Because of the production area's proximity to the Mexican border, Mexican buyers have been accustomed to acquiring small lots of production area lettuce for their home market. These buyers utilize lettuce which fails to meet the pack and container requirements. Inasmuch as such shipments have a negligible effect on the domestic market, they are permitted provided certain safeguard requirements are met.

After consideration of all relevant matters, including the proposal set forth in the notice, it is found that the handling regulation will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this section 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) Shipments of lettuce grown in the production area are expected to begin about the effective date specified in this regulation, (2) to maximize benefits to producers this effective period should be set to cover as many shipments as possible during the shipping season, (3) information regarding the provisions of this regulation has been made available to producers and handlers in the production area, and (4) compliance with this regulation will not require any special preparation on the part of persons subject to it which cannot be completed by the effective date.

The regulation is as follows:

§ 971.319 Handling regulation.

During the period November 20, 1978, through March 31, 1979, no

person shall handle any lot of lettuce grown in the production area unless such lettuce meets the requirements of paragraphs (a), (b), and (c) of this section, or unless such lettuce is handled in accordance with paragraphs (d) or (e) of this section. Further, no person may package lettuce during the above period on any Sunday or on Christmas Day.

(a) *Pack.* (1) Lettuce heads, packed in container Nos. 7303, 7306, or 7313; if wrapped may be packed only 18, 20, 22, 24, or 30 heads per container, if not wrapped, only 18, 24, or 30 heads per container.

(2) Lettuce heads in container No. 85-40 may be packed only 24 or 30 heads per container.

(b) *Containers.* Containers may be only the following depth, width, and length respectively:

(1) Cartons with inside dimensions of 10 inches x 14¼ inches x 21⁵⁄₁₆ inches (designated as carrier container No. 7303), or

(2) Cartons with inside dimensions of 9¾ inches x 14 inches x 21 inches (designated as carrier container No. 7306), or

(3) Cartons with inside dimensions of 14 inches x 9¾ inches x 21 inches (designated as carrier container No. 7313), or

(4) Cartons with inside dimensions of 10¾ inches x 16⅛ inches x 21½ inches (designated as carrier container No. 85-40—flat pack).

(c) *Inspection.* (1) No handler shall handle lettuce unless such lettuce is inspected by the Texas-Federal Inspection Service and an appropriate inspection certificate has been issued for it, except when relieved of such requirement by paragraphs (d) or (e) of this section.

(2) No handler may transport by motor vehicle, or cause such transportation of, any shipment of lettuce for which inspection is required unless each such shipment is accompanied by a copy of an appropriate inspection certificate or shipment release form (SPI-23) furnished by the inspection service verifying that such shipment meets the pack and container requirements of this section.

A copy of such inspection certificate or shipment release form shall be available and surrendered upon request to authorities designated by the committee.

(3) For administration of this part, such inspection certificate or shipment release form required by the committee as evidence of inspection is valid for only 72 hours following completion of inspection, as shown on such certificate or form.

(d) *Minimum quantity.* Any person may handle up to, but not to exceed two cartons of lettuce a day without regard to inspection, assessment, and pack requirements. This exception shall not be applied to any shipment of over two cartons of lettuce.

(e) *Special purpose shipments.* The pack, container, and inspection requirements of this section shall not be applicable to shipments as follows:

(1) For relief, charity, experimental purpose, or export to Mexico, if a handler presents a certificate of privilege for such lettuce prior to handling it, pursuant to §§ 971.120-971.125; and

(2) For export to Mexico, if the handler of such lettuce loads and transports it only in a vehicle bearing Mexican registration (license).

(f) *Definitions.* (1) "Wrapped" heads of lettuce refers to those which are enclosed individually in parchment, plastic, or other commercial film and then packed in cartons or other containers.

(2) Other terms used in this section have the same meaning as when used in Marketing Agreement No. 144 and this part.

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

Dated November 14, 1978, to become effective November 20, 1978.

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

[FR Doc. 78-32469 Filed 11-16-78; 8:45 am]

[3410-02-M]

[Lemon Reg. 172, Amendment 1; Lemon Reg. 173]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period November 19-25, 1978, and increases the quantity of such lemons that may be so shipped during the period November 12-18. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective November 19-25, 1978, and the amendment is effective for the period November 12-18, 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, established under this marketing order, 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 November 14, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons has changed somewhat, with smaller sizes improving and size 150's and larger showing an easing trend.

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 and amendment are 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, and the amendment relieves restrictions on the handling of lemons. 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.

1. Section 910.473 is added as follows:

§ 910.473 Lemon Regulation 173.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period November 19, 1978, through November 25, 1978, is established at 190,000 cartons.

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

§ 910.472 (Amended)

2. Paragraph (a) of § 910.472 Lemon Regulation 172 (43 FR 52462) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period November 12, 1978, through November 18, 1978, is established at 200,000 cartons."

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

Dated: November 16, 1978.

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

[FR Doc. 78-32623 Filed 11-16-78; 11:24 am]

[3410-34-M]

Title 9—Animals and Animal Products

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

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document finalizes the interim rule which amended the regulations relating to financial responsibility for costs associated with the maintenance and operation of approved quarantine facilities for the importation of birds, and gives notice requiring importers to reimburse Veterinary Services for all costs incurred which are associated with the maintenance and operation of such facilities. This action is necessary in order to recover costs incurred by Veterinary Services in providing services required by the importer which are associated with the operation and maintenance of approved quarantine facilities for importation of birds. The intended effect of this action is to reimburse Veterinary Services for funds expended in servicing approved quarantine facilities for importation of birds.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. George P. Pierson, USDA, APHIS, VS, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: On August 9, 1978 (43 FR 35458-35459) and August 11, 1978 (43 FR 35682-35683), an interim rule was published in the FEDERAL REGISTER which amended, effective October 1, 1978, the regulations which relate to the financial responsibility for costs associated with the maintenance and operation of approved quarantine facilities for the importation of birds, and gave notice requiring importers to reimburse Veterinary Services for all costs incurred which are associated with the maintenance and operation of such facilities. This interim rule was of an emergency nature because the Department anticipated that it would not have funds to provide the services subsequent to October 1, 1978. However, the public was given an opportunity to comment on the interim rule.

A comment period through September 8, 1978, was provided and 13 comments were received by the Department. Three of these were from bird quarantine facility operators, two were from bird wholesalers, one was from a zoological park organization, two were from retail pet shops, one was from a Department employee, one was from a humane group, one was from a Congressman, one was from a university professor, and one was from the American Association of Avian Pathologists.

A summary of relevant comments received and the agencies' responses to these comments are as follows:

1. One comment received endorsed the interim rule.

2. One comment was noncommittal concerning agreement or disagreement with the rule, but suggested that a system be devised whereby quarantine cost for individual birds can be arrived at for the purpose of establishing their retail price. The agency believes this suggestion is impracticable and that it involves management problems which importers and dealers should resolve.

3. Of the remaining 10 comments received, most of these addressed economic problems related to the rule. Three of the ten expressed the opinion that the rule is discriminatory and unfair since importers are not required to reimburse the Government for services received from other agencies such as Customs and the U.S. Public Health Service.

Two of the ten expressed the opinion that the Department should continue to assume responsibility for all costs involved in providing approved quarantine stations with required services; 4 of the 10 expressed concern for the increased cost the importer must bear for reimbursement of the Department for services received; 3 of the 10 suggested that the rule will result in a high inflationary impact; 3 small importers and 1 wholesaler suggested that the impact of requiring importers to reimburse the Department for services received will drive small importers and wholesalers out of business; 2 of the 10 comments suggested revision of various operational procedures which they believed would result in reduced charges; and 1 suggested revision of computation procedures by which estimated charges were arrived at.

From the standpoint of economics, most of the objections posed in the comments referred to are academic since Federal funds which may be used to provide services required by approved quarantine facilities for the importation of birds were not available as of October 1, 1978, and the only realistic alternative is to discontinue the use of such facilities. The Department believes that the use of such facilties should be permitted, and therefore it is necessary that the reimbursable funds system set forth in the interim rule, as modified herein, be finalized.

Since the costs of services provided will be borne by the importer and will be passed on to the consumer, an increase in the retail price of birds is expected. An analysis of the inflationary impact of this action has been made, and the conclusion of this analysis is that the inflationary impact should be limited. Operational procedures have been and will continue to be reviewed and revised with the goal of decreasing costs of services provided to importers to the maximum extent possible.

Estimates of costs for laboratory services as proposed in the interim rule have been further reviewed and have been revised to accordingly accurately reflect actual costs to the Department. Originally the charges for laboratory costs as stated in § 92.11(g)(2) of the interim rule were $11.76 per sample, plus shipping charges for each sample. Based upon the aforementioned review, charges for laboratory costs in § 92.11(g)(2) of this document are reduced to $8.50 per sample plus shipping charges.

Further, overtime services when required will be charged at the actual rate of the GS level of the employee providing the services at the time such services are provided, including appropriate premium pay in accordance with the provisions of 5 U.S.C. 5541-5549. The interim rule required that overtime charges be paid in accordance with 9 CFR Part 97. However, part 97 includes a flat rate for reimbursement to the Department for certain import and export services rendered by the Department. This rate is an average hourly rate and includes overhead. Therefore, because the reimbursement to the Department for services performed at approved quarantine facilities is to be based upon

actual cost, and further, because the regulations at § 92.11(g)(3) provide for a surcharge for overhead, the reference in § 92.11(g) to part 97 is deleted. Further, part 97 is also amended to specify that such part does not apply to the provisions of § 92.11(g).

The reimbursement of the Department for the costs of services provided approved quarantine facilities may have an adverse economic impact on businesses which are economically unstable. However, the Department believes the affect of this action on businesses which are financially sound will be limited.

Additionally, 7 of the 10 comments received and summarized in item 3 above suggested that the placing of the interim rule into effect will increase smuggling activities due to the resulting higher cost of legally imported birds. Three of the ten suggested that because of increased smuggling activity which they expect will occur, the possibility of introducing diseases through such illegal movements will be increased and that the poultry industry will be jeopardized. Historically, bird smuggling activities were a problem before approved quarantine facilities for birds were established and have continued to be a problem since that date. It is anticipated that the reimbursement to the Department for services required by importers in the operation and maintenance of approved animal quarantine facilities will have no more than a minimum effect on overall bird smuggling activities.

Accordingly, Part 92, and Part 97, Title 9, Code of Federal Regulations, are amended in the following respects:

1. In § 92.11, a new paragraph (g) is added and the second sentence of paragraph (f) is amended to read:

§ 92.11 Quarantine requirements.

* * * * *

(f) *Standards for approved quarantine facilities and handling procedures for importation of birds.* * * * The cost of the facility and all costs associated with the maintenance and operations of such facility shall be borne by the importer in accordance with the provisions of § 92.11(g) and § 92.12 (a) and (c).

* * * * *

(g) *Charges for services.* The charges to be borne by importers for services provided for quarantine facilities approved in accordance with § 92.11(f) of this part shall be:

(1) The appropriate GS hourly rate (including appropriate premium pay in accordance with 5 U.S.C. 5541-5549) of the employee who actually performs the service, including his travel time and his travel expenses; *Provided, however,* Such time and travel expense shall not exceed the time and travel expense to and from his official duty station;

(2) Laboratory costs at $8.50 per sample, plus shipping charges per sample, and;

(3) A surcharge for overhead based on the most current historical data available showing the percentage of APHIS funds expended for administrative support.

§ 97.1 [Amended]

2. The phrase "Except as provided in § 92.11(g)(1)," is added to the beginning of the first sentence of § 97.1(a).

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132 (21 U.S.C. 111, 134a, 134b, 134c, and 134f); sec. 603(a) (7 U.S.C. 450b and 2201, respectively); 37 FR 28464, 28477; 38 FR 19141.)

(64 Stat. 561 (7 U.S.C. 2260); sec. 15 Pub. L. 94-353, 90 Stat. 882 (49 U.S.C. 1741)) (38 FR 28814, Oct. 17, 1973, as amended at 42 FR 1455, Jan. 7, 1977; 42 FR 55599, Oct. 18, 1977).

These amendments establish procedures to be used to reimburse Veterinary Services for funds expended in servicing approved quarantine facilities for importation of birds. These amendments should become effective immediately in order to continue the furnishing of services involved.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to the amendments are impracticable and unnecessary and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 14th day of November 1978.

NOTE.—This final rulemaking has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations." While this action has not been designated "significant" under those criteria, an approved final impact analysis statement has been prepared and is available from Dr. E. R. Mackery, APHIS, VS, Program Services, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8695.

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc. 78-32470 Filed 11-16-78; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Changes in Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Change in discount rates.

SUMMARY: The Board of Governors has amended its regulation A, "Extensions of Credit By Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country. Pursuant to the authority of 5 U.S.C. sec. 553 (b)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that urgent economic and financial considerations require that these amendments must be adopted immediately and that delay would be contrary to the public interest.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3257.

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357), Part 201 is amended as set forth below:

1. Section 201.51 is revised to read as follows:

§ 201.51 Advances and discounts for member banks under sections 13 and 13a.

The rates for all advances and discounts under sections 13 and 13a of the Federal Reserve Act (except advances under the last paragraph of such section 13 to individuals, partnerships, or corporations other than member banks) are:

Federal Reserve Bank of—	Rate	Effective
Boston	9½	Nov. 2, 1978
New York	9½	Nov. 1, 1978
Philadelphia	9½	Nov. 2, 1978
Cleveland	9½	Do.
Richmond	9½	Do.
Atlanta	9½	Nov. 3, 1978

Federal Reserve Bank of—	Rate	Effective
Chicago	9½	Nov. 2, 1978
St. Louis	9½	Do.
Minneapolis	9½	Nov. 1, 1978
Kansas City	9½	Nov. 2, 1978
Dallas	9½	Do.
San Francisco	9½	Do.

2. Section 201.52 is revised to read as follows:

§ 201.52 Advances to member banks under section 10(b).

(a) The rates for advances to member banks under section 10(b) of the Federal Reserve Act are:

Federal Reserve Bank of—	Rate	Effective
Boston	10	Nov. 2, 1978
New York	10	Nov. 1, 1978
Philadelphia	10	Nov. 2, 1978
Cleveland	10	Do.
Richmond	10	Do.
Atlanta	10	Nov. 3, 1978
Chicago	10	Nov. 2, 1978
St. Louis	10	Do.
Minneapolis	10	Nov. 1, 1978
Kansas City	10	Nov. 2, 1978
Dallas	10	Do.
San Francisco	10	Do.

(b) The rates for advances to member banks for prolonged periods and significant amounts under section 10(b) of the Federal Reserve Act and section 201.2(e)(2) of regulation A are:

Federal Reserve Bank of—	Rate	Effective
Boston	10½	Nov. 2, 1978
New York	10½	Nov. 1, 1978
Philadelphia	10½	Nov. 2, 1978
Cleveland	10½	Do.
Richmond	10½	Do.
Atlanta	10½	Nov. 3, 1978
Chicago	10½	Nov. 2, 1978
St. Louis	10½	Do.
Minneapolis	10½	Nov. 1, 1978
Kansas City	10½	Nov. 2, 1978
Dallas	10½	Do.
San Francisco	10½	Do.

3. Section 201.53 is revised to read as follows:

§ 201.53 Advances to persons other than member banks.

The rates for advances under the last paragraph of section 13 of the Federal Reserve Act to individuals, partnerships, or corporations other than member banks secured by direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency thereof are:

Federal Reserve Bank of—	Rate	Effective
Boston	12½	Nov. 2, 1978
New York	12½	Nov. 1, 1978
Philadelphia	12½	Nov. 2, 1978
Cleveland	12½	Do.
Richmond	12½	Do.
Atlanta	12½	Nov. 3, 1978
Chicago	12½	Nov. 2, 1978
St. Louis	12½	Do.
Minneapolis	12½	Nov. 1, 1978
Kansas City	12½	Nov. 2, 1978
Dallas	12½	Do.
San Francisco	12½	Do.

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 357.)

By order of the Board of Governors, November 8, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32401 Filed 11-16-78; 8:45 am]

[6210-01-M]

[Docket No. R-0189; Regulation E]

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

PART 205—PURCHASE OF WARRANTS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Rescission of regulation E.

SUMMARY: The Federal Reserve System has undertaken a substantive review of its regulations and, as part of that review, has determined that regulation E, "Purchase of Warrants", which governs the purchase by Federal Reserve Banks of certain short-term obligations of State or local governments, is obsolete and should be rescinded.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard H. Puckett, Manager, Regulatory Improvement Project, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2751.

SUPPLEMENTARY INFORMATION: Regulation E, "Purchase of Warrants" (12 CFR Part 205), first issued by the Board in 1915, governs the purchase by Federal Reserve Banks of obligations with a maturity from the date of purchase of not exceeding 6 months issued by State or local governments in anticipation of the collection of taxes or the receipt of assured revenues (hereinafter "warrants"). Regulation E implements section 14(b) of the Federal Reserve Act ("Act"), which empowers Federal Reserve Banks to purchase "bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding 6 months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, * * * such purchases to be made in accordance with rules and regulations prescribed by the Board * * *." Federal Reserve Banks have not purchased warrants pursuant to the authority of section 14(b) of the Act and regulations E since 1933. Historically, Federal Reserve Banks purchased warrants to provide liquidity to member banks or income to Federal Reserve Banks. The purpose of regulation E is to limit purchases of warrants to a relatively small proportion of a Federal Reserve Bank's resources and to assure that investments of Federal Reserve Banks are of short maturity and are self-liquidating.

In 1933, section 12A of the Act was enacted, creating the Federal Open Market Committee ("FOMC") and limiting the power of Federal Reserve Banks to purchase warrants in the open market. While Federal Reserve Banks may purchase warrants directly from State or local governments subject to regulations issued by the Board, the purchase of such obligations in the open market may only be made at the direction of the FOMC. In 1932, section 10(b) of the Act was enacted, allowing member banks to borrow against any acceptable collateral, thereby permitting the use of warrants as collateral for advances to member banks by Federal Reserve Banks at a rate of at least one-half of one percent above the basic discount rate. In 1968, section 13 of the Act was amended to permit Federal Reserve Banks to make advances to member banks at the basic discount rate secured by warrants (see 12 CFR 201.108). These statutory developments have obviated any need for Federal Reserve Banks to make direct purchases from State or local governments of such obligations.

In the unlikely event that it becomes necessary or desirable, in the absence of regulation E, for Federal Reserve Banks to purchase warrants directly from State or local governments, the underlying statutory authority empowering Federal Reserve Banks to make such purchases in accordance with rules and regulations prescribed by the Board would still exist and appropriate authorization could be given at that time by the Board.

In view of the above-mentioned statutory developments which have made use of the section 14(b) authority to purchase warrants unnecessary, the Board has decided to rescind regulation E. In this connection, the language "compliance with the requirements of regulation E is not necessary; but" in 12 CFR 201.108(d) has been deleted.

By order of the Board of Governors, November 9, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

Title 12 CFR is amended as follows:

1. Part 205 is deleted in its entirety.

§ 201.108 [Amended]

2. Section 201.108(d) is amended by deleting from the second sentence the words "compliance with the requirements of regulation E is not necessary; but".

[FR Doc. 78-32414 Filed 11-16-78; 8:45 am]

[6355-01-M]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1202—SAFETY STANDARD FOR MATCHBOOKS

Revised Safety Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Revised final regulation.

SUMMARY: On May 4, 1977, the Commission issued a final safety standard for matchbooks. On March 31, 1978, a Federal court of appeals set aside portions of that standard. Since the Commission has decided not to reissue those portions or appeal the court's decision, the standard that went into effect on May 4, 1978, is different from the standard issued in May 1977. For purposes of clarity, the Commission is publishing in this document the standard, as revised to comply with the court order.

EFFECTIVE DATE: The revised standard became effective on May 4, 1978.

FOR FURTHER INFORMATION CONTACT:

George Anikis, Office of Program Managment, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-492-6453.

SUPPLEMENTARY INFORMATION: On May 4, 1977, the Commission issued in final form a consumer product safety standard applicable to matchbooks (16 CFR Part 1202; 42 FR 22656-70). This standard was to become effective on May 4, 1978.

On March 31, 1978, the U.S. Court of Appeals for the First Circuit decided two petitions for review of the Commission's matchbook standard. In one decision, *D. D. Bean & Sons, Co.* v. *CPSC*, 574 F. 2d 643 (1st Cir. 1978), the court upheld certain challenged provisions, but set aside all of the "performance requirements" (§ 1202.5) contained in the standard. In the other decision, *Giglio* v. *CPSC*, 575 F. 2d 1 (1st Cir. 1978), the court upheld the Commission's position and no provisions in the standard were affected.

On May 4, 1978, the provisions in the matchbook standard not set aside by the court became effective. On May 11, 1978, the Commission considered some outstanding matters concerning the matchbook standard and decided:

1. The Commission would not take action to appeal the decision or to reissue any provision set aside by the court, and

2. The Commission would discontinue its staff work on a certification rule to accompany the matchbook standard.

The performance requirements set aside by the court were accompanied in the original standard by extensive laboratory testing procedures. Like the performance requirements themselves, these procedures have been deleted from the revised standard issued below. In the absence of laboratory testing procedures, there is no need for a certification rule for matchbooks. (The rule on which the staff was working would have included an acceptable sampling plan and other guidance concerning certification by matchbook manufacturers that their products comply with the laboratory tests.)

Certification of matchbooks with the remaining "general requirements" (§ 1202.4) can be based on a visual test. Therefore, a certification rule is unnecessary and it is sufficient for manufacturers to certify matchbooks based on section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)).

Under section 14(a) matchbook manufacturers must issue certificates stating that the matchbook standard applies to their products and certifying that their matchbooks comply with it. These certificates must accompany the matchbooks or be otherwise furnished to distributors or retailers to whom the matchbooks are delivered. The certification must be based on a test of each matchbook or on a reasonable testing program (the manufacturers must use their own judgments in deciding what is a reasonable testing program). There is no specific language or format for the certifications, but they must contain the name of the manufacturer (or private labeler) issuing the certificate, as well as the date and place of manufacture.

For the convenience of anyone interested in the matchbook standard, the Commission is publishing the standard in its current form below. The performance requirements set aside by the court, as well as additional provisions that supported those requirements, have been deleted. Renumbering and other editorial changes have been made, where appropriate.

The Commission amends Title 16, Code of Federal Regulations, Chapter II, by revising part 1202 as follows:

Sec.
1202.1 Scope and effective date.
1202.2 Findings.
1202.3 Definitions.
1202.4 Matchbook general requirements.
1202.5 Certification.
1202.6 Marking.
1202.7 Prohibited stockpiling.

AUTHORITY: Secs. 2, 3, 7, 9, 14, 16, and 19, Pub. L. 92-573, 86 Stat. 1212-17 (15 U.S.C. 2051, 2052, 2056, 2058, 2063, 2065, and 2068).

§ 1202.1 Scope and effective date.

(a) *Scope.* This part 1202, a consumer product safety standard, prescribes the safety requirements, including labeling requirements, for the matchbook. This part 1202 applies to all matchbooks manufactured in or imported into the United States after its effective date.

(b) *Effective date.* The effective date shall be May 4, 1978.

§ 1202.2 Findings.*

(a) *Risk of injury.* The Commission finds that unreasonable risks of injury from accidents are associated with matchbooks. These unreasonable risks, which this part 1202 is intended to reduce or eliminate, are:

(1) Burn injuries, sustained by children and others, including mentally or physically impaired persons, who play with or otherwise improperly use bookmatches.

(2) Burn injuries sustained by persons who use bookmatches that fragment or have delayed ignition.

(3) Eye injuries sustained by persons who use bookmatches that fragment and cause particles from such matches to lodge in a person's eye.

(4) Burn injuries sustained by persons who use bookmatches that, when struck, ignite the remaining matches in the matchbook.

(5) Burn injuries sustained by persons from fires that have resulted

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*The Commission's findings apply to the matchbook standard that it published on May 4, 1977 (42 FR 22656-70). On Mar. 31, 1978, the U.S. Court of Appeals for the First Circuit set aside portions of that standard (*D. D. Bean & Sons, Co.* v. *CPSC*, 574 F. 2d 643). On Nov. 17, 1978, the Commission published a revised version of the standard which reflects the court's decision. However, the findings have not been revised and they are therefore not fully applicable to the revised matchbook requirements. For example, the revised standard does not address the unreasonable risk of injury of "[b]urn injuries that have been sustained by persons from fires that have been set by the afterglow of extinguished bookmatches" (§ 1202.2(a)(6)) because the court set aside the afterglow performance requirement.

from unexpected ignition of bookmatches with no deliberate action by the user.

(6) Burn injuries that have been sustained by persons from fires that have been set by the afterglow of extinguished bookmatches.

(b) *Products subject to this standard.* (1) The products subject to this standard are those kinds of manufactured ignition devices known as matchbooks. The matchbook consists of a group of bookmatches joined together and fastened within a cover. Although matchbooks are commonly referred to as paper matches or paper-stem matches to distinguish them from individual stick matches such as wooden stem matches packaged in boxes, all matchbooks, regardless of the materials of manufacture of the covers or of the bookmatches fastened within, are subject to this standard.

(2) Matchbooks subject to this standard can be divided into two basic categories: Resale matchbooks and special reproduction matchbooks. Resale matchbooks can be subdivided into advertising and nonadvertising matchbooks. Nonadvertising matchbooks are generally sold by large chain stores, and constitute a small portion of the total resale matchbook volume. Resale matchbooks with advertising are generally given away by tobacco shops, drug stores, vending firms, and other mass distribution outlets. Special reproduction matchbooks, characterized by their distinctive and unique cover designs, are purchased and distributed for promotional purposes by hotels, restaurants, financial institutions, and other business enterprises, and are given free to users.

(3) The Commission estimates that resale matchbooks accounted for almost 75 percent of the volume of matchbooks in 1975, or about 15 billion matchbooks, while special reproduction matchbooks accounted for just over 25 percent, or about 5.5 billion matchbooks.

(c) *Effects on utility, cost, and availability.* (1) The Commission finds that the public need for ignition devices which are small, portable, and can be used to provide a source of fire, is substantial since such products meet basic requirements for a source of fire to ignite tobacco products, fires, candles, or other products, and are also used for miscellaneous other purposes such as providing short term illumination. Three types of products: Matchbooks, individual stick matches, and lighters, predominantly supply the source of fire to meet these requirements.

(i) The Commission estimates that in 1976 U.S. consumers required approximately 645 billion such fire sources or "lights," as they are known, with almost 98 percent of this total required for tobacco products. In the aggregate, the requirements by U.S. consumers for a source of fire has been growing at an annual rate of approximately 3 percent. Matchbooks, the products regulated in this standard, are estimated to have supplied about 65 percent of the source of lights, lighters accounted for about 25 percent, and individual stick matches (primarily wooden-stem type) accounted for the remainder.

(ii) The Commission also finds that matchbooks fulfill a need by institutions and business enterprises for a particular form of specialty advertising that is both relatively inexpensive and effective in reaching a specified audience or population segment with the advertiser's message. Various studies of matchbooks as a form of advertising have found that readership can average 3 to 15 times higher than average readership, listenership, and viewership figures from competing media such as magazines, newspapers, radio, and television, and that readership retention of the matchbook advertising message was extremely high, about 45 percent. In addition, matchbooks tend to be considerably less expensive than other forms of specialty advertising, including those competing advertising items such as address books, key cases, litterbags, and the like, which are themselves relatively inexpensive.

(2) The Commission finds that the standard will have no adverse effects on the utility that consumers derive from matchbooks. To the extent that injuries and property damage associated with the use of matchbooks is reduced or eliminated as a result of this standard, the utility of matchbooks as a source of fire will be increased.

(3) The Commission estimates that manufacturing cost increases as a direct or indirect effect of this standard will be modest for the industry as a whole. Such increases will tend to be concentrated in one-time costs to complete changeover to reverse friction, and in costs to establish and implement testing programs and certification procedures.

(i) Because some 80-90 percent of the matchbooks produced annually are given free to consumers, there is not likely to be any direct cost impact on the consumer as a result of the standard. Some proportion of increased manufacturing costs will be passed on to the institutions and business enterprises that purchase matchbooks for promotional purposes. To the extent that increases in advertising and promotional costs may be reflected in higher prices for goods and services sold by these businesses, there may be indirect cost effects on consumers. If so, such impacts would likely be small, if not imperceptible.

(ii) For the 12-20 percent of matchbooks that are purchases at retail by consumers, some proportion of any manufacturing cost increases may be passed on to the consumer. A resulting increase in retail prices for such matchbooks will be small, no more than a few cents per box of 50 matchbooks.

(4) The Commission finds that the standard will not have impacts of significant magnitude on the availability of matchbooks. Although some institutions and business enterprises may reduce their matchbook purchases or eliminate them in response to any increased price of matchbooks, the large number of such purchasers, and the large volume purchased annually, are such that curtailment of purchases by some businesses is likely to have very small effects on the total number of matchbooks available to U.S. consumers.

(d) *Alternatives.* (1) The Commission has considered other means of achieving the objective of the standard throughout the course of its development. Certain other more elaborate test requirements were considered and were shown to have the potential for severe adverse effects on competition and estimated to result in disruptions and dislocations of manufacturing and commercial practices. Therefore, having considered and rejected such other means of achieving the objective of the standard, the Commission has found none that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with the public health and safety than this standard.

(2) Because of competition from substitute products such as inexpensive disposable butane lighters and because of other prevailing business and economic conditions, the industry manufacturing matchbooks has been in a state of contraction in recent years. This contraction, marked by the exit of some firms and by plant closings or consolidations, is likely to continue in the future; but this will neither be the result of, nor significantly accelerated by, effects of the standard. Currently, aggressive price and service competition prevails among firms vying for customer accounts. It is anticipated that this competition for sales may increase as an indirect effect of the standard. To the extent that this occurs, there may be some disruption or dislocation of manufacturing, sales, or distribution practices in certain matchbook product categories and market segments. Marginal firms and firms producing limited product categories or for limited market segments may be affected to a greater degree than multiproduct category or multimarket firms.

(e) *Conclusion.* The Commission finds that this standard, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risks of injury associated with matchbooks and that the issuance of the standard is in the public interest.

§ 1202.3 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for the purpose of this standard:

(a) "Bookmatch" means a single splint, with a matchhead attached, that comes from a matchbook.

(b) "Bridge" means the matchhead material held in common by two or more splints.

(c) "Broken bridge" means a bridge that has become separated.

(d) "Caddy" means a package of two or more matchbooks wrapped or boxed together at a production plant.

(e) "Comb" means a piece of wood, paper, or other suitable material that has been formed into splints, that remain joined at their base, and that are designed to have matchheads attached to their tips.

(f) "Cover" means the paperboard or other suitable material that is wrapped around and fastened to the comb(s).

(g) "Friction" means the dried chemical mixture on the matchbook cover used to ignite the bookmatch.

(h) "Match" means a single splint with matchhead attached.

(i) "Matchbook" means one or more combs with matchheads attached and a cover that is wrapped around and fastened to those combs.

(j) "Matchhead" means the dried chemical mixture on the end of a splint.

(k) "Splint" means the support for the matchhead or that portion normally held when using the bookmatch.

§ 1202.4 Matchbook general requirements.

A matchbook shall meet the following general requirements:

(a) The friction shall be located on the outside back cover near the bottom of the matchbook.

(b) The cover shall remain closed without external force.

(c) No friction material shall be located on the inside of the cover where possible contact with the matchheads may occur during ordinary use.

(d) There shall be no bridge(s) or broken bridge(s).

(e) No matchhead in the matchbook shall be split, chipped, cracked, or crumbled.

(f) No portion of any matchhead shall be outside the matchbook cover when the cover is closed.

(g) No part of a staple or other assembly device for securing the cover and combs shall be within or touching the friction area.

(h) A staple used as an assembly device for securing the cover and combs shall be fully clinched so that the ends are flattened or turned into the cover.

§ 1202.5 Certification.

Certification shall be in accordance with section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)). Under this provision, manufacturers and private labelers of products subject to safety standards must certify that their products conform to the standard, based on either a test of each product or on a reasonable testing program.

§ 1202.6 Marking.

(a) The manufacturer's or private labeler's name and city or a symbol which will identify the name and city shall appear on the matchbook. In addition, every private labeler must label the matchbook with a code which enables it to identify, if requested, the manufacturer of the product.

(b) Boxes or cartons in which two or more caddies are shipped shall be marked "For safety, store in a cool, dry place."

§ 1202.7 Prohibited stockpiling.

Section 9(d)(2) of the Consumer Product Safety Act (15 U.S.C. 2058(d)(2)) authorizes the Commission to prohibit manufacturers and importers from stockpiling a product subject to a consumer product safety standard between its date of issuance and its effective date. A manufacturer or importer is in violation of Section 9(d)(2) and of this § 1202.7 if it fails to comply with the following:

(a) *Definitions.* (1) "Base period" means, at the option of the manufacturer or importer concerned, any period of 365 consecutive days beginning on or after January 1, 1973, and ending on or before December 31, 1975.

(2) "Rate of production (or importation)" means the total number of matchbooks manufactured (or imported) during a stated time period. In determining whether a matchbook was manufactured during a stated time period, the date on which the cover and combs were assembled to form a matchbook shall be used. In the event that a manufacturer currently operates a matchbook manufacturing plant that it did not operate during the base period, or that it did not operate for an entire base period, that manufacturer shall use, as the rate of production during the base period for that plant, either (i) the average daily rate of production (including nonproduction days such as Sundays, holidays, and vacations) for the part of the base period he did operate that plant, multiplied by 365 or (ii) the rate of production during the base period of his most nearly similar matchbook manufacturing plant.

(b) *Prohibited act.* Manufacturers and importers of matchbooks, as these products are defined in § 1202.3(i), shall not manufacture or import matchbooks that do not comply with the requirements of this part 1202 between the date that this part 1202 is issued and the date that it becomes effective at a rate that is greater than the rate of production or importation during the base period plus 15 percent of that rate.

(c) *Documentation.* Manufacturers and importers shall maintain, for a period of six (6) months after the effective date specified in § 1202.1(b), appropriate documentation to be able to substantiate to the Commission that they are in compliance with the provisions of this section.

(Sec. 9, Pub. L. 92-573, 86 Stat. 1215; 15 U.S.C. 2058.)

Dated: November 13, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-32323 Filed 11-16-78; 8:45 am]

[6355-01-M]

SUBCHAPTER E—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

PART 1701—STATEMENTS OF POLICY AND INTERPRETATION

Statement of Policy and Interpretation Regarding Applicability of Child-Resistant Packaging Standards to Hazardous Substances Packaged in Large Containers

AGENCY: Consumer Product Safety Commission.

ACTION: Interpretation of regulation.

SUMMARY: The Commission issues this statement of policy and interpretation to explain that Commission requirements for child-resistant packaging do not, unless specified otherwise for a particular substance, apply to hazardous substances packaged in containers with a capacity of 5 gallons or greater. The Commission takes this position because special packaging requirements apply only to "household substances." The Commission does not generally consider substances packaged in containers of 5 gallons or more to be "household substances," as defined in the Poison Prevention Packaging Act of 1970, since they are not customarily used around the household. This statement of policy and interpretation is being issued to elimi-

nate confusion as to the application of the requirements for child-resistant packaging. It does not affect requirements under the Federal Hazardous Substances Act for hazardous substances intended, or packaged in a form suitable for use in the household.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Sandra Eberle, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6400.

SUPPLEMENTARY INFORMATION: Section 3(a) of the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471-1478) provides that the Commission may issue standards for the special packaging of any "household substance" to help protect young children from serious personal injury or illness from handling, using, or ingesting such substance. As provided by section 2(2) of the PPPA (restated at 16 CFR 1700.1(b)(2)), the term "household substance," means any substance that is customarily produced or distributed for sale for consumption or use, or customarily stored by individuals in or about the household, and which is also a "hazardous substance" as defined in section 2(f) of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261(f)); a "food, drug, or cosmetic" as those terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or a "substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house."

The Commission has in effect special packaging requirements for various substances, as listed in its regulations at 16 CFR 1700.14(a). Among these are the following hazardous substances: Furniture polishes (16 CFR 1700.14(a)(2)), sodium or potassium hydroxide preparations (16 CFR 1700.14(a)(5)), turpentine preparations (16 CFR 1700.14(a)(6)), kindling and/or illuminating preparations (16 CFR 1700.14(a)(7)), methyl alcohol preparations (16 CFR 1700.14(a)(8)), sulfuric acid preparations (16 CFR 1700.14(a)(9)), ethylene glycol (16 CFR 1700.14(a)(11)), and prepackaged liquid solvents for paint or other similar surface coating materials (16 CFR 1700.14(a)(15)).

In the past, the Commission staff has interpreted the requirements for special packaging at 16 CFR 1700.14(a) to apply to hazardous substances without regard to the size of the container, unless a manufacturer could show that the hazardous substance was not a "household" substance when produced in a certain size container. The regulations at 16 CFR 1700.14(a) do not specify the size of the containers of the hazardous substances covered by the regulation, and when interpreted literally could apply to a hazardous substance in any size container. The Commission has received inquiries from manufacturers concerning the applicability of special packaging requirements to hazardous substances in large size containers.

Based on its experience with the manner in which these hazardous substances are marketed to consumers, the Commission has learned that most of the substances customarily marketed for household use are traditionally sold in packages of 1 gallon or less. The Commission is not aware of any instance in which these substances have been customarily produced or distributed for household use in containers of 5 gallons or greater. As a result, the Commission does not believe that these substances in containers of 5 gallons or more are customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household, and thus are not "household substances" within the meaning of the PPPA. Since these substances are not household substances when packaged in containers of 5 gallons or more, these substances are not required to be in special packaging when packaged in large size containers of 5 gallons or more. Unless otherwise specified, this statement of enforcement policy applies to all hazardous substances subject to special packaging requirements under the PPPA, including hazardous substances for which special packaging requirements are established in the future. Thus, unless a particular substance is designated by regulation as being a household substance when packaged in a container of 5 gallons or more, the substance will not be considered subject to special packaging requirements. The Commission is issuing this statement of enforcement policy in order to clarify this interpretation of the applicability of special packaging requirements to hazardous substances in large size containers of 5 gallons or greater. The requirement of special packaging continues to apply to these substances when packaged in containers smaller than 5 gallons. This statement does not affect the applicability of any requirements, including labeling requirements, under the FHSA for "hazardous substances intended or packaged in a form suitable, for use in the household" as defined in section 2(f) of the FHSA and the accompanying regulations at 16 CFR 1500.3(c)(10)(i).

Because the material published below is a general statement of Commission policy involving enforcement of a regulation, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and opportunity for public participation and delay in effective date are inapplicable. Therefore, the statement published below shall be effective upon date of publication.

Accordingly, pursuant to the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, Sections 2, 5, 7, 9, 94 Stat. 1670-1674, 15 U.S.C. 1471, 1474, 1476, 1478) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, Section 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a)), 16 CFR Part 1701 is amended by adding a new § 1701.3 as follows:

§ 1701.3 Applicability of special packaging requirements to hazardous substances in large size containers.

The special packaging requirements of the PPPA apply to "household substances" for which the Commission has determined there is a need for special packaging, as provided in section 3 of the act (15 U.S.C. 1472). At section 2(2) of the act (15 U.S.C. 1471) (restated at 16 CFR 1700.1(b)(2)), the term "household substance" is defined as "any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household * * *." The Commission has issued requirements for special packaging for certain hazardous substances at 16 CFR 1700.14(a). Unless otherwise indicated in the requirements for specific hazardous substances, the Commission interprets the term "household substance" as only applying to these hazardous substances when packaged in containers with a capacity of less than 5 gallons. As a result, unless otherwise specified, the hazardous substances at 16 CFR 1700.14(a) are not required to be in special packaging when packaged in containers of 5 gallons or more.

(Secs. 2, 5, 7, 9, Pub. L. 91-601; 94 Stat. 1670-1674 (15 U.S.C. 1471, 1474, 1476, 1478); sec. 30(a), Pub. L. 92-573, 86 Stat. 1231 (15 U.S.C. 2079(a).)

Effective date. These amendments become effective November 17, 1978.

Dated: November 14, 1978.

SADYE DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-32322 Filed 11-16-78; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 78-448]

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

Granting Allowance for Losses to Imported Merchandise Caused by Natural Force or Leakage

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by granting relief from the payment of Customs duties for losses to imported merchandise caused by a natural force such as evaporation or by leakage. An allowance is presently made in the assessment of duties for lost or missing packages, or deficiencies in the contents of packages, and the Customs Service has determined that a similar allowance in the assessment of duties for losses caused by a natural force or by leakage should be granted.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Benjamin H. Mahoney, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 158 of the Customs Regulations (19 CFR Part 158) sets forth general rules for granting relief from Customs duties on imported merchandise which has been lost, damaged, abandoned, or exported. Although an allowance is made in the assessment of duties for lost or missing packages, or deficiencies in the contents of packages, no similar provision is made for an allowance in duties for losses to imported merchandise caused by a natural force such as evaporation or by leakage. The Customs Service has determined that such an allowance is advisable and that the Customs Regulations should be amended to grant an allowance in the assessment of duties where losses are caused by a natural force or by leakage.

Inasmuch as this amendment grants an allowance not presently provided and places no affirmative duty on the public, notice and public procedure are found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division of the Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

AMENDMENT TO CUSTOMS REGULATIONS

Part 158 of the Customs Regulations (19 CFR Part 158) is amended by adding a new section 158.7 to read as follows:

§ 158.7 Allowance for reduction or loss of merchandise by a natural force or by leakage.

Merchandise subject to ad valorem, specific, or compound rates of duty found at the time of importation to be reduced or diminished by a natural force, such as evaporation, or by leakage, shall be appraised in its condition as imported, with an allowance made in the value, weight, quantity, or measure to the extent of the reduction or loss, except when forbidden by law or regulation.

(R.S. 251, as amended, sec. 499, sec. 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1499, 1624).)

LEONARD LEHMAN,
Commissioner of Customs.

Approved: November 3, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-32392 Filed 11-16-78; 8:45 am]

[4110-07-M]

Title 20—Employee's Benefits

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

[Reg. No. 4]

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

The Retirement Test

AGENCY: Social Security Administration, HEW.

ACTION: Interim regulations.

SUMMARY: The Social Security Amendments of 1977: (1) Eliminate the monthly earnings test beginning with monthly benefits payable January 1978, except for a one-time application of the test to each type of social security benefit; (2) raise the annual earnings limitation amount for individuals age 65 and over, beginning with taxable years ending after 1977; and (3) lower the age from 72 to 70 at which there is no longer an annual earnings limitation, beginning with taxable years ending after 1981.

These interim regulations explain the changes made by the amendments and clarify the effects of the statute. Because the amendments to the monthly earnings test and the annual earnings amount for people aged 65 and over are, under the terms of the statute, already in effect, we are now using some of the rules explained in this regulation. The rules may, however, be changed in light of the comments we receive.

DATES: Effective date: November 17, 1978. You will be given an opportunity to comment on the interim regulations. Your comments will be considered if we receive them no later than January 16, 1978.

ADDRESSES: Send your written comments to: Social Security Administration, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Clara B. Powell, Legal Assistant, Division of Regulations, Office of Policy and Regulations, Office of Program Policy and Planning, Social Security Administration, Baltimore, Md. 21235, 301-594-7459. Ms. Powell will respond to questions, but all comments must be submitted in writing.

SUPPLEMENTARY INFORMATION:

ELIMINATION OF THE MONTHLY EARNINGS TEST

Before the passage of the Social Security Amendments of 1977 (Pub. L. 95-216), two tests were used to compute the benefits payable to social security beneficiaries who continued to work while entitled to benefits. These were the annual earnings test and the monthly earnings test. Under the annual earnings test, the yearly benefits payable to an individual were reduced $1 for each $2 of income earned during the course of a taxable year above the annual earnings limitation

amount established for that year. Deductions were made beginning with the first month of the taxable year in which benefits were payable to the individual.

However, before the individual's monthly benefits were reduced, the monthly earnings test was applied. Under the monthly test, no matter how much money the beneficiary earned for the year as a whole, no benefits could be deducted for any month in the taxable year during which the beneficiary earned wages less than or equal to the monthly earnings limitation amount established for that year (which, in most cases, is 1/12 of the annual earnings limitation amount for that year) and did not perform substantial services in self-employment. These months are referred to as "nonservice" months.

One consequence of the monthly earnings test was that beneficiaries who earned the same amount of money in a given year received different benefits for that year simply because they earned their money in different ways. Consider, for example, two self-employed beneficiaries. One earned $15,000 for the year, but only worked 3 months. Full monthly benefits were paid this individual for the 9 nonservice months, under the monthly earnings test. The second beneficiary also earned $15,000, but worked regularly throughout the year. Since the beneficiary had no nonservice months, the monthly test did not apply; under the annual test, no benefits at all were paid to this beneficiary.

The Social Security Amendments of 1977 correct the unfairness of paying different benefits to beneficiaries who earn the same amount of money in a given year, simply because they earn their money in different ways. Beginning with benefits payable for January 1978, the monthly test is eliminated (except as explained below) and the benefits payable to a beneficiary will be reduced $1 for each $2 of his or her annual earnings above the annual earnings limitation amount, no matter how many nonservice months the beneficiary might have during the year.

The monthly earnings test will continue to apply, however, in the first year a beneficiary, while entitled to benefits, has a nonservice month. This year when the monthly test applies to a beneficiary is called the grace year. In most cases, the grace year will be the beneficiary's actual year of retirement. Applying the monthly test in the beneficiary's year of retirement means that benefits can be paid beginning with the first month of retirement regardless of how much money the beneficiary earned in the months preceding retirement.

Also, the monthly test can apply in more than 1 grace year to any given beneficiary if the beneficiary's entitlement to one type of benefit ends, and, after a break in entitlement of at least 1 month, the beneficiary becomes entitled to a different type of benefit. The monthly test would then apply in the first year that the beneficiary, while entitled to this new type of benefit, has a nonservice month.

It should be noted that, under the Social Security Act, no benefit deductions are made because of excess annual earnings earned by persons receiving benefits as disability beneficiaries under section 223 of the Act and as disabled widows, widowers, and children under section 202. Since the annual earnings test does not apply to these beneficiaries, the monthly earnings test does not apply to them either. As a result, no nonservice month incurred by any person while entitled to a disability benefit as a widow, widower, or child, or under section 223, will be counted in determining whether any given year is the beneficiary's grace year in which the monthly earnings test can apply.

As mentioned earlier, the elimination of the monthly earnings test except for the beneficiary's grace year is effective beginning with monthly benefits payable for January 1978. This means that beneficiaries who, while entitled to benefits, had a nonservice month in a taxable year ending prior to 1978 cannot have the monthly test applied to them in 1978 or thereafter, unless, as explained above, they become (or have become) entitled to a different type of benefit than before, after a break in entitlement of at least 1 month. On the other hand, since only benefits payable beginning January 1978 are affected by the amendment, no beneficiary has been overpaid because the monthly test was applied to him or her in more than 1 year prior to 1978. Because there was a delay in implementing the change in the monthly earnings test until May 1978, HEW has adopted a waiver policy for those net overpayments outstanding at the end of this year which result from erroneous application of the monthly earnings test for January through May 1978.

Annual Exempt Amount for Beneficiaries Age 65 and Older

Another provision of the Social Security Amendments of 1977 increases the annual earnings limitation amount for beneficiaries age 65 and older above the amount for beneficiaries below age 65. In the past, the exempt amount was the same for all beneficiaries. This provision is effective for all months of any taxable year ending after December 1977.

Age at Which Retirement Test No Longer Applies

The age at which the retirement test no longer applies is reduced from 72 to 70. This provision is effective for all months of any taxable year ending after December 1981. We are including this provision now so that beneficiaries making long-range retirement plans will know what rules will apply to them in 1982.

We find that publication of a notice of proposed rulemaking is impracticable and contrary to the public interest because two of the statutory provisions, the elimination of the monthly earnings test and the increase in the annual earnings limitation amount for beneficiaries age 65 and over are, under the terms of the statute, already effective and rules are needed to assure uniform implementation of these provisions. Furthermore, publication of a notice of proposed rulemaking to implement the reduction in the age at which the retirement tests no longer apply from 72 to 70 is unnecessary because this amendment is self-executing and leaves nothing to the discretion of the Secretary.

(Secs. 203 and 1102 of the Social Security Act as amended; 49 Stat. 623, as amended, 49 Stat. 647, as amended (42 U.S.C. 403 and 1302); Pub. L. 95-216.)

(Catalog of Federal Domestic Assistance Program Nos. 13.803, Social Security Retirement Insurance and 13.805, Social Security Survivors Insurance.)

Dated: August 11, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 11, 1978.

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

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.428(a) is revised to read as follows:

§ 404.428 Earnings in a taxable year.

(a) *General.* (1) In applying the annual earnings test (see § 404.415(a)) under this subpart, all of a beneficiary's earnings (as defined in § 404.429) for all months of the beneficiary's taxable year are used even though the individual may not be entitled to benefits during all months of the taxable year. (See, however, § 404.430 for the rule which applies to earnings of beneficiaries who turn age 72 during the taxable year (age 70 for all months of any taxable year ending after December 1981).)

(2) The taxable year of an employee is presumed to be a calendar year until it is shown to the satisfaction of the Social Security Administration that

the individual has a different taxable year. A self-employed individual's taxable year is a calendar year unless the individual has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1954. In either case, the number of months in a taxable year is not affected by: (i) The time a claim for social security benefits is filed, (ii) attainment of any particular age, (iii) marriage or the termination of marriage, or (iv) adoption. A taxable year ends with the death of the beneficiary. The month of death is counted as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430.

2. Section 404.430 is amended as follows:

The section heading is revised; paragraph (a)(3) and (b) are revised; in paragraph (c)(1) the material preceding paragraph (c)(1)(i) is revised; and a new paragraph (d) is added to read as follows:

§ 404.430 Excess earnings; defined for taxable years ending after December 1972; monthly earnings amount; defined.

(a) *Method of determining excess earnings for years ending after December 1972.* For taxable years ending after 1972, an individual's excess earnings for a taxable year are 50 percent of his or her earnings (as described in § 404.429) for the year which are in excess of the product obtained by multiplying the number of months in that taxable year by the following applicable monthly exempt amount:

(1) * * *

(2) * * *

(3) the exempt amount for taxable years ending after December 1974, as determined under paragraphs (c) and (d) of this section. However, earnings in and after the month an individual turns age 72 will not be used to figure excess earnings for retirement test purposes. For the employed individual, wages for months prior to the month of attainment of age 72 are used to figure the excess earnings for retirement test purposes. For the self-employed individual, the pro rata share of the net earnings or net loss for the taxable year for the period prior to the month of attainment of age 72 is used to figure the excess earnings. If the beneficiary was not engaged in self-employment prior to the month of attainment of age 72, any subsequent earnings or losses from self-employment in the taxable year will not be used to figure the excess earnings. Where the excess amount figured under the provisions of this section is not a multiple of $1, it is reduced to the next lower dollar. (All references to age 72 will be age 70 for all months of taxable years ending after December 1981.)

Example 1. The self-employed beneficiary turned age 72 in July 1975. His net earnings for 1975, his taxable year, were $6,000. The pro rata share of the net earnings for the period prior to July is $3,000. His excess earnings for 1975 for retirement test purposes are $240. This is computed by subtracting $2,520 ($210×12), the exempt amount for 1975, from $3,000 and dividing the result by 2.

Example 2. The beneficiary turned age 72 in July 1975. His wages for the period prior to July were $3,000. From August through December 1975 he worked in self-employment and had net earnings in the amount of $2,000. His net earnings from self-employment are not used to figure his excess earnings. Only his wages for the period prior to July 1975 ($3,000) are used to figure his excess earnings. As in example 1, his excess earnings are $240.

Example 3. The facts are the same as in example 2 except that the beneficiary worked in self-employment throughout all of 1975, and had a net loss of $500 from the self-employment activity. The pro rata share of the net loss for the period prior to July is $250. His earnings for the taxable year to be used in figuring excess earnings are $2,750.

This is computed by subtracting the $250 net loss from self-employment from the $3,000 in wages. The excess earnings are $115 (($2,750 − $2,520)÷2).

(b) *Definition.* The retirement test monthly exempt amount is the amount of wages which a social security beneficiary may earn in any month without part of his or her monthly benefit being deducted because of excess earnings. For taxable years ending after 1977, the monthly exempt amount applies only in a beneficiary's grace year or years. (See § 404.435(a).)

(c) *Method of determining monthly exempt amount for taxable years ending after December 1974.* (1) Except as provided under paragraph (d) of this section, for purposes of paragraph (a)(3) of this section, the applicable monthly exempt amount effective for an individual's taxable year that ends in the calendar year after the calendar year in which an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits is effective is the larger of:

* * * * *

(d) *Method of determining monthly exempt amount for taxable years ending after December 1977 for beneficiaries age 65 or over.* (1) For purposes of paragraph (a)(3) of this section, for all months of taxable years ending after 1977, the applicable monthly exempt amounts for individuals who have reached the age of 65 before the close of the taxable year involved are:

(i) $333.33⅓ for each month of any taxable year ending in 1978;

(ii) $375 for each month of any taxable year ending in 1979;

(iii) $416.66⅔ for each month of any taxable year ending in 1980;

(iv) $458.33⅓ for each month of any taxable year ending in 1981; and

(v) $500 for each month of any taxable year ending in 1982.

(2) Fractional amounts listed in paragraph (d)(1) of this section shall be rounded to the next higher whole dollar amount, unless the individual shows that doing so results in a different grace year (see § 404.435 (a) and (c)):

3. Section 404.435 is revised to read as follows:

§ 404.435 Excess earnings; months to which excess earnings cannot be charged.

(a) *Monthly benefits payable beginning with January 1978.* Beginning with monthly benefits payable for January 1978, no matter how much a beneficiary earns in a given taxable year, no deduction on account of excess earnings will be made in the benefits payable for any month: (1) In which he or she was not entitled to a monthly benefit; (2) in which he or she was considered not entitled to benefits (due to noncovered work outside the United States, no child in care, or refusal of rehabilitation, as described in § 404.436); (3) in which he or she was age 72 or over (age 70 for taxable years ending after 1981); (4) in which he or she was entitled to payment of a disability insurance benefit; (5) in which he or she was age 18 or over and entitled to a child's insurance benefit based on disability; (6) in which he or she was entitled to a widow's or widower's insurance benefit based on disability; or (7) which was a "nonservice" month (see paragraph (b) of this section) in the beneficiary's "grace year" (see paragraph (c) of this section).

(b) *Nonservice month; defined.* A nonservice month is any month in which an individual, while entitled to retirement or survivors benefits (1) does not work in self-employment (see paragraphs (d) and (e) of this section), (2) does not earn wages greater than the monthly exempt amount set for that month (see paragraph (f) of this section and § 404.430 (b), (c), and (d)), and (3) does not work in noncovered remunerative activity on 7 or more days in a month while outside the United States. A nonservice month occurs even if there are no excess earnings in the year.

(c) *Grace year; defined* (1) a beneficiary's first grace year is the taxable year in which the beneficiary is for the first time both entitled to a retirement or survivors benefit and has a nonservice month (see paragraph (b) of this section); (2) A beneficiary may have another grace year each time his or her entitlement to one type of benefit ends and, after a break in entitlement of at least 1 month, he or she be-

comes entitled to a different type of retirement or survivors benefit. The new grace year would then be the first taxable year in which the beneficiary, while entitled to this new type of benefit, has a nonservice month; (3) A month will not be counted as nonservice month for purposes of determining whether a given year is a beneficiary's grace year if the nonservice month occurred while the beneficiary was entitled to disability benefits under section 223 of the Social Security Act or as a disabled widow, widower, or child under section 202.

Example 1: Don, age 65, will retire from his regular job in April of next year. Although he will have earned $11,000 for January-April of that year and plans to work parttime, he will not earn over the monthly exempt amount after April. Since next year will be the first year in which he is both entitled to benefits and has a nonservice month, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will receive benefits for all months in which he does not earn over the monthly exempt amount (May-December) even though his earnings have substantially exceeded the annual exempt amount. However, in the years which follow, only the annual earnings test will be applied if he has earnings that exceed the annual exempt amount, regardless of his monthly earnings.

Example 2: Marion, age 58, has been entitled to mother's insurance benefits since 1976 because she has had a child in her care who is under age 18. Marion is a seasonal worker who does not work during the summer. Her salary of $20,000 a year is enough so that all her monthly benefits could have been withheld each year because of excess earnings under the annual earnings test. However, she received full benefits for the summer months of 1976 and 1977 because these were nonservice months under the monthly earnings test. Marion will not receive benefits for these nonservice summer months in 1978 because they do not occur during her grace year. The reason is that 1978 is not the first year in which Marion, while entitled to mother's benefits, had a nonservice month.

Marion's child turns age 18 in May 1979 and, as a result, Marion's entitlement to mother's benefits ends as of April 1979. Marion becomes age 60 in February 1980 and retires in June 1980. She applies for and becomes entitled to widow's insurance benefits in July 1980. Because there was a break in entitlement to benefits of at least 1 month before entitlement to another type of benefit, 1980 is also a grace year for Marion because it is the first year in which she has a nonservice month while entitled to this new type of benefit.

(d) *When an individual works in self-employment.* An individual works in self-employment in any month in which he or she performs substantial services (see § 404.446) in the operation of a trade or business (or in a combination of trades and businesses if there is more than one) as an owner or partner even though there may be no earnings or net earnings caused by the individual's services during the month.

(e) *Presumption regarding work in self-employment.* An individual is presumed to have worked in self-employment in each month of the individual's taxable year until it is shown to the satisfaction of the Social Security Administration that in a particular month the individual did not perform substantial services (see § 404.446(c)) in any trade or business (or in a combination of trades and businesses if there are more than one) from which the net income or loss is included in computing the individual's annual earnings (see § 404.429).

(f) *Presumption regarding earning of wages.* An individual is presumed to have earned wages (as defined in § 404.429) in any given month of more than the applicable monthly exempt amount set for that month until it is shown to the satisfaction of the Social Security Administration that the individual did not earn wages in the month of more than the monthly exempt amount.

[FR Doc. 78-32413 Filed 11-16-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Subpart B—Specific New Animal Drugs For Use In Animal Feeds

AMPROLIUM AND BACITRACIN ZINC

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document amends the regulations to codify a prior approval held by IMC Chemical Group, Inc., for use of amprolium and bacitracin zinc in chicken and turkey feed.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: IMC Chemical Group, Inc., Terre Haute, Ind. 47808, holds a prior approval for use of amprolium at 113.5 to 227 grams per ton (0.0125 percent to 0.025 percent) in combination with bacitracin zinc at 4 to 50 grams per ton for use in broiler chickens, replacement chickens, and turkeys.

This document reflects a previous approval and neither requires reevaluation of the basic data submitted nor constitutes a reaffirmation of the drug's safety and effectiveness. Since the approval was granted before July 1, 1975, a summary of the safety and effectiveness data and information submitted in accordance with § 514.11 (e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) is not required to be filed with the Hearing Clerk, Food and Drug Adminstration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.55 by amending paragraph (e)(2) in the table by revising the entry under the "Limitations" column and adding a new entry under the "Sponsor" column for subitem "Bacitracin 4 to 50" following item (iv), as follows:

§ 558.55 **Amprolium.**

* * * * *

(e) * * *
(2) * * *

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	* * *	*	* *	*
(iv) * * *				
	Bacitracin 4 to 50	1. * * *	As bacitracin methylene disalicylate or bacitracin zinc.	Bacitracin zinc by No. 012769 in § 510.600(c) of this chapter.
		2. * * *	....do	Do.
*	* * *	*	* *	*

Effective date: This regulation is effective November 17, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: November 8, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-32028 Filed 11-16-78; 8:45 am]

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

[FHWA Docket No. 78-35]

PART 635—CONSTRUCTION AND MAINTENANCE

Buy American Requirements

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This emergency regulation implements procedures required under section 401 of the Surface Transportation Assistance Act of 1978 (Act), Buy America provision, which provides, with exceptions, that funds authorized by the Act may not be obligated for highway projects unless materials and supplies are of United States origin.

DATES: This emergency regulation is effective November 6, 1978. Comments must be received on or before January 17, 1979.

ADDRESS: Anyone wishing to submit comments may do so, preferably in triplicate, to FHWA Docket No. 78-35, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Ziems, Construction and Maintenance Division, 202-426-4847; or Lee J. Burstyn, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On November 6, 1978, the President signed into law the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689. The provisions of Section 401, Buy America, are effective immediately and require implementation. Current regulations, 23 CFR 635, subpart D, prescribe procedures relating to product and material selection and use on Federal-aid highway projects, but are contrary to the requirements of the 1978 Act.

The Federal Highway Administrator, Karl S. Bowers, has determined that the required implementation of the new Buy America provision will have a major impact on many highway construction programs of the States. Section 401 allows for a modification in its application when such application would be inconsistent with the public interest. Foreign structural steel has been identified as the only foreign product having a significant nationwide effect on the cost of Federal-aid highway construction projects and its continued unrestricted use is contrary to Section 401 of the Act.

Therefore, the Administrator has determined that this emergency regulation is necessary and consistent with the public interest to provide regulations which will immediately implement the Buy America provision as it relates to the use of structural steel in highway projects. In addition, the Administrator has determined that it would be in the public interest to temporarily waive the provisions of section 401 as it applies to products and materials, other than structural steel, used in highway construction. The issuance of this regulation will allow the Federal Highway Administration to authorize States to proceed with advertising projects without incurring undue delay while awaiting formulation of implementing regulations.

This emergency regulation will allow for the immediate application of section 401 and assure the proper expenditure of Federal funds. In the interim, more extensive procedures may be devised which will fully encompass the policies, objectives, and requirements of the new Buy America provision. The legislation history of this provision indicates that Congress intended it to be interpreted in the light of the 1933 Buy American Act, 41 U.S.C. 10a-10d, as amended.

A docket for comments has been assigned to this regulation and the public is invited to submit their views and comments. Comments may also address future implementation of the Buy America provisions and revisions to the existing 23 CFR 635 Subpart D. These comments may be utilized in formulating a final regulation on this matter and may address proposed criteria concerning the identification of products and materials covered under the Act and implementing procedures.

In consideration of the foregoing, Part 635, Subpart D of Chapter I, Title 23, Code of Federal Regulations, is amended as follows:

1. The table of sections is amended by adding a new section to read:

Sec.
635.410 Buy America requirements.

2. Section 635.410 is added to read as follows:

§ 635.410 Buy America Requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements exist:

(1) The project has a total estimated cost of less than $450,000;

(2) The project includes no structural steel. Structural steel is defined as shapes, plates, H-piling, and sheet piling;

(3) The project is undertaken pursuant to 23 U.S.C. section 117 and the State's laws, regulations, directives and standards are adequate to accomplish the policies and objectives of § 401 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599;

(4) The State has in effect standard contract provisions that favor the use of domestic materials and products, including structural steel, to the same or

a greater extent than the provisions here set forth; or

(5) A bidding procedure described as follows is used. A separate bid item is to be set up for furnishing structural steel to the project site. For this bid item, bidders are to be given the options of submitting a bid for (i) furnishing domestic structural steel, or (ii) submitting a bid for furnishing domestic steel and a bid for furnishing foreign steel. Bidders are to be advised that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic structural steel unless such total bid exceeds the lowest total bid based on furnishing foreign structural steel by more than 10 percent. The determination of foreign or domestic character is based on place of manufacture, and the origin of more than 50 percent of its components.

(c) Where appropriate, the effective date of application of this section is November 6, 1978.

(23 U.S.C. 315; Sec. 401, Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 49 CFR 1.48(b).)

NOTE.—The Federal Highway Administration has determined that this document does contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044.

Issued on: November 15, 1978.

KARL S. BOWERS,
Federal Highway Administrator.

[FR Doc. 78-32613 Filed 11-16-78; 9:21 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7571]

PART 54—PENSION EXCISE TAX REGULATIONS

PART 141—TEMPORARY EXCISE TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Employee stock ownership plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to employee stock ownership plans ("ESOP's"). Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974 (ERISA) and the Tax Reform Act of 1976. These regulations supersede temporary regulations relating to ESOP's. They are intended to provide guidance for the public in complying with the law. They affect all employees who participate in ESOP's and employers who establish ESOP's.

DATE: The regulations are generally effective for plan years ending after December 31, 1974.

FOR FURTHER INFORMATION CONTACT:

Thomas Rogan of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:EE), 202-566-3589.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 2, 1977, the FEDERAL REGISTER (42 FR 44396) published proposed amendments to the Pension Excise Tax Regulations (26 CFR Part 54). These proposed amendments were adopted as temporary regulations in a Treasury decision published in the same issue of the FEDERAL REGISTER (42 FR 44394).

After consideration of all written comments received regarding the proposed amendments, they are adopted as revised by this Treasury decision. Also, this Treasury decision supersedes the related temporary regulations.

The revisions in the final regulations are clarifying and procedural and do not make substantive changes in the proposed amendments.

The final regulations do not reflect changes made by the Revenue Act of 1978.

CONTINUING LOAN PROVISIONS UNDER PLAN

Comments from the public questioned whether the requirements of § 54.4975-11(a)(3), relating to certain plan provisions, are formal or operational. They also asked whether, if the requirements are formal, the appropriate provisions may be included in the plan by incorporating references to exempt loan provisions under § 54.4975-7(b).

Section 54.4975-11(a)(3) is restructured in the final regulations. Revisions make it clear that the terms of an ESOP must formally provide participants with certain protections and rights relating to exempt loan provisions. The plan terms providing these protections and rights may not simply consist of references incorporating related exempt loan provisions. Remedial plan amendments adopted before December 31, 1979, to provide these protections and rights are retroactively effective to the later of two dates: (1) The date on which the plan was designated as an ESOP or (2) November 1, 1977.

INTERGRATED PLANS

One comment suggested that the prohibition of integrated ESOP's under § 54.4975-11(a)(7)(ii) should not apply to plans in existence before November 1, 1977, that are designated as ESOP's after that date.

The final regulations do not adopt this suggestion. Instead, they make it clear that the prohibition against intergrated ESOP's applies to any plan designated as an ESOP after November 1, 1977. This provision is in accordance with the Report of the Committee of Conference on the Tax Reform Act of 1976 (H.R. Rep. No. 94-1515, 94th Cong., 2d Sess., 541, 542 (1976)).

TEMPORARY REGULATIONS SUPERSEDED

These final regulations supersede substantially indentical temporary excise tax regulations. Under § 141.4975-11, the proposed amendments were adopted as temporary regulations until supersession by permanent regulations.

DRAFTING INFORMATION

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations 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:

§ 141.4975-11 [Deleted].

1. 26 CFR Part 141 is amended by deleting § 141.4975-11.

2. The amendments to 26 CFR Part 54 are hereby adopted subject to the changes set forth below.

PARAGRAPH 1. Paragraph (a)(3) of § 54.4975-11, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 54.4975-11 "ESOP" requirements.

(a) *In general.* * * *

(3) *Continuing loan provisions under plan*—(i) *Creation of protections and rights.* The terms of an ESOP must formally provide participants with certain protections and rights with respect to plan assets acquired with the proceeds of an exempt loan. These protections and rights are those referred to in the third sentence of § 54.4975-7(b)(4), relating to put, call, or other options and to buy-sell or similar arrangements, and in § 54.4975-

7(b) (10), (11), and (12), relating to put options.

(ii) *"Nonterminable" protections and rights.* The terms of an ESOP must also formally provide that these protections and rights are nonterminable. Thus, if a plan holds or has distributed securities acquired with the proceeds of an exempt loan and either the loan is repaid or the plan ceases to be an ESOP, these protections and rights must continue to exist under the terms of the plan. However, the protections and rights will not fail to be nonterminable merely because they are not exercisable under § 54.4975-7(b) (11) and (12)(ii). For example, if, after a plan ceases to be an ESOP, securities acquired with the proceeds of an exempt loan cease to be publicly traded, the 15-month period prescribed by § 54.4975-7(b)(11) includes the time when the securities are publicly traded.

(iii) *No incorporation by reference of protections and rights.* The formal requirements of paragraph (a)(3) (i) and (ii) of this section must be set forth in the plan. Mere reference to the third sentence of § 54.4975-7(b)(4) and to the provisions of § 54.4975(b) (10), (11), and (12) is not sufficient.

(iv) *Certain remedial amendments.* Notwithstanding the limits under paragraph (a) (4) and (10) of this section on the retroactive effect of plan amendments, a remedial plan amendment adopted before December 31, 1979, to meet the requirements of paragraph (a)(3) (i) and (ii) of this section is retroactively effective as of the later of the date on which the plan was designated as an ESOP or November 1, 1977.

* * * * *

PAR. 2. Paragraph (a)(7)(ii) of § 54.4975-11, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 54.4975-11 "ESOP" requirements.

(a) *In general* * * *

(7) *Certain arrangements barred.* * * *

(ii) *Integrated plans.* A plan designated as an ESOP after November 1, 1977, must not be integrated directly or indirectly with contributions or benefits under title II of the Social Security Act or any other State or Federal law. ESOP's established and integrated before such date may remain integrated. However, such plans must not be amended to increase the integration level or the integration percentage. Such plans may in operation continue to increase the level of integration if under the plan such increase is limited by reference to a criterion existing apart from the plan.

(Secs. 4975(e)(7), 7805, Internal Revenue Code of 1954 (88 Stat. 976, 68A Stat. 917; 26 U.S.C. 4975(e)(7), 7805).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: October 20, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

[FR Doc. 78-32151 Filed 11-16-78; 8:45 am]

[1410-01-M]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER III—COPYRIGHT ROYALTY TRIBUNAL

PART 301—AGENCY RULES OF PROCEDURE

AGENCY: Copyright Royalty Tribunal (Tribunal).

ACTION: Final rule.

SUMMARY: Copyright Royalty Tribunal adopts its rules of procedure, including regulations required by the Government in the Sunshine Act, the Privacy Act, the Freedom of Information Act, and the equal employment opportunity procedures of the Tribunal.

EFFECTIVE DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 202-653-5175.

SUPPLEMENTARY INFORMATION: On October 23, 1978, the proposed rules of procedure of the Copyright Royalty Tribunal were published in the FEDERAL REGISTER (43 FR 49318-49326). Interested persons were given until November 8, 1978 to submit comments. The rules were considered and adopted by the Tribunal on November 9.

Several substantive comments were received which proposed more detailed procedures in the rules pertaining to rate adjustment and royalty fee distribution proceedings. The Tribunal, without prejudice to the content of these comments, determined that further refinement of rate adjustment and royalty fee procedures should be deferred.

The only change in the proposed rules is a technical amendment to 301.75 to amend the sixth line to read "publication of a proposed royalty distribution determination" rather than "publication of a proposed rate determination".

Accordingly, pursuant to 17 U.S.C. 803(a), Title 37 is amended by establishing a Chapter III entitled "Copyright Royalty Tribunal" and by adding the following new part 301, reading as set forth below.

EFFECTIVE DATE: This rule shall become effective on November 20, 1978.

ADOPTED: November 9, 1978.

THOMAS C. BRENNAN,
Chairman.

Part 301 is added to read as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

Subpart A—Organization

Sec.
301.1 Purpose.
301.2 Address for information.
301.3 Composition of the Tribunal.
301.4 The Chairman.
301.5 Standing committees.
301.6 Administration of the Tribunal.
301.7 Proceedings.

Subpart B—Public Access to Tribunal Meetings

301.11 Open meetings.
301.12 Conduct of open meetings.
301.13 Closed meetings.
301.14 Procedure for closing meeting.
301.15 Transcripts of closed meetings.
301.16 Requests to open or close meetings.
301.17 Ex parte communication.

Subpart C—Public Access to and Inspection of Records

301.21 Public records.
301.22 Public access.
301.23 Freedom of Information Act.
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Subpart D—Equal Employment Opportunity

301.31 Purpose.
301.32 Recruitment and hiring.
301.33 Complaint procedures.
301.34 Third party allegation of discrimination.
301.35 Business relations.

Subpart E—Procedures and Regulations

301.40 Scope.
301.41 Formal hearings.
301.42 Suspension, amendment, or waiver of rules.
301.43 Notice of proposed rulemaking.
301.44 Conduct of proceedings.
301.45 Declaratory rulings.
301.46 Testimony under oath.
301.47 Transcript and record.
301.48 Closing the hearing.
301.49 Documents.
301.50 Reopening of proceedings, modification, or setting.
301.51 Rules of evidence.
301.52 Participation in any proceeding.
301.53 Examination, cross-examination, and rebuttal.
301.54 Proposed findings and conclusions.
301.55 Promulgation of rules or orders.
301.56 Public suggestions and comments.

Subpart F—Rate Adjustment Proceedings

301.60 Scope.

Sec.
301.61 Commencement of adjustment proceedings.
301.62 Content of petition.
301.63 Consideration of petition.
301.64 Disposition of petition.
301.65 Rate adjustment proceedings.
301.66 Publication of proposed rate determination.
301.67 Final determination.
301.68 Reopening of proceedings.
301.69 Effective date of final determination.

Subpart G—Royalty Fees Distribution Proceedings

301.70 Scope.
301.71 Commencement proceedings.
301.72 Determination of controversy.
301.73 Royalty distribution proceedings.
301.74 Publication of proposed royalty distribution determination.
301.75 Final determination.
301.76 Reopening of proceedings.
301.77 Effective date of final determination.

AUTHORITY: 17 U.S.C. 803(a).

Subpart A—Organization

§ 301.1 Purpose.

The Copyright Royalty Tribunal (Tribunal) is an independent agency in the Legislative Branch, created by Public Law 94-553 of October 19, 1976.

The Tribunal's statutory responsibilities are:

(a) To make determinations concerning copyright royalty rates in the areas of cable television covered by 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for phonorecords (17 U.S.C. 115) and for coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116).

(c) To establish and later make determinations concerning royalty rates and terms for non-commercial broadcasting (17 U.S.C. 118).

(d) To distribute cable television and jukebox royalties under 17 U.S.C. 111 and 17 U.S.C. 116 deposited with the Register of Copyrights.

§ 301.2 Address for information.

The official address of the Copyright Royalty Tribunal is 1111 20th Street NW., Washington, D.C. 20036, until March 31, 1979. Office hours are Monday through Friday, 8:30 a.m. to 5:30 p.m., excluding legal holidays.

§ 301.3 Composition of the Tribunal.

The Tribunal is composed of five members appointed by the President with the advice and consent of the Senate.

§ 301.4 The Chairman.

(a) On December 1st of each year the Chairman will be designated for a term of 1 year from the most senior Commissioner who has not yet previously served as Chairman, or, if all the Commissioners have served, the most senior Commissioner who has served the least number of terms will be designated Chairman.

(b) The responsibilities of the Chairman are, first, to preside at meetings and hearings of the Tribunal, and second, to represent the Tribunal officially in all external matters. In matters of legislation and legislative reports, the Chairman will represent the majority opinion of the Tribunal; however, any Commissioner with a minority or supplemental opinion may have that opinion represented also. The Chairman is the initial authority for all communications with other government officials or agencies and is the contracting officer; however, another Commissioner or subordinate official may be designated to act in his stead. The Chairman shall convene a meeting of the Tribunal upon the request of a majority of the Commissioners.

§ 301.5 Standing committee.

The Tribunal may establish standing or temporary committees to act in whatever capacity the Tribunal feels is appropriate. Said committees are authorized, in the areas of their jurisdiction, to conduct hearings, meetings, and other proceedings, but no such subdivision shall be authorized to act on behalf of the agency as a whole within the official meeting of 5 U.S.C. 552(a)(1).

§ 301.6 Administration of the Tribunal.

The administration of the Tribunal denotes chiefly the maintenance of the Tribunal records and the custodianship of Tribunal property. The records to be maintained include legal and public records, a current index of opinions, orders, policy statements, procedures, and rules of practice, and instructions that affect the public. Also, announcements of Tribunal actions must be published in the FEDERAL REGISTER as required, and the observance by the Tribunal of appropriate administrative procedure must be supervised, as well as the disposition of Tribunal correspondence. From time to time other administrative responsibilities may emerge. To manage the above, the Tribunal may choose to install an Administrative Officer; however, if not, it will be the Chairman's duty to see that these responsibilities are met.

§ 301.7 Proceedings.

(a) *Location.* The Tribunal will normally hold all proceedings at its principal office, except under exceptional circumstances, in which case the Tribunal may perform its duties anywhere in the United States. The Tribunal's proceedings will all be public, except as exempted in § 301.15.

(b) *Quorum.* A majority of the members of the Tribunal constitutes a quorum.

(c) *Voting.* Each Commissioner's vote shall be recorded separately, and the votes of the Commissioners shall be taken in order of their seniority, except that the Chairman shall vote last. No proxy votes will be recorded.

Subpart B—Public Access to Tribunal Meetings

§ 301.11 Open meeting.

(a) The purpose of this chapter is to comply with the Government in the Sunshine Act, Pub. L. 94-409; 90 Stat., 1241 et seq., 5 U.S.C. 522(b), and insure that all Tribunal meetings shall be open to the public. The conditions under which meetings, as an exception, may be closed, are listed in § 301.13

(b) Each meeting announcement by the Tribunal shall be made at least 7 calendar days in advance in the FEDERAL REGISTER and shall state the time and place of the meeting, the subject to be discussed, whether the meeting is to be open or closed, and the name and telephone number of the person to contact for further information.

(c) If amendments are made to the original announcement, they must be placed in the FEDERAL REGISTER as soon as practicable. Changes in time and place may be made simply by making such an announcement, but a change in subject matter requires a recorded vote by Commissioners, with the results of that vote appearing in the announcement of the amendment.

(d) If it is decided that a meeting must be held on shorter notice than 7 days, that decision must be made by recorded vote of Commissioners and included in the announcement.

§ 301.12 Conduct of open meetings.

(a) Meetings of the Tribunal will be conducted in a manner to insure both the public's right to observe and the ability of the Tribunal to conduct its business properly. The Chairman or presiding officer will take whatever measures he feels necessary to achieve this.

(b) The right of the public to be present does not include the right to participate or make comments.

(c) Reasonable access for news media will be provided at all public sessions provided that it does not interfere with the comfort of Commissioners, staff, or witnesses. Cameras will be admitted only on the authorization of the Chairman, and no witness may be photographed or have his testimony recorded for broadcast if he objects.

§ 301.13 Closed meetings.

In the following circumstances (as per 5 U.S.C. 552(c), 1-10) the Tribunal

may close its meetings or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive order, in the interests of national defense or foreign policy;

(b) If the matter relates solely to the internal personnel rules and practices of the Tribunal;

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue;

(d) If the matter involves privileged or confidential trade secrets or financial information;

(e) If the result might be to accuse any person of a crime or formally censure him;

(f) If there would be a clearly unwarranted invasion of personal privacy;

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information which if written would be contained in such records, and to the extent disclosure would (1) interfere with enforcement proceedings, (2) deprive a person of the right to a fair trial or impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclosure the identify of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, confidential information furnished only by a confidential source, (5) disclosure investigative techniques and procedures, or (6) endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate the Tribunal's action, unless the Tribunal has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action.

(i) If the matter concerns the Tribunal's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing.

§ 301.14 Procedure for closing meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of the Commissioners. Each question, either to close a meeting or withhold information, must be voted on separately, unless a series of meetings is involved, in which case the Tribunal may vote to keep the discussions closed for 30 days, starting from the first meetings. If the Tribunal feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the Chairman must certify that, in his opinion, such a step is permissible, and he shall cite the appropriate exemption under § 301.13. This certification shall be included in the announcement of the meeting and be maintained as part of the Tribunal's records.

(c) Following such a vote, and by the end of the working day, the Chairman must transmit the following information to the FEDERAL REGISTER for publication:

(1) The vote of each Commissioner;

(2) The appropriate exemption under § 301.13;

(3) A list of all persons expected to attend the meeting and their affiliation.

§ 301.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject to either a complete transcript or, in the case of § 301.13(i) and at the Tribunal's discretion, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all rollcall votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Tribunal for 2 years or 1 year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the Chairman does not feel is exempt from disclosure under § 301.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the Chairman at the end of each calendar year and if he feels they may at that time be disclosed, he will resubmit the question to the Tribunal to gain authorization for their disclosure.

§ 301.16 Requests to open or close meetings.

(a) Any person may request the Tribunal to open or close a meeting or disclose or withhold information. Such a request must be captioned "Request to Open" or "Close" a meeting on a specific date concerning a specific subject. The requester must state his or her reasons, and include name and address, and desirably, telephone number.

(b) In the case of a request to open a meeting the Tribunal has previously voted closed, the Tribunal must receive the request within 3 working days of the meeting's announcement. If not, it will not be heeded, and the requester will be so notified. Requests are desired in seven copies.

(c) For the Tribunal to act on a request to open or close a meeting, the question must be brought to a vote before the Tribunal by one of the Commissioners. If the request is granted, an amended meeting announcement will be issued immediately and the requester notified. If a vote is not taken, or if after a vote the request is denied, the requester will also be notified promptly.

§ 301.17 Ex parte communication.

(a) No person not employed by the Tribunal and no employee of the Tribunal who performs any investigative function in connection with a Trubunal proceeding shall communicate, directly or indirectly, with any member of the Tribunal or with any employee involved in the decisions of the proceeding, with respect to the merits of any proceeding before the Tribunal or of a factually related proceeding.

(b) No member of the Tribunal and no employee involved in the decision of a proceeding shall communicate, directly or indirectly, with any person not employed by the Tribunal or with any employee of the Tribunal who performs an investigative function in connection with the proceeding, with respect to the merit of any proceeding before the Tribnal or of a factually related proceeding.

(c) If an *ex parte* communication is made to or by any member of the Tribunal or employee involved in the decision of the proceeding, in violation of paragraph (a) or (b) of this section, such member or employee shall promptly inform the Tribunal of the substance of such communciation and of the circumstance surrounding it. The Tribunal shall then take such action it considers appropriate; provided that any written *ex parte* communication and a summary of any oral *ex parte* communication shall be made part of the public records of the Tribunal, but shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(d) A request for information with respect to the status of proceeding shall not be considered an *ex parte* communication prohibited by this section.

Subpart C—Public Access To and Inspection of Records

The following is the manner in which Tribunal opinions, recommended decisions, orders, public reports and records shall be made available to the public.

§ 301.21 Public records.

(a) Final official determinations of the Tribunal will be published in the FEDERAL REGISTER and include the relevant facts and the reasons for those determinations.

(b) An annual report, required of the Tribunal to be presented to the Presi-

dent and Congress each fiscal year, along with a detailed fiscal statement of account, will be available both for inspection at the Tribunal and for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(c) All other Tribunal records are available, for inspection or copying at the Tribunal, except:

(1) Records that relate solely to the internal personnel rules and practices of the Tribunal;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with the Tribunal;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among Commissioners concerning the drafting of decisions, opinions, reports, and findings on any Tribunal matter or proceeding;

(6) Offers of settlement which have not been accepted unless they have been made public by the offerer;

(7) Records not herein listed but which may be withheld as "exempted" if the Tribunal finds compelling reasons exist.

§ 301.22 Public access.

(a) Information may be requested from the Tribunal in person, by telephone, or by mail.

(b) If the material sought is not a Tribunal record, is exempted, or for some reason is unavailable, the person requesting it will be so informed and, in the case of an "exempted record," will be explained the reason for the exemption and the procedure for appeal under the Freedom of Information Act, § 301.13.

(c) Fees for copies of Tribunal records are: $.45 per page for 24 pages or less, and $.35 per page for 25 copies or more, with a minimum fee of $4; $10 for each hour or fraction thereof spent searching for records; $4 for certification of each document; and the actual cost to the Tribunal for any other costs incurred.

301.23 Freedom of Information Act.

(a) If a request is made under the Freedom of Information Act (5 U.S.C. 552), it must be in writing, be captioned "Freedom of Information Act Request," and identify as accurately as possible, the information desired.

(b) Within 10 working days after the Tribunal has received such a request, the Chairman shall inform the requester how the records may be inspected or copied and the cost (as under § 301.22) of copying. The chairman may, however, extend this time limit up to 10 working days if:

(1) Records must be located or transferred;

(2) Voluminous material must be examined;

(3) Other agencies with substantial interest in the matter must be consulted or other elements of the Tribunal must be consulted.

In this case the requester shall be notified in accordance with 5 U.S.C. 552 (a)(6)(B).

(c) If the request is denied, the Chairman shall so inform the requester in writing, citing the exemption authorizing the denial and informing the requester that he or she may appeal the denial to the Tribunal within 20 working days. Appeals must be in writing and must be acted on by the Tribunal within 20 working days of their receipt. If the appeal is rejected, the requester must be so notified immediately and informed of the provisions for judicial review under 5 U.S.C. 552(a)(4).

§ 301.24 Privacy Act.

(a) The Privacy Act of 1974 (Pub. L. 93-579) 5 U.S.C. 552(a), concerns only requests which contain personal information retrievable by a personal identified. This section does not apply to personnel records located in Government-wide systems elsewhere.

The purpose of the Privacy Act is to enable individuals to:

(1) Learn if the Tribunal maintains records concerning them;

(2) Have access to such records;

(3) Learn if and to whom the Tribunal has disclosed such records; and

(4) Amend such records.

The Tribunal, in compliance with paragraph (a)(4) of this section, will record the disclosures of all records, their dates, the material disclosed, and to whom the material has been disclosed.

(b) A request made under the Privacy Act must be in writing, captioned "Privacy Act Request," and identify as accurately as possible the records in question and the nature of the information desired. This section is not to be construed as allowing an individual access to information compiled in reasonable anticipation of a civil action or proceeding.

(c) The request must be signed by the person making it, and such signature will be considered certification that the person signing is either the individual involved or that person's guardian. If the Chairman considers it necessary, he may require additional verification. Section 552(a)(i)(3) of the Privacy Act; 5 U.S.C. 552(a)(i)(3), states the penalties for false representation.

(d) If a medical record is involved and the chairman feels that its disclosure might adversely affect the individual, he shall require that person to designate a medical doctor to whom the record will be transmitted.

(e) Within 10 working days after the Tribunal has received such a request, the Chairman shall acknowledge its receipt to the requester and within 30 days shall inform the requester how the records may be inspected and the cost for copying, unless the records are exempted under § 301.21(c).

(f) If an individual who has obtained access to personal records wishes to have those records amended, he or she must make such a request in writing, state the nature of the information desired amended, and cite the reasons. Within 10 working days after the Tribunal has received such a request, the Chairman shall acknowledge its receipt and inform the requester whether or not the request has been granted. If the request is denied, the Chairman shall explain why and inform the requester of the right to appeal the denial to the Tribunal. All appeals must be in writing, with the caption "Privacy Act Appeal," and the Chairman will inform the requester of their disposition within 30 working days, unless there is good cause for the time to be extended. If the appeal is denied the requester will be notified of the provision for judicial review under 5 U.S.C. 552(b).

(g) Exempt from this section is all investigatory material compiled for law enforcement purposes as stipulated in 5 U.S.C. 552(k)(2).

Subpart D—Equal Employment Opportunity

§ 301.31 Purpose.

(a) This section sets forth the Tribunal's policy concerning Equal Employment Opportunity and the complaint procedures in the case of discrimination.

(b) The policy of the Tribunal is to oppose discrimination in all areas of job application, employment, and promotion on the basis of race, religion, sex, national origin, age, or physical handicap; this is because such a policy is right and any other would be morally indefensible. This policy will be pursued actively and affirmatively.

§ 301.32 Recruitment and hiring.

(a) Except in the case of the personal staffs of Commissioners, responsibility for equal employment opportunity is the Tribunal's as a whole; however, the authority to execute this policy may be delegated to a Personnel Committee.

(b) All hiring will be done on the basis of individual qualifications, without discrimination. The criteria of who is best qualified to fill a vacancy rests with the Tribunal, but there will be no

criteria which discriminates in the areas covered by § 301.31(b).

(c) In soliciting job applicants, systematic efforts will be made to locate and encourage qualified minority and women candidates. Where appropriate, the positions will be advertised in publications with primarily minority and women readership and announced through organizations or groups with high minority and women representation.

(d) Applicants for the same position will be required to have the same skills and to provide the same background information. The total number of applicants considered must reflect the proportion of minorities and women reasonably available for such a position. The criteria by which applicants are screened and selected shall be job related.

§ 301.33 Complaint procedures.

(a) Any person who believes that he or she has been discriminated against on the basis of race, religion, sex, national origin, age, or physical handicap, must first resolve such a complaint through the following procedure before taking civil action. Before a complaint may be presented formally the procedures for resolving it informally must be exhausted.

(1) *Informal complaint procedures.* (i) Within 30 days of an alleged discriminatory act, or in the case of a personnel action, within 30 days of its effective date, the complainant must contact the Chairman of the Personnel Committee and explain the case for the complaint. In case the complaint is against the Chairman of the Personnel Committee, it will be made to the chairman of the Tribunal. The complainant may be accompanied or represented by any person of his or her choosing.

(ii) The chairman of the Personnel Committee, or the Chairman of the Tribunal, or a Commissioner designated by the Chairman, shall then make whatever inquiry seems necessary into the circumstances surrounding the complaint and shall attempt to resolve it informally through counseling. Such counseling shall be completed within twenty-one (21) days of the date on which the complaint was first brought, and written record will be kept. If an informal resolution is reached, its terms will be in writing. The identity of the complainant at this stage, however, will at no time be revealed unless he or she specifically authorizes it.

(iii) If an informal resolution is not reached, the complainant will be advised that he or she may then file a formal complaint.

(2) *Formal complaint procedure.* (i) Within 15 days of the final counseling session under the informal procedure above, and if no resolution has been reached, the complainant may file a formal written complaint addressed to the Chairman of the Tribunal, signed by the complainant, and specifying all the details surrounding the complaint.

(ii) On receipt of the complaint, the Chairman shall request an investigation by the Chairman of the Personnel Committee and two Commissioners not on the Committee. This investigation will review thoroughly all the circumstances surrounding the alleged discrimination and analyze the treatment of the complainant as compared with others in the same situation. The results shall be in writing and a copy sent to the complainant. The complainant shall then be given the opportunity to meet with the Commissioners who prepared this report to try to reach an adjustment of the complaint. The complainant may be accompanied or represented by a person of his or her own choosing. If the complainant is an employee of the Tribunal, he or she shall be allowed sufficient official time to present the complaint. If the complainant has designated another Tribunal employee to advise or represent him, that person shall be allowed sufficient official time to perform the appropriate duties.

(iii) If an adjustment is reached at this point, it must be signed by the complainant and shall serve to terminate the matter. If an adjustment is not reached, the investigative report will be transmitted to the Chairman of the Tribunal, and the Tribunal shall make a disposition of the complaint to take affect within 15 days. This disposition will be relayed to the complainant in writing immediately. The complainant shall also be advised of his or her right to file a civil action, or in the case of an employee of the Tribunal to demand a hearing.

(iv) Within 15 days of the announcement of the Tribunal's proposed disposition, a complainant who is an employee of the Tribunal may request a hearing. Upon receipt of such a request, the Chairman shall request from another Federal agency, a qualified Hearing Examiner who has been certified to hear Equal Employment Opportunity complaints.

(v) The Hearing Examiner, within 21 days, shall conduct a hearing. Witnesses will be allowed to testify, but their testimony must relate only to the complaint; information will be admitted into evidence, but only information having a direct bearing on the complaint. Both parties to the complaint shall have the opportunity to cross-examine. The hearing shall be recorded, and the transcript as well as the findings and recommendations of the Hearing Examiner shall be transmitted to the Tribunal for a final decision.

(vi) The Tribunal will give special consideration to the recommendations of the Hearing Examiner, and if he wishes to reject or modify those recommendations, the Tribunal must accompany such a decision with a letter detailing his reasons. The Tribunal's final decision will be accompanied by a copy of the Hearing Examiner's findings and recommendations and a transcript of the hearing.

(vii) After the decision has been issued, the complainant shall be advised immediately that he or she has the right to file a civil action in the appropriate District Court within 30 days.

(viii) If within one hundred eighty (180) days from the date the complainant first brought the complaint, the Tribunal has failed to issue a decision, the complainant will also have the right to file a civil action.

(ix) Where discrimination is found, the Tribunal shall review the matter which gave rise to the complaint and determine whether or not disciplinary action is necessary. The basis for this action shall be in writing, but not included in the complaint file.

§ 301.34 Third party allegation of discrimination.

Organizations or third parties may bring allegations of discrimination against the Tribunal in areas unrelated to individual complaints, but such allegations must be in writing, and in sufficient detail for the Tribunal to investigate them. The Tribunal may order an investigation, and the party bringing the allegations will be informed of its results as well as of any decision by the Tribunal and corrective action.

§ 301.35 Business relations.

Business contracts entered into by the Tribunal shall stipulate that all contractors, subcontractors, and suppliers to the Tribunal conform in their own policies with the substance of the Tribunal's Equal Employment Opportunity Policy.

Subpart E—Procedures and Regulations

§ 301.40 Scope.

All Tribunal proceedings will be governed by the procedures of this Subpart. This subpart does not apply to general statements of policy or to rules of agency organization, procedure, or practice.

§ 301.41 Formal hearings.

(a) The formal hearings which will be conducted pursuant to the rules of this subpart are rate adjustment proceedings, royalty fee distribution proceedings, and all rulemaking proceeding in which it has been determined to

conduct a hearing. The Tribunal may also, on its own motion or on the petition of an interested party, hold other proceedings it deems necessary on any matter it has the authority to investigate, in order to obtain information in determining its policies, in exercising its duties, or in formulating or amending its rules and regulations. Such proceedings also will be subject to the rules of this subpart.

(b) Studies or conferences the Tribunal may hold in carrying out its statutory responsibilities may be conducted in whole or in part under the provisions of this subpart, depending upon the discretion of the Tribunal.

§ 301.42 Suspension, amendment, or waiver of rules.

(a) The provisions of this subpart may be suspended, revoked, amended, or waived, in whole or in part, at any time by the Tribunal for good cause shown, subject to the provisions of the Administrative Procedure Act. Where procedures have not been specifically prescribed in this subpart, the Tribunal shall follow those which in its opinion will best serve the purposes of a proceeding.

§ 301.43 Notice of proposed rulemaking.

(a) *General notice.* Public notice for rate adjustment and royalty distribution proceedings is covered in Subparts F and G of this Part. Before the adoption of any rule of general applicability, or the commencement of any hearing on any proposed rulemaking, the Tribunal shall publish a general notice in the FEDERAL REGISTER, such notice to be published not less than 30 days prior to the date on which the proposed rules may be considered by the Tribunal, or the date of any hearing on such proposed rules. However, where the Tribunal, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may adopt the rules without notice by incorporating a finding to such effect and a concise statement of the reasons therefor in the notice.

(b) *Notice.* A rule proceeding shall commence with a notice of proposed rulemaking. Such notice shall be published in the FEDERAL REGISTER, and to the extent practicable, otherwise made available to interested persons. The notice shall include: (1) The terms or substance of the proposed rule or a description of the subjects and issues involved; (2) reference to the legal authority under which the rule is proposed; (3) a statement describing the particular reason for the rule; and (4) an invitation to all interested persons to comment.

(c) *Hearing notice.* A hearing notice of proposed rulemaking shall be published in the FEDERAL REGISTER, and to the extent practicable, otherwise made available to interested persons. The hearing notice shall include: (1) Designated issues which are to be considered; (2) the time and place of hearing, and (3) instructions to interested persons seeking to make oral presentation.

§ 301.44 Conduct of proceedings.

(a) At the opening of the proceeding the Chairman shall announce the subject under consideration.

(b) Only Commissioners of the Tribunal, authorized Tribunal staff, or counsel as provided in this chapter shall question witnesses.

(c) Subject to the approval of the Tribunal, the Chairman will have the responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Ruling on objections and motions;

(3) Administering oaths and affirmations to all witnesses;

(4) Making all rulings with respect to introducing or excluding documentary or other evidence;

(5) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial;

(6) Announcing the schedule of subsequent hearing;

(7) Taking any other action which is consistent with this chapter and which has been authorized by the Tribunal.

(d) With all due regard for the convenience of witnesses, proceedings shall be conducted as expeditiously as possible.

(e) Following the opening statement, the Tribunal may convene first in executive session if such is the requirement of a statute or rule.

§ 301.45 Declaratory rulings.

In accordance with 5 U.S.C., Sec. 554(e), the Tribunal may on motion of its own, or on motion of an interested party, issue a declaratory ruling in order to terminate a controversy or remove uncertainty.

§ 301.46 Testimony under oath or affirmation.

All witnesses at Tribunal proceedings shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

§ 301.47 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings will be designated by the Tribunal from time to time. Anyone wishing to inspect the transcript of any hearing may do so at the Tribunal; however, anyone wishing a copy must purchase it from the official reporter.

(b) After the close of the hearing, the complete transcript of testimony together with all exhibits shall be certified as to identity by the Chairman and filed in the offices of the Tribunal.

(c) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the exclusive record or decision. Any decision resting on official notice of a material fact not appearing in the record shall automatically afford any party, on timely request, to have an opportunity to show the contrary.

§ 301.48 Closing the hearing.

To close the record of hearing, the Chairman shall make an announcement that the taking of testimony has concluded. In its discretion the Tribunal may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted: *Provided,* That the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing which has been recessed may not be closed by the Chairman prior to the day on which the hearing is to resume, except upon 10 days' notice to all parties.

§ 301.49 Documents.

(a) *Copies of documents.* The original and 15 copies of every document filed and served in proceedings before the Tribunal shall be furnished for the Tribunal's use, except exhibits made a part of the record.

(b) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel, shall be signed by at least one attorney of record and list his address and telephone number. All copies shall be confirmed. Except when otherwise specifically provided, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification by him that he has read the document, that to the best of his knowledge and belief there is good ground to support it, and that it has not been interposed for delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with intent to defeat the purpose of this section, may be stricken as sham and false and the matter proceed as though the document had not been filed.

§ 301.50 Reopening of proceedings, modification or setting.

(a) *Condition for reopening.* (1) Except in the case of rate adjustment proceedings and distribution proceedings the Tribunal may, upon petition or its own motion, reopen any proceeding, after reasonable notice, for the purpose of rehearing arguments or reconsideration.

(2) After granting an opportunity to be heard, the Tribunal may alter, modify or set aside in whole or in part, the report of its finding or order if it finds such action required by changed conditions, by material mistake of fact or law, or by the public interest

(b) *Petition for reopening.* A petition for reopening shall be made in writing and shall state its grounds. If it is a petition to take further evidence, the nature and purpose of the new evidence to be adduced shall be stated briefly, and an explanation given for why such evidence was not available at the time of the prior hearing. If it is a petition for reargument or reconsideration, the matter that is claimed to have been erroneously decided shall be specified and the alleged errors outlined briefly. Copies of the petition shall be furnished to all participants or their counsel.

(c) *Stay of rule or order.* No petition for reopening nor permission for reopening shall constitute a stay of any Tribunal rule or order; except that the Tribunal may postpone the effective date of any action taken by it pending judicial review and if, in the Tribunal's opinion, justice so requires.

§ 301.51 Rules of evidence.

(a) *Admissibility.* In any public hearing before the Tribunal, evidence which is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence which is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. A document in which material and relevant matter occurs which is of such bulk that it would unnecessarily encumber the record, may instead be marked for identification, and the relevant and material parts, once properly authenticated, may be read into the record. If the Tribunal desires, a true copy of the material and relevant matter may be presented in extract and submitted as evidence. Anyone presenting documents as evidence must present copies of all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer any other portion in evidence which may be felt material and relevant.

(c) *Documents filed with the Tribunal.* If the matter offered in evidence is contained in documents already on file with the Tribunal, the documents themselves need not be produced, but may instead be referred to according to how they have been filed with the Tribunal.

(d) *Public documents.* If a public document is offered in evidence either in whole or in part, such as an official report, decision, opinion or published scientific or economic data, and the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Copies to participants.* Copies of all prepared testimony and exhibits must be distributed to the Tribunal and to other participants or their counsel at a hearing, unless the Chairman directs otherwise. For its use the number of copies the Tribunal requires is seven.

(f) *Reception and ruling.* Any ruling on the admissibility of evidence will be made by the Chairman, and he shall control the reception of evidence and insure that it confines itself to the issues of the proceeding.

(g) *Offers of proof.* If the Chairman rejects or excludes proposed oral testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(h) *Introduction of studies and analysis.* If studies or analysis are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Tribunal.

(i) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be added in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of which characteristics were measured or counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies, if requested, which employ alternative models and variables.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data itself.

(j) *Cumulative evidence.* Cumulative evidence will be discouraged by the Tribunal and the Tribunal may limit the number of witnesses that may be heard in behalf of any one party on any one issue.

(k) *Further evidence.* At any state of a hearing the Chairman may call upon any party to furnish further evidence upon any issue.

(l) *Rights of parties as to presentation of evidence.* Every participant shall have the right to present his case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be necessary to disclose the facts fully and truthfully. The Chairman, however, may limit introduction of evidence, examination, and cross-examination if in his judgment this evidence or examination would be cumulative or cause undue delay.

§ 301.52 Participation in any proceeding.

Interested persons will be afforded an opportunity to participate in any proceeding and submit written data, views, or arguments, with or without the opportunity to present the same orally. If proposed rules are required by statute to be made on the record after opportunity for a hearing, such a hearing shall be conducted pursuant to 5 U.S.C., Subchapter II, and 7 U.S.C., and the procedure will be the same as in § 301.55 herein.

§ 301.53 Examination, cross-examination, and rebuttal.

(a) Each Commissioner may examine any witness at any time.

(b) Examination, cross-examination, and rebuttals relevant to the issues under consideration, shall be allowed by the Chairman, but only to the extent they are necessary for a full and true disclosure of the facts.

(c) *Selection of representatives for cross-examination.* The Tribunal will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, then each individual or group will be allowed to conduct his own examination and cross-examination, but only on issues affecting his particular interest.

§ 301.54 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the Chairman so to file, such filings to take place within 20 days after the record has been closed, unless additional time is granted.

(b) Failure to file when directed to so do may be considered a waiver of the right to participate further in the proceeding, unless good cause is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions and cite appropriately the record for each evidentiary fact. Proposed conclusions shall be stated separately. Proposed findings submitted by someone other than an applicant in a proceeding shall be restricted to those issues which specifically affect that person.

(d) Proof of service upon all other counsel or parties in a proceeding must accompany pleadings and all other papers filed under this section.

§ 301.55 Promulgation of rules or orders.

(a) In adopting a rule or order the Tribunal will consider all relevant matters of fact, law, and policy, and all relevant matters which have been presented by interested persons, and will exercise due discretion. Together with a concise general statement of its basis and purpose and any necessary findings, the rule or order will be published in the FEDERAL REGISTER, and if any other public notice is necessary that will be made also.

(b) The effective date of any rule, or its amendment, suspension, or repeal, will be at least 30 days after it is published in the FEDERAL REGISTER, unless good cause has been shown and is published with the rule.

§ 301.56 Public suggestions and comments.

(a) The Tribunal encourages the public, not just those persons subject to its regulations, to submit suggestions and proposals concerning any substantial question before it, when that question will have subtantial impact either upon those directly regulated by the Tribunal or upon others. It is in the best interests of both the Tribunal and the public at large that the Tribunal be advised on issues and problems that are potentially significant to it. This will permit the Tribunal to consider policy questions and administrative reforms early enough so that they may be viewed in a general context and not in the detailed application of a particular proceeding.

(b) Upon receiving such suggestions or proposals, the Tribunal shall review them and take whatever action seems necessary. Further information may be requested from the party submitting the suggestion or proposals, and the Tribunal staff may be asked to make a study, or an informal public conference may be held. Conferences or procedures undertaken pursuant to this section shall not be deemed subject to the Administrative Procedure Act with respect to notice of rulemaking. They are intended by the Tribunal simply as a means of determining the need for Tribunal action, prior to issuing a notice of proposed rulemaking.

(c) Such suggestions or proposals, however, shall be filed in accordance with the Tribunal's rules.

(d) This policy may not be used to advocate ex parte a position in a pending proceeding. Suggestions or proposals offered must relate to general conditions, such as conditions in industry, the public interest, or the policies of the Tribunal.

Subpart F—Rate Adjustment Proceedings

§ 301.60 Scope.

This chapter governs only those proceedings dealing with royalty rate adjustments affecting cable television (17 U.S.C. 111), the production of phonorecords (17 U.S.C. 115), coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), and non-commercial broadcasting (17 U.S.C. 118). It does not govern unrelated rulemaking proceedings. Those provisions of subpart E generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 301.61 Commencement of adjustment proceedings.

(a) In the case of cable television, phonorecords, and coin-operated phonorecord players (jukeboxes) rate adjustment proceedings will commence by the publication of a notice to that effect in the FEDERAL REGISTER on January 1, 1980, pursuant to 17 U.S.C. 804(a)(1). In the case of noncommercial broadcasting the notice will be published on June 30, 1982 and at 5-year intervals thereafter, pursuant 10 U.S.C. 118(c). The notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

(b) Initially, as outlined in paragraph (a) of this section a petition from an interested party is not necessary to commence proceedings. Thereafter, however, for rate adjustment proceedings to commerce, a petition must be filed by an interested party according to the following schedule:

(1) Cable Television: During 1985 and each subsequent fifth calendar year.

(2) Phonorecords: During 1987 and each subsequent 10th calendar year.

(3) Coin-operated phonorecord players (jukeboxes): During 1990 and each subsequent 10th calendar year.

(c) Cable television rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C., 801(b)(2) (B) and (C), if the Federal Communications Commission amends certain of its rules concerning the carriage by cable of broadcast signals, or with respect to syndicated and sports program exclusivity.

(d) In the case of non-commercial broadcasting, a petition is not necessary for the commencement of proceedings. They commence automatically according to paragraph (a) of this section.

§ 301.62 Content of petition.

(a) The petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Tribunal to determine whether the petitioner has "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users, and owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment as the result of a Federal Communications Commission rule change, the petition shall also set forth the action of the Federal Communications Commission which the party filing the petition feels authorizes a rate adjustment proceeding.

§ 301.63 Consideration of petition.

The Tribunal shall not start to consider any petition before the expiration of 90 days from the start of the calendar year specified in § 301.61(b) or 90 days from the effective date of the Federal Communications Commission action mentioned in § 301.62(c). Similar petitions may be joined together by the Tribunal for the purpose of determining "significant interest", and the Tribunal may permit written comments or a hearing on pending petitions.

§ 301.64 Disposition of petition.

At the end of the 90-day period, the Tribunal shall determine as expeditiously as possible if one or more petitioner's interest is "significant"; and shall publish in the FEDERAL REGISTER a notice of its determination and the reasons therefor, together with a notice of the commencement of proceedings if it has been determined to commence a proceeding. Any commencement notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

§ 301.65 Rate adjustment proceedings.

In any rate adjustment proceeding, all interested persons shall have the opportunity to present written comments and oral testimony, subject to the general provisions of subpart E.

§ 301.66 Publication of proposed rate determination.

(a) Following the conclusion of the hearings, the Tribunal shall publish as soon as possible in the FEDERAL REGISTER, a notice of its proposed findings and conclusions in the rate adjustment proceeding. The Tribunal shall afford all parties a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

(b) A proposed determination will not be published if, in the Tribunal's judgment, a final determination cannot feasibly be rendered before the year's end as required by 17 U.S.C. 118(c) and 17 U.S.C. 804(e) concerning the termination of proceedings.

§ 301.67 Final determination.

Upon the conclusion of the procedures for proposed determinations described in § 301.66, or upon the conclusion of the rate adjustment proceedings provided in § 301.65, if the publication of a proposed rate determination is not feasible because of the requirements to reach a final determination before the end of the year (17 U.S.C. 118(c) and 17 U.S.C. 804(e)), the Tribunal shall publish in the FEDERAL REGISTER a written opinion stating in detail the criteria it found applicable, the facts found relevant, and the specific reasons for its determination.

§ 301.68 Reopening of proceedings.

Following the publication of a final determination in the FEDERAL REGISTER the Tribunal shall not reopen or conduct any further proceedings.

§ 301.69 Effective date of final determination.

A final determination by the Tribunal shall become effective thirty days following its publication in the FEDERAL REGISTER, unless an appeal has been filed prior to that time pursuant to 17 U.S.C. 810 to vacate, modify or correct a determination, and notice of the appeal has been served on all parties who appeared in the proceeding.

Subpart G—Royalty Fees Distribution Proceedings

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television and coin-operated phonorecord player (jukebox) royalties desposited with the Register of Copyrights, according to the terms of 17 U.S.C., 111(d)(5) and 116(c). It does not govern unrelated rulemaking proceedings. Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 301.71 Commencement proceedings.

(a) *Cable television.* In the case of compulsory royalty fees for secondary transmissions by cable television, any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of July each year in accordance with Tribunal regulations.

(b) *Coin-operated phonorecord players.* In the case of compulsory royalty fees for the use of nondramatic musical works by coin-operated phonorecord players (jukeboxes) any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of January each year in accordance with Tribunal regulations.

§ 301.72 Determination of controversy.

(a) *Cable television.* After the first day of August each year, the Tribunal shall determine whether a controversy exists among the claimants of cable television compulsory royalty fees. In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of subpart E. The results of this determination shall be announced in the FEDERAL REGISTER. If the Tribunal decides that a controversy exists, the FEDERAL REGISTER notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

(b) *Coin-operated phonorecord players.* After the first day of October each year, the Tribunal shall determine whether a controversy exists among the claimants of coin-operated phonorecord player (jukebox) compulsory royalty fees. In order to determine whether a controversy exists the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of subpart E. The results of this determination shall be announced in the FEDERAL REGISTER. If the Tribunal decides that a controversy exists, the FEDERAL REGISTER notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

§ 301.73 Royalty distribution proceedings.

In any royalty distribution proceeding all interested claimants shall have the opportunity to present written comments and oral testimony, subject to the general provisions of subpart E.

§ 301.74 Publication of proposed royalty distribution determination.

(a) Following the conclusion of the hearings, the Tribunal shall publish, as soon as possible, in the FEDERAL REGISTER, a notice of its proposed findings and conclusions in the royalty distribution proceeding. The Tribunal shall afford all claimants a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

(b) A proposed determination will not be published if, in the Tribunal's judgment, a final determination cannot feasibly be rendered before the year's end, as required by 17 U.S.C. 804(e) concerning the termination of proceedings.

§ 301.75 Final determination.

Upon the conclusion of the procedures for proposed determination described in § 301.74, or upon the conclusion of the royalty distribution proceedings provided in § 301.73, if the publication of a proposed royalty dis-

tribution determination is not feasible because of the requirements to reach a final determination before the end of the year (17 U.S.C. 804(e)), the Tribunal shall publish in the FEDERAL REGISTER a written opinion stating in detail the criteria it found applicable, the facts found relevant, and the specific reasons for its determination.

§ 301.76 Reopening of proceedings.

Following the publication of a final determination in the FEDERAL REGISTER, the Tribunal shall not reopen or conduct any further proceedings.

§ 301.77 Effective date of final determination.

A final determination by the Tribunal shall become effective thirty days following its publication in the FEDERAL REGISTER, unless an appeal has been filed prior to that time pursuant to 17 U.S.C. 810 to vacate, modify, or correct a determination, and notice of the appeal has been served on all parties who appeared in the proceeding.

[FR Doc. 78-32471 Filed 11-16-78; 8:45 am]

[8320-01-M]

Title 38—Pensions, Bonuses and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 36—LOAN GUARANTY

VA Home Loans in Foreclosure

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The VA (Veterans Administration) has amended its regulations by adding a provision which allows an obligor on a delinquent VA guaranteed or insured loan in most circumstances to cure the delinquency at any time prior to a foreclosure sale. The new regulation allows an obligor on a VA loan to avoid foreclosure whenever he or she has sufficient funds to cure the delinquency prior to liquidation of the security provided that specific legal exceptions to reinstatement are not applicable.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond L. Brodie, Assistant, Director for Loan Management (261), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420, 202-389-3668.

SUPPLEMENTARY INFORMATION: On March 14, 1978, the Veterans Administration published for comment in the FEDERAL REGISTER (43 FR 10583) a proposed regulation concerning lender responsibilities in the area of loan reinstatement. The regulation, which is adopted, with the incorporation of one change, allows an obligor to reinstate his or her loan at any time prior to a judicial or statutory sale or other public sale of the secured property under power of sale provisions contained in the loan instruments. In order to have the loan reinstated, an obligor must pay sufficient funds to bring the delinquent loan to a current status.

Sufficient funds to bring the delinquent loan current includes but is not limited to an amount which would pay all installment payments presently due (including principal, interest, taxes, and insurance) and pay any reasonable expenses incurred by the lender or holder during foreclosure proceedings such as advertising costs, recording fees, attorney fees, etc. "Reasonable expenses" does not include the administrative expenses of loan servicing.

The Veterans Administration received many comments concerning the new regulation, most of which were favorable. Several of the respondents noted that in their jurisdictions in instances where loans were being judicially foreclosed, reinstatement of a loan after a certain point in the legal proceedings may not be legally feasible or have an undesirable consequence such as the promotion of junior liens. Along this line, another commentator pointed out that a local statute would not allow a loan reinstatement within 5 days of the foreclosure sale. We agree with both comments and have incorporated them into the text of the regulation.

Several respondents felt that reinstatement of the loan should not be required when the property is not owner-occupied or when the property has been transferred from the veteran to another party. VA believes that both comments are too inflexible. Although the intent of the loan guaranty program is to provide housing for veterans as owner-occupants, the governing law does not dictate property disposition by the veteran at a later date. However, field stations will be instructed to consider property occupancy as one factor in any decision to deny reinstatement of a VA loan.

One commentator felt that loan reinstatement should not be required where the borrower has been a chronic servicing problem; while another felt that reinstatement should not be required where the loan has been reinstated from foreclosure within the previous 2 years. Accordingly, we are instructing field stations to consider a borrower's payment history and the nature of the default(s) in connection with any request to deny loan reinstatement. A history of delinquency may indicate willful default, or insufficient income, but it may also indicate poor servicing. However, we do not believe that reinstatement of a loan should be denied routinely solely because the obligor has had his or her loan previously reinstated during the past 2 years.

Several comments were received that reinstatement should not be required when the property is in poor physical condition. Other respondents also felt that loan reinstatement should not be required if there is no evidence that the borrower will be able to maintain the mortgage obligation in the future. Both objections raise valid points. Our field stations accordingly will be instructed to review the condition of the property and the ability of the borrower to make future payments in connection with any request to deny reinstatement.

Comments were received in one final area. Many respondents felt that the new regulation would cause a burden both to the holders and to the VA by creating additional paperwork and causing procedural difficulties. VA does not anticipate that this new regulation will cause any substantial burden on either holders or the VA. We expect only a very small number of cases to be referred to VA with requests that a mortgagor be denied loan reinstatement.

Accordingly, 38 CFR Part 36 is amended by adding paragraph (g) in § 36.4308. This amendment is adopted under authority granted to the Administrator by section 1803(c)(1) of title 38, United States Code.

Approved: November 9, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

In § 36.4308, paragraph (g) is added to read as follows:

§ 36.4308 Transfer of title by borrower or maturity by demand or accleration.

* * * * *

(g) If sufficient funds are tendered to bring a delinquency current at any time prior to a judicial or statutory sale or other public sale under power of sale provisions contained in the loan instruments to liquidate any security for a guaranteed loan, the holder shall be obligated to accept the funds in payment of the delinquency unless:

(1) The prior approval of the Administrator is obtained to do otherwise, or

(2) Reinstatement of the loan would adversely affect the dignity of the lien or be otherwise precluded by law.

A delinquency will include all installment payments (principal, interest, taxes, insurance, advances, etc.) due and unpaid and any accumulated late charges plus any reasonable expenses incurred and paid by the holder if termination proceedings have begun (e.g., advertising costs, foreclosure costs, attorney or trustee fees, recording fees, etc.).

[FR Doc. 78-32399 Filed 11-16-78; 8:45 am]

[6820-24-M]

Title 41—Public Contracts and Property Management

CHAPTER 1—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 196]

PART 1-1—GENERAL

Recovered Materials

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment of the Federal Procurement Regulations (FPR) requires the executive agencies to procure items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The amendment is necessary to comply with the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act. The intended effect of the amendment is to increase the use of recovered materials, by providing a market for them through Federal procurements and by setting an example for industry and State and local governments to follow.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip G. Read, Director of Federal Procurement Regulations, 703-557-8947.

SUPPLEMENTARY INFORMATION: This FPR amendment implements the requirements of section 6002 of the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), and Office of Federal Procurement Policy Letter No. 77-1.

PART 1-1—GENERAL

The table of contents for part 1-1 is amended by adding new entries as follows:

Subpart 1-1.24—[Reserved]

Subpart 1-1.25—Recovered Materials

Sec.
1-1.2500 Scope of subpart.
1-1.2501 Policy.
1-1.2502 General.
1-1.2503 Definitions.
1-1.2504 Procedures.

Subpart 1-1.25 is added as follows:

Subpart 1-1.25—Recovered Materials

§ 1-1.2500 Scope of subpart.

This subpart prescribes policies and procedures regarding the use of recovered materials.

§ 1-1.2501 Policy.

The policy of the Government is to procure items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

§ 1-1.2502 General.

This subpart 1-1.25 implements the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), and Office of Federal Procurement Policy Letter No. 77-1. The statutes require agencies responsible for drafting or reviewing specifications to ensure that they: (1) Do not exclude the use of recovered materials, (2) do not require that items be manufactured from virgin materials, and (3) require recovered materials to the maximum extent possible without jeopardizing the intended end use of items. The statutes also require the Administrator, Environmental Protection Agency (EPA), to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated items.

§ 1-1.2503 Definitions.

(a) "Recovered material" means material which has been collected or recovered from solid waste. It includes reclaimed materials.

(b) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. It does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1242), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011).

§ 1-1.2504 Procedures.

(a) This section is applicable to all procurements that: (1) Use Government specifications which specify minimum percentages of recovered materials, and (2) involve a purchase price for an item that: (i) exceeds $10,000 or (ii) exceeds $10,000 for quantities of an item or a functionally equivalent item purchased or acquired during the preceding fiscal year.

(b) Solicitations and contract awards which employ Government specifications requiring the utilization of recovered materials shall include a certification which, as a minimum, is as follows:

CERTIFICATION OF RECOVERED MATERIALS

The offeror contractor certifies that recovered materials will be used as required by specifications referenced in the solicitation/contract.

(c) Requirements in Government specifications involving recovered materials may be waived by the contracting officer only after a determination that the items:

(1) Are not reasonably available within a reasonable period of time, or

(2) (i) Fail to meet the performance standards set forth in the applicable specifications, or (ii) fail to meet the reasonable performance standards of the agency, or

(3) Are not available at a reasonable price.

The determination required by § 1-1.2504(c)(2) may be made only on the basis of Bureau of Standards guidelines.

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

Dated: November 9, 1978.

PAUL E. GOULDING,
Acting Administrator of General Services.

[FR Doc. 78-32442 Filed 11-16-78; 8:45 am]

[4110-07-M]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regulations No. 45]

PART 282—DEMONSTRATION PROJECTS

Social Security Act, Section 1115, Demonstration Projects

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These final rules provide for establishment and conduct by States of special demonstration projects under section 1115(b) of the Social Security Act. Pub. L. 95-216, the Social Security Amendments of 1977, redesignated the then existing section 1115 as 1115(a) and added a new 1115(b) to the Act. Under the new section 1115(b), States are permitted to waive certain requirements of the State Aid to Families with Dependent Children (AFDC) plan to enable them to conduct demonstration projects providing opportunities for public service employment, training, employment incentives, or other related activities. Participation by AFDC recipients must be voluntary.

EFFECTIVE DATE: November 17, 1978. Post-publication comments are invited, and consideration will be given to any written comments submitted within 60 days after publication.

ADDRESSES: Send comments to the Acting Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments received in response to this notice will be available for public inspection for 60 days following receipt during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Ms. Virginia Casey Kohan, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-6629.

SUPPLEMENTARY INFORMATION: These rules, among other things, clarify the statutory provisions for public service employment with respect to: (1) Standards for health and safety; (2) Assignment of participants; (3) Prohibition against displacement of employed workers; (4) Workmen's compensation protection.

In addition, rules are provided for: (1) Compensating AFDC participants in the projects, (2) waiving provisions of title IV-A of the Social Security Act during the life of the project, and (3) using Federal and State moneys to fund the project.

Section 1115(b) became effective upon enactment on December 20, 1977 and provides that all projects must terminate no later than September 30, 1980. These regulations are needed to enable the States to submit approvable projects. Therefore, the Secretary finds that delay caused by publication of a notice of proposed rulemaking is contrary to the public interest and these regulations are published as final regulations.

These amendments are issued under authority of Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302) and Sec. 1115, 91 Stat. 1562 (42 U.S.C. 1315), Social Security Act, as amended.

(1977 Catalog of Federal Domestic Assistance Program No. 13.766, Public Assistance Research.)

The regulations are hereby adopted.

Dated: August 9, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 11, 1978.

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

Title 45, Chapter II, of the Code of Federal Regulations is amended by adding new Part 282 to read as follows:

PART 282—DEMONSTRATION PROJECTS

Subpart A—General Policy Provisions for Section 1115(b) Projects

Sec.

282.10 Purpose of section 1115(b).
282.11 States eligible to apply.
282.12 No preclusion of other projects.
282.13 Statewide project.
282.14 Section 402(a)(19) waiver—WIN.
282.15 Section 402(a)(3) waiver—single State agency administration.
282.16 Section 402(a)(8) waiver—disregard of earned income.
282.17 Duration of demonstration projects.
282.18 Participation must be voluntary.
282.19 Duration of volunteer's participation.
282.20 If volunteer withdraws from project.

Subpart B—Policy Provisions for Public Service Employment in Section 1115(b) Projects

282.25 Acceptable types of public service employment.
282.26 Assignment of participants.
282.27 Employed worker displacement prohibited.
282.28 Health, safety, other conditions.
282.29 Workmen's compensation protection.
282.30 No resultant "unemployment."

Subpart C—Administrative Provisions for Section 1115(b) Projects

282.35 Administrative requirements.
282.36 Application.
282.37 Public notice by State.
282.38 Public notice by Secretary.
282.39 Approval; denial.
282.40 Waiver cancellation; project termination.
282.41 Evaluation of demonstration projects.
282.42 Section 1115(b) project reports.

Subpart D—Compensation and Funding Provisions for Section 1115(b) Projects

282.46 Compensation of project volunteers.
282.47 Limitation on Federal matching in compensation to families.
282.48 Federal reimbursement to State for administrative expenses.

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302). Sec. 1115, 91 Stat. 1562 (42 U.S.C. 1315), Social Security Act, as amended.

PART 282-DEMONSTRATION PROJECTS

Subpart A—General Policy Provisions for Section 1115(b) Projects

§ 282.10 Purpose of section 1115(b).

The purpose of section 1115(b) is to permit the States to achieve more efficient, effective use of public assistance funds; to reduce the dependency of public assistance recipients; and to improve the living conditions and increase the incomes of public assistance recipients. The purpose is to be achieved through a State's conducting not more than three demonstration projects, providing opportunities for public service employment, training, employment incentives, or other related activities. Participation by AFDC recipients must be voluntary.

§ 282.11 States eligible to apply.

Any State that has an approved plan under part A, title IV (AFDC), is eligible to apply for projects under section 1115(b).

§ 282.12 No preclusion of other projects.

Demonstration projects under section 1115(b) are authorized independently. Their use in a State does not preclude or limit other projects or activities approved under section 1115(a) or other provisions of the Act.

§ 282.13 Statewide project.

(a) *Limit of one statewide project.* Under section 1115(b), a State can have only three demonstration projects, only one of which may be a statewide project. A "statewide project" is one in effect in all political subdivisions of a State.

(b) *Section 402(a)(1) waiver.* If a State implements a section 1115(b) project statewide, no other 1115(b)

project in the State can be statewide. A State may waive the requirements of section 402(a)(1) of the Act (relating to statewide operation) with respect to all three of its section 1115(b) projects, for the duration of the projects.

§ 282.14 Section 402(a)(19) waiver—WIN.

(a) *State waives WIN requirements.* A State may waive any or all of the requirements of section 402(a)(19) of the Act (relating to the work incentive program (WIN)) with respect to demonstration projects. Where section 402(a)(19) is waived, use WIN of funds in connection with a demonstration project under section 115(b) is prohibited.

(b) *State does not waive WIN requirements.* If a State does not waive section 402(a)(19), any person in active status under the WIN program is precluded from volunteering for or participating in a demonstration project under section 1115(b), unless the State AFDC agency has an agreement with the WIN agency defining the criteria under which persons in active WIN status may also participate as volunteers in 1115(b) projects. A person in active WIN status is a participant in a WIN component or is currently being considered for assignment to a WIN component.

§ 282.15 Section 402(a)(3) waiver—single State agency administration.

A State may waive the requirements of section 402(a)(3) of the Act (relating to administration by a single State agency) with respect to demonstration projects under section 1115(b).

§ 282.16 Section 402(a)(8) waiver—disregard of earned income.

(a) A State may waive the requirements of section 402(a)(8) of the Act (relating to disregard of earned income) with respect to individuals actively participating in demonstration projects under section 1115(b). However, no waiver of section 402(a)(8) shall permit a disregard of over one-half of the earned income of a project participant.

(b) Unless the State has waived the section 402(a)(8) earned income disregard under the authority of section 1115(b), it shall be applied to all of the compensation received by an individual for participating in a project, including the benefits payable on behalf of other members of the family as a result of the volunteer's participation (benefits to the family are also regarded as compensation to the project volunteer).

§ 282.17 Duration of demonstration projects.

(a) *Two-year limit.* A State may not conduct any demonstration project established under section 1115(b) for longer than 2 years, or beyond September 30, 1980, whichever comes first. Evaluation of the project may continue after its ending date.

(b) *Beginning date.* A demonstration project under section 1115(b) shall begin not earlier than either (1) the date of approval by the Secretary, or (2) the 60th day after the application is submitted to the Secretary, if the Secretary has not denied the application.

§ 282.18 Participation must be voluntary.

Participation in a demonstration project under section 1115(b) by any individual receiving AFDC benefits must be voluntary.

§ 282.19 Duration of volunteer's participation.

A volunteer's participation in a demonstration project under section 1115(b) may last for the life of the project (see § 282.17). A State's plan may provide for shorter periods of participation so that more volunteers may be given opportunities to participate.

§ 282.20 If volunteer withdraws from project.

A volunteer may withdraw from a project at any time. If the person does, eligibility for assistance remains protected. The State shall make adjustments so that the AFDC grant to the family will be paid as assistance rather than as compensation for participation in a project, starting with the date of withdrawal from the project.

Subpart B—Policy Provisions for Public Service Employment in Section 1115(b) Projects

§ 282.25 Acceptable types of public service employment.

(a) *Public service employment generally.* Demonstration projects under section 1115(b) may provide for public service employment. The following requirements apply:

(1) The job provided must meet public service needs not met or not adequately met prior to the start of the project;

(2) The job provided must be likely to lead to regular, unsubsidized employment, or to opportunities for continued job training; and

(3) The project must, to the extent feasible, provide jobs in an occupational field likely to expand within the public or private sector as the rate of unemployment drops.

(b) *Who may be a public service employer.* Demonstration projects under section 1115(b) may provide employment by both public and private, nonprofit agencies or organizations. The following requirements apply with respect to private, nonprofit agencies or organizations:

(1) The private, nonprofit agency or organization must be one that provides the public with educational, health, or social services;

(2) The agency's or organization's services must be offered to the general public, and must not be primarily or exclusively for the benefit of members constituents; and

(3) The agency's or organization's services must be the best available to meet the needs of the unemployed AFDC population.

§ 282.26 Assignment of participants.

Job or training assignments shall, to the extent possible, be within reasonable commuting distance for participants.

§ 282.27 Employed worker displacement prohibited.

In public service employment under a demonstration project, placement of participants must not result in displacement of employed workers.

§ 282.28 Health, safety, other conditions.

In public service employment under a demonstration project, the State must establish and maintain appropriate standards for health, safety, and other conditions relating to work and training. No participant in any project may be trained or employed under conditions which are unsanitary or hazardous to his health or safety. If the training or employment involves an inherently dangerous occupation (e.g., fire control, law enforcement), reasonable safety practices must be observed. In any public service employment project, the conditions of work, training, education, and employment must be reasonable, taking into consideration the type of work in which participants are involved, the geographic region and the standards applied to similar jobs in that region, and the level of skill of the participant. Requirements of the Service Contract Act of 1965 (Pub. L. 89-286), sections 208(a)(5) and 703(5), regarding health and safety conditions, represent the Federal standard that must be met.

§ 282.29 Workmen's compensation protection.

In public service employment under a demonstration project, the State must see that there is appropriate workmen's compensation protection for all participants. The protection must be equivalent to that provided for regular employees doing the same or similar work in the same locality. Workmen's compensation protection would primarily cover work-related injuries. Coverage may be provided

through the State's compensation agency or by a private insurance carrier.

§ 282.30 No resultant "unemployment."

A participant's employment in a demonstration project under section 1115(b) is not considered employment for purposes of any finding with respect to "unemployment" as that term is used in section 407 (Dependent Children of Unemployed Fathers).

Subpart C—Administrative Provisions for Section 1115(b) Projects

§ 282.35 Administrative requirements.

The provisions of 45 CFR Part 74, Administration of Grants, which establish uniform administrative requirements and cost principles, apply to demonstration projects under section 1115(b), with the following exceptions:

(a) The provisions of Subpart G, Matching and Cost Sharing, do not apply; and

(b) The provisions of Subpart I, Financial Reporting Requirements, do not apply.

§ 282.36 Application.

(a) *Application kit available.* Application must be made in the format prescribed by the Commissioner of Social Security. An application kit containing all the necessary forms and instructions is available from, and completed applications must be sent to: Division of Contracting and Procurement, Social Security Administration, Box 7696, Gwynn Oak Branch, Baltimore, Md. 21207.

(b) *Incomplete applications.* A completed application is a written proposal for a demonstration project, signed by an authorized State official, and substantially in the format prescribed by the Commissioner. Only completed applications will be considered by the Secretary. The 60-day time period during which the Secretary may deny an application will not start until a completed application has been submitted.

§ 282.37 Public notice by State.

(a) *Publication and comments.* When a State submits an application to the Secretary for a section 1115(b) project, at the same time the State shall issue public notice that it has made application. The public notice must include a general description of the proposed demonstration project. The State shall invite comment from interested parties, which may be submitted to the State or to the Secretary within the 30-day period starting with the date the application is submitted to the Secretary.

(b) *Public inspection of application.* The State shall make copies of the application available for public inspection.

§ 282.38 Public notice by the Secretary.

(a) *Publication and comments.* The Secretary shall immediately upon receipt of an application publish a summary of the proposed demonstration project in the FEDERAL REGISTER. The Secretary will consider comments received from the public regarding the application.

(b) *Public inspection of applications.* The Secretary will make copies of the application available for public inspection at the Department of Health, Education, and Welfare. They may be inspected at this address: Family Assistance Studies Staff, Office of Research and Statistics, Social Security Administration, Room 914, 1875 Connecticut Avenue NW., Washington, D.C. 20009.

§ 282.39 Approval; denial.

(a) *Approval by the Secretary.* A State can proceed with a demonstration project under section 1115(b) when the State's application has been approved by the Secretary. The Secretary may not approve an application earlier than 30 days following the date the application is submitted to him. (Note that this coincides with the 30-day public comment period; see § 282.37.)

(b) *Denial by the Secretary.* A State can proceed with a demonstration project under section 1115(b) 60 days after the date on which the application is submitted to the Secretary, unless, during that 60-day period, the Secretary denies the application.

§ 282.40 Waiver cancellation; project termination.

The Secretary may review any waiver made by a State at any time during the life of the project. If the Secretary finds that any waiver made by a State is inconsistent with the purposes of section 1115(b) and the purposes of the AFDC program, the Secretary may disapprove the waiver. If the Secretary disapproves a waiver, and specifies that the project shall be terminated, the State must terminate the project no later than the last day of the month following the month in which the Secretary disapproved the State's waiver.

§ 282.41 Evaluation of demonstration projects.

Each project must include an evaluation component. Instructions for conducting an objective evaluation of a demonstration project are included in the application kit, and minimum Federal requirements for evaluation are set forth in the kit. An evaluation plan may go beyond the uniform Federal minimum requirements.

§ 282.42 Section 1115(b) project reports.

The State shall submit reports as prescribed by the Commissioner, for all project funds, including the non-Federal share.

Subpart D—Compensation and Funding Provisions for Section 1115(b) Projects

§ 282.46 Compensation of project volunteers.

(a) *Compensation defined.* AFDC assistance benefits paid to a family because of work performed in a public service assignment by one of its members shall be considered compensation for work performed. Additional amounts paid to the family by the State for work performed in a public service assignment shall also be regarded as compensation for work performed.

(b) *Level of compensation.* Each participant in a public service employment project must be compensated for work at an hourly rate equal to the prevailing entry level hourly wage for similar work in the same locality.

(c) *State use of other funds for compensation.* A State may include use of supplementary funds as part of its project plan.

(1) A State may use funds appropriated under the State and Local Fiscal Assistance Act (SLFAA) of 1972 for any fiscal year in which the project is conducted, to cover costs of salaries of participants in public service employment not covered by AFDC funds. A State may use other State or Federal funds, in the absence of any statutory or regulatory prohibition, to augment AFDC and SLFAA funds used for demonstration projects.

(2) Supplementary funds may be used to bring participant's salaries above the AFDC benefit level; to compensate participants for work-related expenses, including reasonable child care expenses; and for other purposes consistent with section 1115(b).

§ 282.47 Limitation on Federal matching in compensation to families.

Federal matching in amounts paid to a family which includes a member participating in a project may not be increased over the Federal matching which would be payable if the family were receiving AFDC and one of its members were not working in a project. States may supplement AFDC assistance above the family's grant level where a family member participates in

service employment (e.g., to provide compensation under § 282.46 or for work related expenses) by using other Federal or State funds, including funds under the State and Local Fiscal Assistance Act; however, these supplementary amounts will not be eligible for matching under title IV-A of the Social Security Act.

EXAMPLE

Assume that a family with no other income receives a $300 monthly AFDC grant before one of the family member participates in a project. The Federal matching in this assistance payment is $150. As a result of a member's participation in a public service employment project conducted under section 1115(b) of the Act, the family's AFDC grant of $300 per month is now regarded as compensation, i.e., wages. Federal matching in this payment is still $150. Since this payment is regarded as compensation for work performed, the family is entitled to have the earned income disregard ($30 plus ⅓ of the remainder, assuming it is not waived as described in § 282.16) and work expenses (e.g., $70.00) deducted from this amount in determining countable income. When the $120 earned income disregard and work expenses of $70 are deducted, countable income is $110. Under the State's methodology for determining the amount of the AFDC grant, the family would be entitled to an additional assistance payment of $190 above the $300 received in compensation for participating in the project.

Nevertheless, because of the statutory limitation in section 1115(b)(4), no additional Federal matching is available in this $190 assistance payment since $150 in Federal matching is all that would have been available if the family were not participating in the project, and this amount will be paid to the State as partial reimbursement for the $300 paid to the family as compensation.

§ 282.48 Federal reimbursement to State for administrative expenses.

A State may be reimbursed for administrative costs of a demonstration project under section 1115(b), under the rules and at the rates that generally apply to administrative costs. Federal matching for administrative costs is not limited to the amounts payable to the State in absence of a section 1115(b) project.

[FR Doc. 78-32400 Filed 11-16-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-788]

PART 1—PRACTICE AND PROCEDURE

PART 73—RADIO BROADCAST SERVICES

Reregulation of Radio and TV Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Reregulation of broadcasting by order to permit single licensing of common sited main, alternate main and auxiliary transmitters; permit FM and TV stations to make certain antenna system changes without prior authorizations; clarify licensing requirements for NCE-FM stations in Alaska; delete notifications for transmitter replacements and FM station stereo conversions; permit certain remote control operation without specific authorization; and adopt consolidated rules for auxiliary and emergency antennas.

EFFECTIVE DATE: November 20, 1978.

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

FOR FURTHER INFORMATION CONTACT:

John W. Reiser, Broadcast Bureau, 202-632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: November 2, 1978.

Released: November 14, 1978.

By the Commission: Commissioner Washburn absent.

Order. In the matter of reregulation of radio and TV broadcasting.

1. Through the continuing study concerning the reregulation of radio and TV broadcasting, the FCC has under consideration the matter of amending part 73 of its rules to reduce or eliminate the application and notification filing requirements for several types of broadcast authorizations. These amendments will reduce the application burdens of licensees who wish to make modifications in their existing transmission equipment (modifications which have no effect on the coverage of the station), and reduce the FCC staff workload in processing the applications and requests. Along with these amendments to the rules which simplify the authorization processes, additional revisions include retitling of certain rule sections which will more correctly identify the subject covered. Also, some provisions in the present rules are being transferred or combined into other sections covering similar topics. This restructuring will provide the user of the rules with a more precise and convenient access to the rules. The reregulation of radio and TV broadcasting covered by this order is based primarily on recommendations of the Bureau staff responsible for processing applications and preparing authorizations. The amendments are being made by this reregulation order for the reasons specified.

2. *Licensing of multiple transmitters.* Under the present rules, each transmitter of a broadcast station (main, alternate main, and auxiliary transmitters) is covered by a separate license. This procedure originated at the time when many broadcast stations constructed their own transmitters. The licensee was required to submit the results of detailed technical tests to the FCC before authorization was issued to permit use of the transmitter for program service. Since few licensees construct their own transmitters any more, this separate licensing, except when different antenna systems are used, no longer serves a regulatory function. With this order, the rules are amended so that all colocated transmitters using a common antenna system will be covered by the single station license.

3. *Installation of new transmitters.* Station licensees specify the type of transmitter(s) being used. When a replacement transmitter is installed, the licensee must send a notice to the FCC so that a modified license can be issued. The notification requirements are being deleted from the rules by this order. Licensees may install replacement or additional type accepted transmitters without either prior authorization from, or notification to the FCC. Upon installation of a new transmitter, equipment performance measurements are to be made for retention in the station files to verify that the transmitter, as installed, is functioning correctly. These amendments do not preclude licensees from obtaining authority to use transmitters of their own design and construction upon proper application.

4. *Licensing of auxiliary antennas.* An auxiliary antenna is one that is permanently installed for use when the main antenna is out of service for repairs or maintenance. The auxiliary antenna may be located at the same site as the main transmission system or may be located at another site as part of a complete auxiliary transmission system. Because the location, radiation characteristics, or coverage area may differ from those specified for the main transmission system, separate licensing of the auxiliary antenna is required. To clarify the different

licensing procedures for auxiliary antennas and colocated transmitters, a new section is being included in subpart H applicable to all stations describing the licensing procedures for the auxiliary antennas.

5. *Emergency antennas.* Whenever the main antenna of a station not having an auxiliary antenna is damaged, it may be necessary for the station to quickly erect and use a temporary antenna in order to continue program service to the public. The present rules only provide for the use of an emergency antenna by commercial FM stations, although the use of such antennas is authorized on a temporary basis in all of the broadcast services. We are, therefore, consolidating the procedures for the temporary use of emergency antennas in subpart H of the rules for AM, FM, noncommercial educational FM, and TV stations.

6. *FM station conversion to stereophonic operation.* Licensees of FM stations are now required to send written notices to the FCC when converting from monophonic to stereophonic transmissions. These notifications are no longer needed since the FCC has sufficient data on stereo transmitting equipment and is no longer keeping statistics on the number of FM stations providing stereophonic programs. The equipment performance measurements made upon completion of the conversion of the transmitting equipment are sufficient for verification of satisfactory conversions.

7. *Remote control authorizations.* The rules now require that any broadcast licensee who wishes to operate the transmitter facility by remote control must obtain prior authorization to do so from the FCC. For all FM, and those AM stations using nondirectional antennas, the application is a simple request containing the address of the control point. AM stations using directional antennas and TV stations are required to submit detailed technical exhibits as evidence that the station, when operated by remote control, can provide adequate service to the public. We believe that the remote control authorization procedures no longer serve any salutory purpose for most nondirectional AM stations and FM stations, and that these stations could operate by remote control without specific remote control authority. Our regulatory responsibility would be served if the licensee using remote control notifies the FCC in Washington, D.C., of the remote control location. Additionally, the engineer in charge of the radio district in which the station is located is to be notified of remote control points located other than at the authorized transmitter or studio addresses.

8. *Use of FM subcarriers for remote control.* FM stations that plan to use subcarrier transmissions for the telemetry of transmitter data to a remote control or ATS monitoring point are now required to obtain a subsidiary communications authorization (SCA). Further, the use of the subcarrier is subject to the same logging requirements as if it were used to transmit specialized program information. (AM stations may use subaudible tones without prior authorization and without logging requirements.) We believe that the subsidiary communications authorization procedures and logging requirements should not be applicable to remote control telemetry transmissions not intended for use by the public. Therefore, these amendments will permit such use without prior Commission authorization and exempt subcarrier telemetry operations from the SCA logging requirements. In this connection, the amendments also clearly state that the transmission of the subcarrier is only required during periods when the operator wishes to determine the operating condition of the transmitter.

9. *Use of FM subcarriers and AM subaudible tones for automatic transmission systems.* The automatic transmission system rules are amended by including provisions for use of FM subcarriers or AM subaudible tones without specific authorization, similar to the above use when remote control systems are used, as discussed in paragraph 8 above.

10. *Replacement of FM and TV antennas and transmission lines.* Licensees who find it necessary or desirable to replace an existing antenna, or the transmission line connecting the transmitter to the antenna, are required to file an application for a construction permit, even though the replacement equipment may be identical to that in use, or would have no effect on the effective radiated power of the station. A construction permit application is also required to use circular polarization. In most cases, since the processing of the application for equipment changes raises no technical issues upon which the application would be denied, no useful purpose is served by continuing this traditional procedure. We therefore believe that FM and TV licensees should be permitted to make antenna and transmission line replacements or substitutions not affecting the station's effective radiated power or antenna height without first obtaining a construction permit. Under the rules as amended by this order, the licensee files an application to amend the existing station license after the transmission system modifications have been completed. This application is only required if the new transmission system is different from that identified or the transmitter operating power differs from that shown on the station license. These permissive changes do not apply to FM or TV directional antenna systems or where the changes could possible affect the operation of colocated or nearby AM stations. Authority to operate with temporary antenna arrangements during the period when the modifications are being made may be obtained with an informal request to the FCC.

11. *Upgrading of FM and TV transmitters.* Many FM and TV aural transmitters are combinations of several functional components such as the FM exciter unit, stereophonic generator, intermediate power amplifiers, and final power amplifiers. Frequently, these components are separately constructed units that can be separated both electrically and mechanically. Licensees occasionally replace or substitute these units within the transmission system, primarily to improve the quality and reliability of the program transmission. During the past several years, licensees wishing to replace FM exciter units or stereo generators in their existing transmitters were required to file an informal application to obtain prior FCC authority to make the substitutions. In nearly every instance there has been no technical basis for not permitting the requested substitutions to be made. The replacement equipment has either previously been subject to the FCC's type acceptance processes or has been evaluated for broadcast acceptability. Therefore, in order to remove unnecessary application filing and processing requirements, amendments adopted by this order will permit FM and TV station licensees to replace the modulation exciter units of their transmitters, and FM stations to replace stereo generators without prior FCC authorization if the replacement equipment has been type accepted or otherwise has been demonstrated to be compatible with the transmitter in use. Licensees will be responsible for insuring that their transmitters comply with the required transmission standards through the existing performance measurement requirements.

12. In addition to the above modifications, this order incorporates several changes by retitling certain rule sections and rearranging other rule provisions so similar subject matter is associated in the same section. Those amended rules which are essentially identical and common to all AM, FM, NCE-FM and TV stations are included in subpart H rather than being amended separately for each service subpart.

13. We conclude that, for the reasons set forth above, adoption of these revisions will serve the public interest and inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior

notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

14. *Therefore, it is ordered,* That, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 73 of the Commission's rules and regulations are amended as set forth below, effective November 20, 1978.

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

§ 1.537 [Deleted]

1. Section 1.537 is deleted in its entirety.

2. Section 73.43, including headnote, is amended, as follows:

§ 73.43 Modification of transmission systems.

Licensees of AM stations must observe the following procedures for making changes in authorizing station transmitting systems.

(a) No changes may be made: (1) That would result in emissions of signals outside of the authorized channel exceeding that which is permitted under § 73.40.

(2) That would result in the external performance characteristics being in disagreement with those prescribed in § 73.40.

(b) The following modifications may be made only upon specific authority of the FCC. Application to make the changes must be filed on FCC Form 340 (FCC Form 340 for noncommercial educational stations.)

(1) Installation of a main transmitter which is not included on the FCC's "radio equipment list" as type accepted for broadcast use.

(2) Modification of an existing transmitter that would affect its power rating or change any of the performance characteristics which are required for type acceptance.

(3) Change in the location or overall height of the antenna tower(s).

(4) Change in the antenna system (see § 73.45).

(5) Change in the operating power of the station.

(c) [Reserved]

(d) The following changes in the transmission system equipment may be made without prior authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modifications.

(1) Installation of a new transmitter which is included on the FCC's "radio equipment list" as type accepted for broadcast use. (See § 73.1665.)

(2) Replacement of the carrier frequency generator of the transmitter with one of a different type that has been demonstrated to the FCC to be compatible with the transmitter in use.

3. Section 73.45 is amended to read as follows:

§ 73.45 Antenna systems.

(a) All applicants for new, additional, or different AM station facilities and all licensees requesting authority to change the transmitting system site of an existing station must specify an antenna system, the efficiency of which complies with the requirements for the class and power of station. (See §§ 73.186 and 73.189.)

(b) The simultaneous use of a common antenna or antenna structure by more than one AM station or by a station of any other type or service may be authorized provided:

(1) Engineering data are submitted showing that satisfactory operation of each station will be obtained without adversely affecting the operation of the other station(s).

(2) The minimum field strength for each AM station complies with § 73.189(b).

(c) Should any changes be made or otherwise occur which could possibly alter the resistance of the antenna system, the licensee immediately must make a new determination of the antenna resistance (see § 73.45). (If the changes are due to the construction of FM or TV transmitting facilities, see § 73.316(e) or § 73.658.) Upon completion of the antenna resistance measurements an application for authority to resume determination of operating power by the direct method must be filed with the FCC in Washington, D.C., as follows:

(1) Whenever the measurements show that the antenna or common point resistance differs from that shown on the station authorization, FCC Form 302 (FCC Form 341 for noncommercial educational stations) must be filed with the information and measurement data specified in § 73.54(a).

(2) Whenever the measurements show that the antenna or common point resistance does not differ from that shown on the station authorization, an informal application must be filed with the information specified in subparagraphs (3) through (6) of § 73.54(e).

(d) No AM station licensee or permittee may change the physical height of an antenna, or supporting structure, or make any changes in the antenna system which will measurably alter the radiation characteristics, except upon application to and authority from the FCC.

4. In § 73.46, the headnote is amended to read as follows:

§ 73.46 Standards of good engineering practice.

* * * * *

See §§ 73.1665 and 1670.

5. In § 73.47, paragraph (a) is amended to read as follows:

§ 73.47 Equipment performance measurements.

(a) The licensee of each AM station must make equipment performance measurements for each main transmitter when initially installed and thereafter at least once each calendar year. One set of measurements must be made during the 4-month period immediately preceding the filing date of the application for renewal of the station license. The dates of completion of successive sets of measurements may be no more than 14 months apart. If the same transmitter is authorized for more than one mode of operation, equipment performance measurements need be made at the highest authorized power level. (Equipment performance measurements for auxiliary transmitters are not required.) Equipment performance measurements must be made with equipment adjusted for normal program operation and must include all circuits between the main studio microphone terminals or amplifier input and the antenna circuit including equalizer or corrective circuits normally used, but without compression. The measurement program must yield the following information:

(1) * * *

* * * * *

6. Section 73.48 is amended to read as follows:

73.48 Acceptability of broadcast transmitters for licensing.

See § 73.1660.

7. In § 73.51, paragraph (d) is amended to read as follows:

§ 73.51 Antenna input power: how determined.

* * * * *

(d) The antenna input power shall be determined on a temporary basis without prior authority from the FCC as described in paragraphs (e) and (f) of this section in any of the following circumstances:

(1) In an emergency, where the authorized system has been damaged. (See § 73.45.)

(2) Pending completion of authorized changes in the antenna system.

(3) If changes occur in the antenna system or its environment which affects or appears likely to affect the value of the antenna resistance.

(4) If the antenna current meter or common point meter becomes defective and the station does not have a remote reading or extension antenna or common point ammeter.

* * * * *

8. Section 73.63 is amended to read as follows:

§ 73.63 Auxiliary transmitter.

See § 73.1670.

9. Section 73.64 is amended to read as follows:

§ 73.64 Alternate main transmitter.

See § 73.1665.

10. Section 73.66 and headnote are amended to read as follows:

§ 73.66 Remote control authorizations.

(a) The licensee of an AM station using a nondirectional antenna may operate by remote control without specific authorization from the FCC. Written notice giving the address and description of the remote control point being used must be sent to the FCC in Washington, D.C., within 3 days of commencing remote control operation. When a remote control point is at an address or location other than that of either the authorized transmitter or studio facilities, the licensee must also send a notice to the engineer in charge of the radio district in which the station is located. This additional notice is to include the full address, location, and telephone number of the remote control point.

(b) Authority to operate an AM station using a directional antenna system by remote control from any remote control point is obtained using the following procedures:

(1) An applicant for a construction permit to erect a new or make modifications in an existing directional antenna, subject to the sampling system requirements of § 73.68, may request remote control authorization on the permit application FCC Form 301 (FCC Form 341 for noncommercial educational stations.)

(2) An existing licensee or permittee having a sampling system in compliance with the provisions of § 73.68(a) must request remote control authorization on FCC Form 301-A, and submit information showing that the directional antenna sampling system has been constructed according to the specifications of § 73.68(a).

(3) An existing station not having an approved disrectional sampling system in compliance with the provisions of § 73.68(a) must request remote control authorization on FCC Form 301-A, and submit information showing that the directional antenna is in proper adjustment and further showing the stability of the antenna system during the 1-year period specified in section II of the form 301-A.

11. In § 73.67 paragraph (c)(6) is deleted and a new paragraph (d) is added to read as follows:

§ 73.67 Remote control operation.

* * * * *

(c) * * *

(6) [Deleted]

(d) Stations using directional antennas when operated by remote control, must make a skeleton proof of performance, as defined in § 73.154, at least once each calendar year. The results of each proof, signed and dated by the qualified person who made it, must be kept on file at the transmitter or remote control point for a period of 3 years, and on request must be made available during that time to representatives of the FCC.

12. Section 73.89 is deleted in its entirety.

§ 73.89 [Deleted]

13. Section 73.142 is amended by adding new paragraph (j) to read as follows:

§ 73.142 Automatic transmission system facilities.

* * * * *

(j) AM stations may, without further authority from the FCC, use subaudible tones for the purposes of transmitting to ATS monitoring and alarm points essential data on the operating conditions of the broadcast transmitter and associated devices, subject to the following conditions:

(1) The tone must have a frequency no higher than 30 hertz.

(2) The amplitude of modulation of the carrier by the tone must not be higher than necessary to effect reliable and accurate data transmission, and may not, in any case exceed 6%.

(3) The tone may be transmitted only at such times and during intervals as necessary for the ATS functions.

(4) Measures must be used to insure that during period the tone is being transmitted, the total modulation of the carrier conforms with the requirements of § 73.55.

(5) Tone transmission must not significantly degrade the quality of program transmission or produce an audible effect resulting in public annoyance.

14. Section 73.250 is amended to read as follows:

§ 73.250 Acceptability of broadcast transmitters for licensing.

See § 73.1660.

15. In § 73.253, paragraph (a)(2) is amended to read as follows:

§ 73.253 Modulation monitors.

(a) * * *

(2) If the station is using subcarriers for SCA operation or for remote control or automatic transmission system telemetry, the licensee must have a modulation monitor of a type approved by the FCC for monitoring SCA subcarrier transmissions.

* * * * *

16. In § 73.254, the section headnote is amended, paragraph (a) is deleted in its entirety, paragraph (b) is redesignated as paragraph (a) and amended, and paragraph (c) is redesignated as paragraph (b) as follows:

§ 73.254 Equipment performance measurements.

(a) The license of each FM station must make equipment performance measurements for each main transmitter when initially installed and thereafter at least once each calendar year. One set of measurements must be made during the 4-month period immediately preceding the filing of the application for renewal of the station license. The dates of completion of successive sets of measurements may be no more than 14 months apart. (Equipment performance measurements for auxiliary transmitters are not required.) Equipment performance measurements must be made with equipment adjusted for normal program operation and shall include all circuits between the main studio amplifier microphone terminals or amplifier input and the antenna circuit including equalizer or corrective circuits normally used, but without compression. The measurement program must yield the following information:

(1) * * *

* * * * *

17. Section 73.255 is amended to read as follows:

§ 73.255 Auxiliary transmitter.

See § 73.1670.

18. Section 73.256 is amended to read as follows:

§ 73.256 Alternate main transmitters.

See § 73.1665.

19. Section 73.257 and headnote are amended to read as follows:

§ 73.257 Modification of transmission systems.

Licensees of FM stations must observe the following procedures for making changes in authorized station transmitting systems.

(a) No changes shall be made:

(1) That would result in emission of signals outside of the authorized channel exceed that which is permitted under § 73.314.

(2) That would result in the external performance characteristics being in disagreement with those prescribed in §§ 73.317 and 73.322.

(b) The following modifications may be made only upon specific authority of the FCC. Application to make such changes must be filed on FCC form 301.

(1) Installation of a main transmitter which is not included on the FCC's "radio equipment list" as type accepted for broadcast use.

(2) Modification of an existing transmitter which would affect its power rating or change any of the performance characteristics which are required for type acceptance.

(3) Change in the location or overall height of the antenna supporting structure.

(4) Change in the height above ground of the antenna center of radiation exceeding ±2 meters from that shown on the station authorization.

(5) Change in the effective radiated power of the station in the horizontal plane or in the directional radiation characteristics of the antenna.

(6) Change in an antenna system which is mounted on an AM station antenna or which could possibly affect the operation of any AM directional antenna system.

(c) The following modifications may be made and operation commenced without prior authorization from the FCC: *Provided,* That the modifications would not possibly affect the operation of any colocated or nearby AM station. Equipment performance measurements must be made and an application for license modification filed on FCC form 302 within 10 days following completion of the changes.

(1) Replacement of a nondirectional antenna with one of the same or different type or number of bays: *Provided,* That the height above ground of the center of radiation is within ±2 meters of that specified in the station authorization, and there is no change in the horizontal effective radiated power.

(2) Installation of a transmission line with one of a different type or length which requires change in the transmitter output power to maintain the licensed effective radiated power.

(3) Installation of harmonic filters or diplexers of a different type which require a change in the transmitter output power to maintain the licensed effective radiated power.

(d) The following changes in the transmission system equipment may be made without authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modification:

(1) Installation of a new transmitter which is included on the FCC's "radio equipment list" as type accepted for broadcast use. (See § 73.1665.)

(2) Replacement of the carrier frequency generator of the transmitter with one of a different type that has been demonstrated to the FCC to be compatible with the transmitter in use.

(3) Replacement of the FM exciter unit of the transmitter with one that has been acceptable for FM station use through the FCC's type acceptance procedures and that has been demonstrated to the FCC to be compatible with the transmitter in use.

(4) Replacement of the stereophonic generator of the transmitter with one that has been demonstrated to the FCC to be compatible with the transmitter in use.

20. Section 73.273 is amended to read as follows:

§ 73.273 Emergency antenna.

See § 73.1680.

21. Section 73.274 and headnote are amended to read as follows:

§ 73.274 Remote control authorizations.

(a) The licensee of an FM station may operate by remote control without authorization from the FCC. Written notice giving the address and description of the remote control point being used must be sent to the FCC in Washington, D.C. within 3 days of commencing remote control operation when a remote control point is at an address or location other than that of either the authorized transmitter or studio facilities, the licensee must also send a notice to the engineer in charge of the radio district in which the station is located. This additional notice is to include the full address, location, and telephone number of the remote control point.

(b) FM stations may, without specific authority from the FCC use a subcarrier frequency for remote control telemetry, in accordance with the technical provisions of this subpart and § 73.295(g), and upon installation of a modulation monitor type approved for monitoring FM subcarrier transmissions.

22. In § 73.275, a new paragraph (c) is added to read as follows:

§ 73.275 Remote control operation.

* * * * *

(c) When a subcarrier is used for telemetry of remote control data from the transmitter to the control point, radiation of the subcarrier is only necessary when remote transmitter readings are being made. However the subcarrier must be available for telemetry at all times. The subcarrier logging requirements specified in § 73.295(f) are not applicable to remote control telemetry operation.

23. In § 73.293, paragraph (a)(2) is amended, the note following paragraph (b)(3) is deleted, and new paragraphs (b)(4) and (d) are added to read as follows:

§ 73.293 Subsidiary Communications Authorizations.

(a) * * *

(1) * * *

(2) Transmission of signals which are directly related to the operation of FM stations; for example, relaying of broadcast material to other stations, remote cueing and order circuits, and similar uses. (Use of multiplex subcarriers for transmission of control and data telemetry for remote control or automatic transmission system (ATS) operations does not require an SCA.)

* * * * *

(b) * * *

* * * * *

(4) Experimental operation of an FM station to obtain the technical information necessary to support an application for an SCA for visual transmissions may be conducted under the provisions of § 73.1510.

(d) Prior permission to engage in any new or additional SCA activity other than the transmission of control and data telemetry for remote control ATS operation must be obtained from the FCC by filing an application on FCC form 318.

24. In § 73.295, the headnote and paragraphs (a) and (f) are amended to read as follows:

§ 73.295 Use of multiplex subcarriers.

(a) Use of multiplex subcarriers by an FM station must conform to the purposes authoized by the FCC under a Subsidiary Communications Authorization (SCA) except for the transmission control and telemetry data for remote control or automatic transmission system operation which may be conducted without an SCA.

* * * * *

(f) A daily SCA operating log must be maintained for the multiplex sub-

carrier transmissions, except those for control and data telemetry for remote control or ATS operation. The following log entries are to be made, excluding subcarrier interruptions of 15 minutes or les:

(1) * * *

* * * * *

25. In § 73.297, paragraph (a) is amended to read as follows:

§ 73.297 Stereophonic broadcasting.

(a) An FM broadcast station may, without specific authority from the FCC, transmit stereophonic programs upon installation of type accepted stereophonic transmitting equipment and a type approved stereophonic modulation monitor. Prior to commencement of stereophonic broadcast, equipment performance measurements must be completed.

* * * * *

26. In § 73.316, paragraph (i) is amended and paragraphs (k) and (l) are deleted in their entirety:

§ 73.316 Antenna systems.

* * * * *

(j) When the proposed FM antenna is to be mounted on a tower in the vicinity of an AM station directional antenna system and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the FM application concerning the effect of the FM antenna on the AM directional radiation pattern. Field measurements of the AM station may be required prior to and following construction of the FM station antenna, and readjustments made as necessary.

* * * * *

(k) [Deleted]

(l) [Deleted]

§ 73.321 [Deleted]

27. Section 73.321 is deleted in its entirety.

§ 73.330 [Deleted]

28. Section 73.330 is deleted in its entirety.

29. Section 73.342 is amended by adding new paragraph (j) to read as follows:

§ 73.342 Automatic transmission system facilities.

* * * * *

(j) An FM station may, without specific authority from the FCC, use a subcarrier frequency for automatic transmission system telemetry in accordance with the technical provisions of this subpart and § 73.295(g), and upon installation of a modulation monitor type approved for monitoring FM subcarrier transmissions. The subcarrier logging requirements specified in § 73.295(f) are not applicable to ATS telemetry operations.

30. In § 73.508, the existing text is designated as paragraph (a) and new paragraphs (b) and (c) are added to read as follows:

§ 73.508 Standards of good engineering practice.

(a) * * *

(b) The transmitter and associated transmitting equipment of each noncommercial educational FM station licensed for transmitter output power above 10 watts must be designated, constructed and operated in accordance with § 73.317.

(c) The transmitter and associated transmitting equipment of each noncommercial educational FM station licensed for transmitter power output of 10 watts or less, although not required to meet all requirements of § 73.317, must be constructed with the safety provisions of the current national electrical code as approved by the American Standards Association. These stations must be operated, tuned, and adjusted so that emissions are not radiated outside the authorized band causing or which are capable of causing interference to the communications of other stations. The audio distortion, audio frequency range, carrier hum, noise level, and other essential phases of the operation which control the external effects, must be at all times capable of providing satisfactory broadcast service. Studio equipment properly covered by an underwriter's certificate will be considered as satisfying safety requirements.

31. Section 73.513 and headnote are amended to read as follows:

§ 73.513 Noncommercial educational FM stations operating on unreserved channels.

Noncommercial education FM stations other than class D (secondary) which operate on channels 261 through 300 but which comply with § 73.503 as to licensing requirements and the nature of the service rendered, must comply with the provisions of the following sections of subpart B: § 73.201 through § 73.213 (classification of FM broadcast stations and allocations of frequencies) and such other sections of subpart B as are made specifically applicable by the provisions of this subpart C. Stations in Alaska using channels 261-300 need not meet the minimum effective radiated power requirement specified in § 73.211(a). In all other respects, stations operating on channels 261 through 300 are to be governed by the provisions of this subpart and not subpart B.

32. Section 73.542 is amended by adding new paragraph (j) to read as follows:

§ 73.542 Automatic transmission system facilities.

* * * * *

(j) A noncommercial educational FM station may, without specific authority from the FCC, use a subcarrier frequency for automatic transmission system telemetry in accordance with the technical provisions of this subpart and § 73.595(g), and upon installation of a modulation monitor type approved by the FCC for monitoring FM subcarrier transmissions. The subcarrier logging requirements specified in § 73.295(f) are not applicable to ATS operation.

34. Section 73.550 is amended to read as follows:

§ 73.550 Acceptability of broadcast transmitters for licensing.

See § 73.1660.

34. In § 73.553, paragraph (a)(2) is amended to read as follows:

§ 73.553 Modulation monitors.

(a) * * *

(2) If the station is using subcarriers for SCA operations or for remote control or automatic transmission system telemetry, the licensee must have a modulation monitor of a type approved by the FCC for monitoring SCA subcarriers transmissions.

* * * * *

35. In § 73.554, the section headnote is amended, paragraphs (a) and (b) are deleted in their entirety, paragraphs (c) and (d) are redesignated as paragraphs (a), and (b), and the redesignated paragraph (a) is amended in part to read as follows:

§ 73.554 Equipment performance measurements.

(a) The licensee of each noncommercial educational FM station with transmitter output power above 10 watts must make equipment measurements of each main transmitter when initially installed and thereafter at least once each calendar year. One set of measurements must be made during the 4-month period immediately preceding the filing date of the application for renewal of the station license. The dates of completion of successive sets of measurements must be no more than 14 months apart. (Equipment performance measurements for auxiliary transmitters are not required.)

Equipment performance measurements must be made with equipment adjusted for normal program operation and shall include all circuits between the main studio microphone terminals or amplifier input and the antenna circuit, including equalizer or corrective circuits normally used, but without compression. The measurement program must yield the following information:

(1) * * *

* * * * *

36. Section 73.555 is amended to read as follows:

§ 73.555 Auxiliary transmitter.

See § 73.1670.

37. Section 73.556 is amended to read as follows:

§ 73.556 Alternate main transmitters.

See § 73.1665.

38. Section 73.557, including headnote, is amended to read as follows:

§ 73.557 Modification of transmission systems.

Licensees of noncommercial educational FM stations must observe the following procedures for making changes in authorized station transmitting systems.

(a) No changes may be made:

(1) That would result in emission of signals outside of the authorized channel exceeding that which is permitted under § 73.314.

(2) That would result in the external performance characteristics being in disagreement with those prescribed in §§ 73.317 and 73.322.

(b) The following modifications may be made only upon specific authority of the FCC. Application to make the changes must be filed on FCC form 340.

(1) Installation of a main transmitter which is not included on the FCC's "radio equipment list" as type accepted for broadcast use.

(2) Modification of an existing transmitter which would affect its power rating or change any of the performance characteristics which are required for type acceptance.

(3) Change in the location or the overall height of the antenna supporting structure.

(4) Change in the height above ground of the antenna center of radiation exceeding ±2 meters from that shown on the station authorization.

(5) Change in the effective radiated power of the station in the horizontal plane or in the directional radiation characteristics of the antenna.

(6) Change in an antenna system which is mounted on an AM station antenna or which could possibly affect the operation of any AM directional antenna system.

(c) The following modifications may be made and operation commenced without prior authorization from the FCC: *Provided,* That the modifications would not possibly affect the operation of any co-related or nearby AM station. Equipment performance measurements must be made and an application for license modification filed on FCC form 341 within 10 days following completion of the changes.

(1) Replacement of a nondirectional antenna with one of the same or different type or number of bays. *Provided,* That the height above ground of the center of radiation is within ±2 meters of that specified in the station authorization, and there is no change in the horizontal effective radiated power.

(2) Installation of a transmission line with one of a different type or length which requires change in the transmitter output power to maintain the licensed effective radiated power.

(3) Installation of harmonic filters or diplexers of a different type which require a change in the transmitter output power to maintain the licensed effective radiated power.

(d) The following changes in the transmission systems equipment may be made without prior authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modification:

(1) Installation of a new transmitter which is included on the FCC's "Radio Equipment List" as type accepted for use. (See § 73.1665.)

(2) Replacement of the carrier frequency generator of the transmitter with one of a different type that has been demonstrated to the FCC to be compatible with the transmitter in use.

(3) Replacement of the FM exciter unit of the transmitter with one that has been acceptable for FM station use through the FCC's type acceptance procedures and that has been demonstrated to the FCC to be compatible with the transmitter in use.

(4) Replacement of the stereophonic generator of the transmitter with one that has been demonstrated to the FCC to be compatible with the transmitter in use.

39. Section 73.572 and headnote are amended to read as follows:

§ 73.572 Remote control authorizations.

(a) The licensee of a noncommercial educational FM station may operate by remote control without authorization from the FCC. However, written notice giving the address and description of the remote control point being used must be sent to the FCC in Washington, D.C. within three days of commencing remote control operation. When a remote control point is at an address or location other than that of either the authorized transmitter or studio facilities, the licensee must also send a notice to the engineer in charge of the radio district in which the station is located. This additional notice is to include the full address, location, and telephone number of the remote control point.

(b) A noncommercial educational FM station may, without specific authority from the FCC, use a subcarrier frequency for remote control or automatic transmission system telemetry, in accordance with the technical provisions of this part and § 73.595(g), and upon installation of a modulation monitor type approved for monitoring FM subcarrier transmissions.

40. In § 73.573, a new paragraph (c) is added to read as follows:

§ 73.573 Remote control operation.

* * * * *

(c) When a subcarrier is used for telemetry of remote control data from the transmitter to the control point, radiation of the subcarrier is only necessary when remote transmitter readings are being made. However the subcarrier must be available for telemetry at all times. The subcarrier logging requirements specified in § 73.595(f) are not applicable to remote control telemetry.

41. In § 73.593 paragraph (a)(2) is amended, the note following paragraph (b)(3) is deleted, and new paragraphs (b)(4) and (d) are added to read as follows:

§ 73.593 Subsidiary Communications Authorizations.

(a) * * *

(1) * * *

(2) Transmission of signals which are directly related to the operation of noncommercial educational FM stations; for example, relaying of broadcast material to other stations, remote cueing and order circuits, and similar uses. (Use of multiplex subcarriers for transmission of control and data telemetry for remote control automatic transmission system (ATS) operations does not require an SCA.)

* * * * *

(b) * * *

* * * * *

(4) Experimental operation of a noncommercial educational FM station to obtain the technical information necessary to support an application for an SCA for visual transmissions may be conducted under the provisions of § 73.1510.

(d) Prior permission to engage in any new or additional SCA activity other than the transmission of control and data telemetry for remote control ATS operation must be obtained from the FCC by filing an application on FCC form 318.

42. In § 73.595, the headnote and paragraphs (a) and (f) are amended to read as follows:

73.595 Use of multiplex subcarriers.

(a) Use of multiplex subcarriers by an FM station must conform to the purposes authorized by the FCC under a Subsidiary Communications Authorization (SCA) except for the transmission control and telemetry data for remote control or automatic transmission system operation which may be conducted without an SCA.

* * * * *

(f) A daily SCA operating log must be maintained for the multiplex subcarrier transmissions, except those for control and data telemetry for remote control or ATS operation. The following log entries are to be made, excluding subcarrier interruptions of 15 minutes or less:

(1) * * *

* * * * *

43. In § 73.596, paragraph (a) is amended to read as follows:

§ 73.596 Stereophonic broadcasting.

(a) A noncommercial educational FM broadcast station may, without specific authority from the FCC, transmit stereophonic programs upon installation of type accepted stereophonic transmitting equipment and, for stations authorized to operate with a transmitter output power over 10 watts, a type approved stereophonic modulation monitor. Prior to commencement of stereophonic broadcasts, equipment performance measurements must be completed.

* * * * *

44. Section 73.637 is amended to read as follows:

§ 73.637 Alternate main transmitters.

See § 73.1665.

45. Section 73.638 is amended to read as follows:

§ 73.638 Auxiliary transmitter.

See § 73.1670.

46. Section 73.639 including headnote is amended to read as follows:

§ 73.639 Modification of transmission systems.

Licensees of TV stations must observe the following procedures for making changes in authorized station transmitting systems.

(a) No changes shall be made:

(1) That would result in emission of signals outside of the authorized channel exceed that which is permitted under § 73.687(i)(1).

(2) That would result in the external performance characteristic being in disagreement with that prescribed in §§ 73.682 and 73.687.

(b) The following modifications may be made only upon specific authority of the FCC. Application to make such changes shall be filed on FCC form 301 (FCC form 340 for noncommercial educational stations.)

(1) Installation of a main transmitter which is not included on the FCC's "radio equipment list" as type accepted for broadcast use.

(2) Modification of an existing transmitter which would affect its power rating or modify any of the performance characteristics which are required for type acceptance.

(3) Change in the location or the overall height of the antenna supporting structure.

(4) Change in the height above ground of the antenna center of radiation exceeding ±2 meters from that shown on the station authorization.

(5) Change in the effective radiated power of the station in the horizontal plane or in the directional radiation characteristics of the antenna.

(6) Change in an antenna system which is mounted on an AM station antenna or which could possibly affect the operation of any AM directional antenna system.

(c) The following modifications may be made and operation commenced without prior authorization from the FCC: *Provided,* That the modifications would not possibly affect the operation of any co-located or nearby AM station. Equipment performance measurements must be made and an application for license modification filed on FCC form 302 (FCC form 341 for noncommercial educational TV stations) within 10 days following completion of the changes.

(1) Replacement of a nondirectional antenna with one of the same or different type or number of bays: *Provided,* That the height above ground of the center of radiation is within ± 2 meters of that specified in the station authorization, and there is no change in the horizontal effective radiated power.

(2) Installation of a transmission line with one of a different type or length which requires change in the transmitter output power to maintain the licensed effective radiated power.

(3) Installation of harmonic filters, sideband filters or diplexers of a different type which requires a change in the transmitter output power to maintain the licensed effective radiated power.

(d) The following changes in the transmission systems equipment may be made without prior authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modification:

(1) Installation of a new transmitter which is included on the FCC's "radio equipment list" as type accepted for broadcast use. (See § 73.1665.)

(2) Replacement of the carrier frequency generator of the transmitter with one of a different type that has been demonstrated to the FCC to be compatible with the transmitter in use.

47. Section 73.640 is amended to read as follows:

§ 73.640 Acceptability of broadcast transmitters for licensing.

See § 73.1660.

48. In § 73.677, paragraph (a)(10) is deleted and marked "Reserved."

§ 73.677 Remote control authorization.

* * * * *

(a) * * *

(10) [Reserved]

* * * * *

49. In § 73.685, paragraph (h)(2) is amended to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(h) * * *

* * * * *

(2) When the proposed TV antenna is to be mounted on a tower in the vicinity of an AM station directional antenna system and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the TV application concerning the effect of the TV antenna on the AM directional radiation pattern. Field measurements of the AM stations may be required prior to and following construction of the TV station antenna, and readjustments made as necessary.

* * * * *

50. A new § 73.1660 is added to Subpart H to read as follows:

§ 73.1660 Type acceptance of broadcast transmitters.

(a) A transmitter may be type accepted upon request of any manufacturer of transmitters following the type acceptance procedure described

in Part 2 of the FCC's rules by submitting data and information to show that the transmitter meets the technical specifications for the type of broadcast service for which it is to be used. If acceptable the transmitter will be included on the FCC's published "radio equipment list."

(b) A permittee or licensee planning to install and use as a main transmitter one not included on the FCC's "radio equipment list" must obtain authority to use such a transmitter by filing an application for a construction permit on FCC form 301 (FCC form 340 for noncommercial educational stations). The application must include a complete description and circuit diagram of the transmitter, description of the carrier frequency determining circuits, complete operating parameters, and measurement data as required for type acceptance for the type of broadcast station at which it will be used.

(c) A transmitter which was in use prior to January 30, 1955, may continue to be used by the licensee, and successors or assignees, if it continues to comply with the technical requirements for the type of station at which it is used.

(d) Additional rules concerning type acceptance, modification of type accepted transmitters, and withdrawal of type acceptance are in Part 2 of the FCC's rules.

51. A new § 73.1665 is added to Subpart H to read as follows:

§ 73.1665 Main transmitters.

(a) Each broadcast station must have one or more main transmitters which comply with the provisions of transmitter technical requirements for type and class of station. Main transmitters are those which are used for regular program transmissions having power ratings appropriate for the authorized operating power(s). In addition, AM stations must use transmitters meeting the power rating specifications of § 73.41.

(b) A licensee may, without further authority or notification to the FCC, replace an existing main transmitter or install additional main transmitters for use with the authorized antenna if the replacement or additional transmitter(s) is type accepted as shown in the FCC "radio equipment list." Within 10 days after commencement of regular use of the replacement or additional transmitter(s), equipment performance measurements, as prescribed for the type of station are to be completed and a certification must be entered in the station, maintenance log by the station's consulting engineer, technical director, or chief operator that the station with the new transmitter(s), as installed, complies with the technical provisions of this part.

NOTE.—After January 1, 1979, no new licenses will be issued nor will existing licenses be renewed for alternate main transmitters operating into a single main antenna system. Further, licenses issued after that date will no longer identify the specific transmitters which are shown in the FCC's "radio equipment list" as type accepted for broadcast use. Composite or other transmitting equipment which has been licensed for use based on data filed by the licensee will continue to be specified on station authorizations.

52. A new § 73.1670 is added to read as follows:

§ 73.1670 Auxiliary transmitters.

(a) A licensee of a broadcast station may, without further authority from the FCC, install and use with the main antenna system one or more auxiliary transmitters for the following purposes:

(1) The transmission of regular programs upon failure of the main transmitter.

(2) The transmission of regular programs during maintenance or modification of the main transmitter.

(3) Emergency broadcast system operation.

(4) The transmission of regular programs by an AM station under a Presunrise Service Authority (PSA).

(5) The transmission of tests to determine the operating condition of the auxiliary transmitter or auxiliary antenna.

(6) For testing, upon the request of representatives of the FCC.

(b) Authorization to install an auxiliary transmitter for use with other than the main antenna must be obtained by filing an application for a construction permit on FCC form 301 (FCC form 340 for noncommercial educational stations).

(c) The following technical and operating standards apply to auxiliary transmitter:

(1) The auxiliary transmitter may be operated on only the station's authorized frequency and within the required carrier frequency departure tolerance for the type of station.

(2) The carrier frequency of the auxiliary transmitter must be measured as often as necessary to insure that it is maintained within the prescribed tolerance. If the transmitter is used daily for a period of more than 40 days, the measurement must be made at least once each calendar month with not more than 40 days between successive measurements.

(3) When using an auxiliary transmitter, the operating power may be less than the authorized power but may not exceed the authorized power within the permitted tolerance for the type of station. If operation with an auxiliary transmitter at reduced power continues for a period exceeding 10 days, the FCC in Washington, D.C. must be notified. (See § 73.52, AM; § 73.267, FM; § 73.567, NCE-FM; and § 73.689, TV.)

(4) If the operation of an auxiliary transmitter exceeds 2 consecutive days, an aural modulation monitor must be used with monitor indications available at the transmitter control point.

(5) Normal operator requirements apply to the operation of the auxiliary transmitter.

NOTE.—After January 1, 1979, new licenses will not be issued nor will existing licenses be renewed for auxiliary transmitters that are operated into the main antenna system.

53. A new § 73.1675 is added to part 73, subpart H, to read as follows:

§ 73.1675 Auxiliary antennas.

(a) An auxiliary antenna is one that is permanently installed and available for use when the main transmission system is out of service for repairs or replacement. Auxiliary antennas may be located at the same site as the station's main antenna or at a separate site.

(b) Authority to construct an auxiliary antenna must be obtained by filing an application for a construction permit on FCC form 301 (FCC form 340 for noncommercial educational stations).

54. A new § 73.1680 is added to part 73, subpart H, to read as follows:

§ 73.1680 Emergency antennas.

(a) An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used.

(b) Prior authority from the FCC is not required to erect and commence using an emergency antenna to restore program service to the public, however an informal request to continue operation with the emergency antenna must be made to the FCC in Washington, D.C. within 24 hours after commencement of its use. The request is to include the damage to the authorized antenna(s), description of the emergency antenna, and the station operation power with the emergency antenna.

(1) *AM stations.* AM stations may use a horizontal or vertical wire or a nondirectional vertical element of a directional antenna as an emergency antenna.

(2) *FM and TV stations.* FM and TV stations may erect any suitable radiator, or use operable sections of the authorized antenna(s) as an emergency antenna.

(c) The FCC may prescribe the output power, radiation limits, or other operating conditions when using an emergency antenna, and emergency

antenna authorizations may be modified or terminated in the event harmful interference is caused to other stations or services by the use of an emergency antenna.

[FR Doc. 78-32325 Filed 11-16-78; 8:45 am]

[6712-01-M]

[BC Docket No. 78-138; RM-3067]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Greensboro, GA.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein, as a result of a petition for rulemaking filed by the partnership of Boswell and Dingler, assigns FM channel 280A to Greensboro, Ga., as that community's first FM assignment. The proposed station could render a first local aural broadcast service to the community.

EFFECTIVE DATE: December 21, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER

Adopted: November 7, 1978.

Released: November 13, 1978.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Greensboro, Ga.), BC Docket No. 78-138, RM-3067.

1. The Commission has before it for consideration a notice of proposed rulemaking, adopted April 21, 1978, 43 FR 19241, proposing the assignment of FM channel 280A to Greensboro, Ga., as that community's first FM assignment. The notice was issued in response to a petition by the partnership of Boswell and Dingler ("petitioner"). Petitioner filed supporting comments reaffirming its intention to apply for the channel, if assigned. No opposing comments to the proposal have been received.

2. Greensboro (pop. 2,583) [1], seat of Greene County (pop. 10,212) [1], is located in the east central part of Georgia, approximately 109 kilometers (68 miles) east of Atlanta and 104 kilometers (65 miles) northeast of Macon, Ga.

[1] Population figures are taken from the 1970 U.S. Census.

3. Petitioner states that Greensboro and Greene County have been experiencing a change in population and employment trends over the past few years. It asserts that the area which is now supporting a gradual and economically sound transition to manufacturing, industry and services, has had, between 1960-70, an 18 percent growth in services, 25 percent growth in wholesale and retail trade, a 63 percent growth in contract construction and 176 percent growth in finance, insurance and real estate.

4. We have given careful consideration to the proposal and believe that channel 280A should be assigned to Greensboro, Ga., to provide Greensboro and Greene County with a first local aural broadcast service.

5. Authority for the adoption of the amendment is contained 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 of the Commission's rules.

6. *Accordingly, it is ordered*, That effective December 21, 1978, § 73.202(b) of the Commission's rules and regulations, the FM Table of Assignments, is amended, as it pertains to the community listed below:

City	Channel No.
Greensboro, Ga	280A

7. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-32327 Filed 11-16-78; 8:45 am]

[6712-01-M]

[Docket No. 21489]

PART 73—RADIO BROADCAST SERVICES

Repeal of Programing Restrictions on Subscription Television; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum.

SUMMARY: This deletion was inadvertently omitted from a document which was published in the FEDERAL REGISTER. The deletion removes the note following paragraph (b) of 47 CFR 73.643.

EFFECTIVE DATE: May 22, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: This is a correction of the report and order released on April 7, 1978, in docket No. 21489, which appeared in the FEDERAL REGISTER on Wednesday, April 12, 1978, page 15322.

In the matter of repeal of programing restrictions on subscription television. Erratum

Released: November 8, 1978.

The report and order in the above-entitled proceeding, docket No. 21489, adopted April 5, 1978, FCC 78-245, Mimeo No. 84933, is corrected by the deletion of the note following paragraph (b) of 47 CFR 73.643. This deletion was inadvertently omitted from the report and order as published.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32328 Filed 11-16-78; 8:45 am]

[6712-01-M]

[Docket No. 20829; FCC 78-694]

PART 76—CABLE TELEVISION SERVICES

Nondiscrimination in the Employment Policies and Practices of Cable Television Applicants and Certificate Holders and Licensees of Cable Television Relay Stations

AGENCY: Federal Communications Commission.

ACTION: Report and order in docket No. 20829, "Nondiscrimination in the Employment Policies and Practices of Cable Television Applicants and Certificate Holders and Licensees of Cable Television Relay Stations."

SUMMARY: Commission reaffirms its jurisdication to regulate the employment practices of cable television systems to insure equal employment opportunity. Existing § 76.311 of the Commission's Rules is reorganized and some provisions are reworded to improve readability. Minor substantive changes in § 76.311 are adopted. Commission clarifies the requirments of its present EEO rules and adopts various internal monitoring and enforcement procedures designed to improve EEO compliance, including a commitment by the Commission to collect and collate local labor pool availability data in order to provide a more meaningful means of statistically evaluating operator performance in the employment area.

EFFECTIVE DATE: December 15, 1978.

ADDRESS: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Bob Ratcliffe, Cable Television Bureau, 202-632-9703.

REPORT AND ORDER—PROCEEDING TERMINATED

Adopted: September 27, 1978.

Released: November 6, 1978.

By the Commission: Commissioner Quello absent.

In the matter of: Nondiscrimination in the employment policies and practices of cable television applicants and certificate holders and licensees of cable television relay stations, docket No. 20829.

1. The Commission has before it a notice of proposed rulemaking in docket 20829, FCC 76-749, 60 FCC 2d 618 (1976) (hereinafter Notice), concerning nondiscrimination in the employment policies and practices of cable television applicants and certificate holders and cable television relay station (CARS) licensees, together with comments filed in response thereto.[1] The Notice contemplated both clarification and amendment of our equal employment opportunity (EEO) rules[2] and procedures and was prompted primarily by a study of annual employment reports (FCC form 395A) filed by cable television systems in 1974. That study indicated that minorities and females were disproportionately represented in the lesser skilled and lower paying job categories within the cable industry and that, in general, these groups were not employed in numbers commensurate with their availability.[3] These results, in turn, suggested that the EEO programs being utilized by cable television operators were not sufficiently active and affirmative. We consequently advanced various proposals in the Notice as possible means of promoting a fuller realization of our equal employment goals in the cable television field without unnecessarily increasing the regulatory burden on cable operators.

2. Specifically, the Notice first undertook to describe and exemplify some of those elements of an effective affirmative action program which we deem essential under existing EEO rule requirements. Second, we considered possible methods, apart from analysis of FCC form 395A's, which might be used to meaningfully evaluate the implementation of affirmative action programs. In this connection we made several specific proposals, including: (a) A requirement that system operators conduct and submit local labor force availability surveys, (b) a requirement that system operators file updated EEO program statements with the Commission at regular intervals, (c) a proposal to establish five (5) or perhaps ten (10) full-time cable system employees as a threshold condition for filing written EEO program statements, and (d) a proposal to exempt from coverage in a system's EEO program any minority group "insignificantly" represented in the filing system's local labor pool. We also presented a sample affirmative action program which incorporated many of the above-mentioned proposals and asked comment as to whether this sample program should be adopted as a guideline or an official Commission form. Third, the Notice outlined a range of monitoring and enforcement techniques, including the use of "goals and timetables", which might be employed by the Commission in seeking to assure compliance with our EEO rules and to remedy significant departures from our equal employment objectives. Finally, we discussed the procedures we intend to follow in disposing of individual complaints of employment discrimination and the role such complaints will play in our overall enforcement program.

3. Just prior to our adoption of the Notice, the Supreme Court issued its decision in *NAACP* v. *FPC*, 425 U.S. 662 (1976). Therein the Court held that the authority of a Federal agency to regulate or consider the employment practices of its regulatees must be derived from the specific statutory purposes and functions of the agency and may not be based simply on a broad mandate to regulate in the public interest. Id. at 669. Recognizing that this decision might have significant jurisdictional implications for its proposals, the Commission stated in the Notice:

> In light of the Supreme Court's opinion, we seek comment as to whether our proposed actions are within the Commission's "statutory authority to consider the consequences of employment discrimination in performing its mandated regulatory functions." 60 FCC 2d at 521 (citation omitted).

In view of the pervasive importance of this issue, we shall address it, and the comments directed to it, at the outset.

JURISDICTION

4. *Comments.* A majority of the commenting parties[4] argue that the Commission's jurisdiction to regulate the employment practices of cable television operators is either highly suspect or lacking altogether. They contend that neither the Court's decision in *FPC*, *supra*, nor any reasonable construction of the Commission's established "ancillary" authority over cable television can support our regulatory proposals, or, indeed, our existing EEO rules.

5. NCTA, CZR and Sammons first point to the decision in *FPC* as precluding sole reliance on the national policy against discrimination, which CZR considers to be the position taken in the Notice, as a basis for the Commission's jurisdiction. Such reliance, they reason, would constitute the very kind of unspecific "public interest" justification for regulatory authority which the Court expressly rejected. These same parties also contend that, although the decision in *FPC* appears to sanction the Commission's existing regulation of employment practices as "necessary to enable the FCC to satisfy its (statutory) obligation * * * to insure (nondiscriminatory programing)," [5] the Court's conclusion in this regard was mere dictum and thus not binding. In any event, it is reasoned, the Court's conclusion was based on considerations applicable only to broadcasters and cannot, therefore, be taken to approve EEO regulation for

[1] The parties participating in this proceeding are listed in appendix A. See 41 FR 56211, December 27, 1976.

[2] The relevant provisions are contained in § 76.311 of the Commission's rules and apply to operators of cable television systems, both in that capacity and as licensees or permittees of CARS stations. See § 78.75. We note that, in an effort to improve the readability of these regulations, we have today revised § 76.311 by simplifying its internal organization and rewording some of its constituent parts. See appendix B. We do not intend by this revision, however, to alter the substance of the rule in any respects other than those sepcifically noted elsewhere herein. In order to maintain consistency with the Notice and avoid possible confusion, references to § 76.311 throughout this document are based upon its existing structure and paragraphing scheme.

[3] Subsequent Commission samples of cable industry employment profile data for 1976 and 1977, while indicating some improvement in minority and female employment patterns since 1974, generally attest to the continued underrepresentation of these groups. The results of these studies, as well as the 1974 figures, are attached at appendix C. It must be remembered, of course, that because these statistical surveys relied solely on FCC form 395A data and were not adjusted to account for local labor pool availability variations, they cannot be considered precise measures of EEO performance. They are, nonetheless, sufficiently reliable approximations of the general range of industry achievement in utilizing minority and female employees to raise legitimate questions concerning the adequacy of cable systems' EEO compliance and to support our conclusion that further efforts on our part are required in this area.

[4] National Cable Television Association (NCTA); Cole, Zylstra and Raywid (CZR); Cablecom-General, Inc. (Cablecom); Sammons Communications, Inc., et al. (Sammons) (see appendix A for a complete listing of the parties filing jointly with Sammons).

[5] 425 U.S. at 670, n. 7.

cable television systems.[6] The parties consequently argue that the Court's reference to the cable television EEO rules, which was remarked in our Notice,[7] was either an error or, at best, inappropriate.[8]

6. NCTA also argues that the Commission's past attempts to base its cable EEO jurisdiction on an analogy to its obligation and authority to regulate the employment practices of broadcasters and common carriers are misplaced. NCTA notes that because cable systems do not utilize the spectrum in their activities, the same regulatory restrictions designed to insure nondiscriminatory programing which broadcasters legitimately incur as users of a limited public resource cannot be applied. And, since cable is not mentioned in the Communications Act and the Commission has necessarily refrained from asserting full licensing authority in the area, jurisdiction cannot be grounded on the statutory licensing responsibilities which the Commission has in the broadcast field. Moreover, NCTA contends that our asserted jurisdiction over the employment activities of common carriers is grounded on the recognition in the Communications Act of these enterprises' "special responsibilities" to provide service in a nondiscriminatory manner to the public. But, it is noted, such legislative recognition is totally lacking for cable television. NCTA concludes that neither our authority over broadcast nor common carrier EEO matters can provide support for our exercise of similar regulatory power with respect to cable television systems.

7. CZR and Sammons argue more particularly that our regulation of cable EEO concerns is not "reasonably ancillary" to the Commission's jurisdiction over broadcasting as defined by the decisions in *U.S.* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968) and *U.S.* v. *Midwest Video Corp.*, 406 U.S. 649 (1972), and is consequently beyond our statutory authority. In this regard, CZR reasons that the cable EEO rules go a substantial step beyond the origination requirement sustained in *Midwest Video, supra*, and seek to regulate cable in accordance with the public interest goal of equal employment and not any proper broadcast purpose. Elaborating on this point, Sammons argues:

> Certainly [the cable EEO] rules cannot be said to be "reasonably ancillary" to the technical aspects of broadcast regulation. Unlike the Commission's exclusivity rules, they are unrelated to Commission allocation responsibilities or the need to protect local broadcast service. Unlike the Commission's former program origination rules, they cannot be said to be in furtherance of a goal of diverse local programing service * * *. In short, the Commission's CATV EEO regulations are not "reasonably ancillary" to its regulation of broadcast licensees. (Citations and footnotes omitted.)

Sammons reasons further that the Court's mention of the Commission's EEO rules in *FPC* does not dictate a contrary conclusion. In *FPC*, it is contended, the Court bottomed its positive reference to the Commission's EEO rules on the programing function of broadcasters. But, with the elimination of the program origination requirement, Sammons argues, this function is no longer performed by cable television systems and the Court's rationale may not, therefore, be applied by analogy to support employment regulation of cable television operators. CZR has also addressed the issue of cable television systems' programing role as a basis for our jurisdiction, but has done so not just with respect to origination but with respect to alternative forms of program discretion which and operator might exercise as well.[9] Like Sammons, however, CZR concludes that cable television's programing function cannot vindicate our regulatory control of cable employment practices.

8. The National Black Media Coalition (NBMC) suggests, on the other hand, that the Commission's jurisdiction over cable EEO matters is clear and fully broad enough to encompass the actions proposed in the Notice. NBMC adverts to the Commission's licensing authority under its plenary jurisdiction over use of the electromagnetic spectrum and concludes that this authority requires the development and enforcement of EEO policies for cable television systems. And, NBMC argues that the decision in *FPC* merely reinforces this conclusion since the opinion explicitly recognizes that the Commission's EEO regulations are necessary to insure nondiscriminatory programing.

9. *Discussion.* Despite the thrust of the majority of the comments, we are not persuaded that either the actions proposed in the Notice or the fairly extensive regulations governing cable EEO already embodied in Section 76.311 of the Rules are beyond out authority. On the contrary, we are convinced that the decision in *FPC* taken in conjunction with the jurisdictional standards outlined by the Supreme Court in *Midwest Video, supra*, firmly support our regulatory authority over the employment practices of cable television systems.

10. In *FPC*, petitioners had proposed adoption by the Federal Power Commission of a comprehensive set of regulations designed to curtail employment discrimination by FPC regulatees. The FPC declined to adopt the suggested rules, asserting that it lacked jurisdiction to do so. On appeal, the Court of Appeals for the District of Columbia Circuit reasoned that two distinct types of jurisdiction were at issue:

> One—to which the proposed rule extends—embraces power on the part of the Commission to prescribe personnel practices in detail and to receive complaints, adjudicate them, and punish directly infractions of those practices. The other * * * is power to take into account, in performance of its regulatory functions, including licensing and rate review, evidence that the regulatee is a demonstrated discriminator in its employment relations. *NAACP* v. *FPC*, 520 F.2d 432, 435 (1975).

The court then noted that the first, more expansive type of jurisdiction necessarily involved a power on the FPC's part "to regulate employment discrimination per se," and concluded that a specific statutory mandate would be required to support such broad authority. Reviewing the FPC's enabling legislation, the court determined that this mandate did not exist and that the proposed rule was consequently beyond the FPC's authority to adopt. As to that agency's regulatory power pursuant to the second type of jurisdiction, however, the court stated:

> We can foresee situtations in which consideration by the Commission of a regulatee's discriminatory employment practices * * * could be reasonably related to the pursuit of the Commission's proper objectives. We therefore conclude that the Commission does have jurisdiction over employment discrimination in the narrower sense described at the outset of the discussion. * * * 520 F. 2d at 443-44.

The Supreme Court subsequently affirmed the lower court's judgment, although it described the limits of the FPC's jurisdiction in slightly different terms:

> [The] Federal Power Commission is authorized to consider the consequences of discriminatory employment practices on the

[6] For a more specific statement of this contention, see infra at para. 7.

[7] 60 FCC 2d at 621.

[8] The Court's reference to § 76.311 initially appeared in the version of its opinion printed in United States Law Week. 44 U.S.L.W. 4659, 4662, n. 7. This citation was subsequently deleted in the official report of the case and a reference to the various broadcast EEO rules, which had not been previously included, was inserted in its place. 425 U.S. 662, 670 n. 7. While this revision removed any express allusion to our cable employment regulations from the Court's decision, we do not take it to support the broad contention that the considerations underlying the Court's approval of our broadcast EEO rules are inapplicable to out regulation of cable employment practices. See paras. 12-16, infra.

[9] We believe this to be the better approach since clearly an operator may affect programing, and thus have the capacity to introduce discriminatory choices, not merely when he originates material but whenever program content discretion is afforded him. See paras. 13-16, infra, for details of CZR's broader contentions in this regard and our analysis thereof.

part of its regulatees *only insofar as* such consequences are *directly related* to the Commission's establishment of just and reasonable rates in the public interest. 425 U.S. at 671 (emphasis supplied).

In the sum, the critical determinant in fixing an agency's jurisdictional prerogatives in the EEO field is a direct realtionship or nexus between the proposed employment regulation and the legitimate regulatory objectives of the agency.

11. Neither the Court of Appeals nor the Supreme Court left the specific application of this standard to the FCC to pure speculation, however. Both courts addressed the issue by contrasting the authority of the FPC with that of the FCC. As the Court of Appeals stated:

> We have specifically recognized the responsibility of the FCC to guard against racially discriminatory programing. *Office of Communication of the United Church of Christ* v. *FCC*, 123 U.S. App. D.C. 328, 359 F. 2d 994 (1966). The FCC has reached the conclusion that a broadcaster's programing will inevitably fail fairly to reflect the tastes and viewpoints of minorities if those minorities are systematically excluded from the broadcaster's employ. This is a far different question from the one involved in the appeal before us * * *. [Discrimination] in programing * * * might be so subtle and unsusceptible of direct remedy as to require the eradication of its root cause. 520 F. 2d at 442-43 (footnote omitted).

The Supreme Court was even more explicit, expressly concluding that the FCC's statutory responsibilities clearly provide the necessary jurisdictional nexus to support its broadcast EEO rules:

> The Federal Communications Commission has adopted regulations dealing with the employment practices of its regulatees. See 47 CFR 73.125, 73.301, 73.680, 73.793, 73.599 (1975). These regulations can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U.S.C. 151 et seq., to insure that its licensees' programing fairly reflects the tastes and viewpoints of minority groups * * *. It has nowhere been argued that the Federal Power Commission needs similar regulations in order to promote energy production at reasonable rates. 425 U.S. at 670-71, n.7.[10]

12. It is then the Commission's legitimate interest in assuring the widest, most diversified programing for all segments of the population[11] which provides at least one underpinning for our authority to regulate the employment practices of broadcasters. This same "broadcast purpose" was specifically recognized by the Court in *Midwest Video* as a proper basis for our regulation of cable television. After concluding that, in general, the Commission's jurisdiction over cable television extended to the pursuit of positive broadcast goals,[12] the Court upheld the Commission's former mandatory program origination rule (§ 74.1111(a)), stating:

> The effect of the regulation, after all, is to assure that in the retransmission of broadcast signals viewers are provided *suitably diversified programing*—the same objective underlying regulations sustained in *National Broadcasting Co. v. United States, supra*, as well as the local carriage rule reviewed in *Southwestern* and subsequently upheld * * *. In sum, the regulation preserves and enhances the integrity of broadcast signals and therefore is "reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting." 406 U.S. at 669-70 (emphasis supplied).

In the case of the program origination rule, of course, the objective of "suitably diversified programing" was served by increasing the sources of program material. This objective, however, is no less served, as the Court in *FPC* recognized in the context of broadcasting, by rules such as our EEO regulations which are designed to avoid artificial and adverse effects on the diversity of existing programing. If, then, we may promote diverse programing through regulation of cable television as well as broadcasting, and given that this goal is legitimately furthered by regulation of broadcasters' employment practices to avoid discriminatory programing, we think the conclusion inescapable that we may also, and to the same end, regulate the employment practices of cable operators. In short, our cable EEO rules clearly further a recognized broadcast objective and are therefore within the scope of our "ancillary" jurisdiction over cable television.[13]

13. CZR has suggested, however, that while this analytical approach to our jurisdiction may comport with the standards set down in *Midwest Video*, practical differences between broadcasters and cable television operators render our conclusion untenable. Specifically, CZR contends that discrimination in programing, which our EEO rules are said to guard against, presumes program discretion, and that although broadcasters may exercise such discretion, cable television systems do not. Thus, it is argued, rules directed at cable employment practices are unjustified because the harm they seek to avoid cannot exist. In this connection, CZR contends that the Commission's signal carriage rules and the technical availability of only certain signals largely eliminates any operator choice in determining the broadcast signals which a system will carry. As to origination programing, CZR notes that few operators engage in such efforts, that none are required to, and that in those cases where programing is originated, it is often "prepackaged" premium programing such as that received from Home Box Office, Inc., with little if any content control vested at the system level. Such limited program discretion, CZR concludes, cannot support EEO regulation of the cable industry as a whole.

14. We are not persuaded that the program discretion exercised by cable television operators is so narrowly circumscribed. The Commission's rules, for example, afford every system located outside of all television markets unlimited discretion in choosing its permissive signal complement.[14] This same freedom also applies to all small systems (less than 1,000 subscribers), regardless of market location.[15] Further, in the first 100 markets it is virtually impossible for cable systems to have their entire carriage selection dictated by the rules,[16] and all systems are unrestricted in their carriage of specialty stations.[17] A similarly unfettered choice is available to operators in their carriage of educational stations,[18] as well as in their selection of alternative program sources under the late-night programing provisions of the rules.[19] The suggestion, moreover, that the limited technical availability of signals seriously restricts the scope of these carriage options is difficult to credit. The increasing use of common carrier, CARS and earth station signal

[10] NCTA, CZR and Sammons have correctly observed that this conclusion by the Court is dictum since the validity of our rules was not at issue in *FPC*. In the absence of countervailing authority, however, we consider the Court's statement to be a persuasive confirmation of the Commission's own long-standing assertion of jurisdiction over the employment practices of broadcasters. See *Nondiscrimination in Employment Practices of Broadcast Licensees*, FCC 68-702, 13 FCC 2d 766 (1968) and *Nondiscrimination in the Employment Practices of Broadcast Licensees*, FCC 76-426, 60 FCC 2d 226, 229 (1976).

[11] See *National Broadcasting Co.* v. *United States*, 319 U.S. 190 (1943).

[12] In this regard, the Court held: "[The] regulatory authority asserted by the Commission in 1966 and generally sustained by this Court in Southwestern was authority to regulate CATV with a view not merely to protect but to promote the objectives for which the Commission had been assigned jurisdiction over broadcasting." 406 U.S. at 667.

[13] To the extent, of course, that cable operators are also licensees of CARS facilities, our licensing responsibilities under the Communications Act of 1934, as amended, provide an additional and distinct jurisdictional support for our cable EEO rules.

[14] See § 76.57(b).

[15] See §§ 76.59(b), 76.61(b) and 76.63(a) as it relates to § 76.61(b).

[16] See § 76.61 (b) and (c) as it relates to the permissive carriage of independent signals in the first 50 markets and, as modified by § 76.63(a), as it relates to similar carriage in the second 50 markets.

[17] See §§ 76.59(d)(1), 76.61(e)(1) and 76.63(a) as it relates to § 76.61(e)(1).

[18] See §§ 76.59(c), 76.61(d) and 76.63(a) as it relates to § 76.61(d).

[19] See §§ 76.59(d)(3), 76.61(e)(3) and 76.63(a) as it relates to § 76.61(e)(3).

importation methods, as well as the regulatory need to limit distant signal carriage in the first place, certainly argue to the contrary. We conclude that cable operators exercise substantial program discretion in the context of their carriage determinations and that such discretion clearly affords the opportunity for discriminatory choices which our EEO rules are properly intended to avoid. The latter point is exemplified with particular force in the case of specialty stations, whose wide availability is especially conducive to achieving our goal of program diversity and is positively encouraged by Commission policy. It seems most unlikely, however, that cable systems engaged in employment discrimination based on ethnic background or religion, for example, would undertake carriage of stations that direct their programing to individuals characterized by the very ethnic or religious traits which the operator has discriminated against in employment.

15. Origination programing, of course, provides an even more direct and pervasive form of program discretion than signal selection. And, while it is true that cable systems are no longer required to produce such material, this fact is not jurisdictionally dispositive. The relevant point is that every system may, and contrary to CZR's contention a substantial number of systems do, originate programing. As of September 1, 1977, for example, data compiled by Television Digest, Inc., indicated that out of 3,911 operating systems, 1,097, or 28.04 percent, offered nonautomated origination programing.[20] It is apparent, moreover, that even those systems whose originations consist exclusively of "pre-packaged" premium programing (that is, "pay-cable") are capable of exerting a form of content control over the material supplied to them by such sources as Home Box Office, Inc.[21] Beyond the fact that systems can initially select pay programing from several alternative sources, they may, and in our experience do, decline to carry particular programs provided by these sources at various times and for various reasons, in much the same manner that television broadcast stations may fail to "clear" programing supplied to them by a national television network. In such circumstances, of course, systems may also select replacement programs and thus engage directly in a programing function.

16. In sum, both in their signal carriage decisions and in connection with their origination function, cable television systems are afforded considerable control over the content of the programing they provide.[22] And, while this control may vary in kind and degree from the discretion exercised by broadcasters, it is nonetheless extensive and fully adequate to justify our regulatory efforts to insure that it is exerted in a nondiscriminatory fashion. Our conclusion in this regard is, we believe, perfectly consistent with the decision in *FPC*, for nothing therein intimates that the Commission's EEO jurisdiction is dependent upon total programing discretion by our regulatees, either in the sense that all operators must exercise a particular type of discretion (for example, origination) or that where they do exercise discretion, it must be complete (for example, signal selection).

Policy Clarification

17. Given the apparent underrepresentation of minorities and women suggested by our study of cable annual employment reports for 1974, we concluded in the notice that:

> [Although] our nondiscrimination rules are fairly comprehensive, there is a further need to describe and exemplify the measures which cable operators should undertake to promote the full realization of equal opportunity in employment for minorities and women. 60 FCC 2d at 618.

Accordingly, we endeavored in paragraphs 9-14 of the notice to clarify the meaning and scope of our operational, as distinguished from our informational, EEO requirements.[23] We emphasized first that these rules require not only nondiscrimination in employment (§ 76.311(a)), but the establishment and pursuit of a positive, continuing program of specific practices to assure equal employment opportunity—in brief, an affirmative action plan (§ 76.311(b)(1)). The starting point, we observed, in achieving these broad objectives is a reaffirmation by each cable operator of its commitment to equal employment opportunity in all phases of its employment activities—recruitment, evaluation, selection, promotion, compensation, training and termination. Each operator's program should, we concluded, set forth at the outset its adherence to this policy goal.

18. Turning to the specific elements of a complaint affirmative action program, we reviewed the provisions of § 76.311(b)(2) and pointed out that these rules require each cable system's program to: (a) Identify those individuals responsible for employment decisions and establish procedures to insure that these persons function in a consistent, nondiscriminatory manner; (b) establish effective methods to communicate the operator's equal employment policies to its employees and its prospective employees, including, among other outreach techniques, the posting of appropriate notices; (c) formulate procedures to continuously review the system's personnel practices to assure that, regardless of how neutral they appear, these practices are not having adverse effects on minorities and women. In this regard, we underscored the need for each operator to actively seek out qualified minorities and women for possible employment, and the necessity for each system to constantly evaluate and, where indicated, improve the effectiveness of its recruitment methods. We also took note of particular outreach techniques which might prove useful in achieving increased minority and female referrals;[24] (d) devise methods to insure that once a minority or female employee is hired, he or she is placed and promoted in a nondiscriminatory fashion. To this end, we indicated that a cable system's employment program should investigate possible methods of fostering the advancement of minorities and women in the system's organizational structure, particularly training programs—internal or external—which might be utilized to improve the skills and qualifications of minorities and women. We emphasized that our rules do not require a formal training program, but noted that, where appropriate and feasible, such programs can provide an extremely valuable means of fulfilling each operator's obligation to affirmatively promote equal employment opportunity. We also remarked that insuring nondiscriminatory allocation of such items as compensation, fringe benefits and opportunities to perform overtime constituted an essential EEO responsibility which each operator's employment program should address.

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[20] *Television Factbook*, Services Volume, 1978 ed., p. 76-a.

[21] It should be noted that less than half of the systems originating non-automated programs provide a "pay-cable" service at all. Id. Even fewer systems provide this service as the exclusive form of their originations.

[22] Access programing represents still another area in which cable operators are afforded an opportunity to influence the program material supplied to subscribers. In this case, however, the control is more subtle and is based primarily upon the broad discretion which a system may exercise in the day-to-day administration of its access services—as, for example, in program playback and production scheduling decisions—rather than on direct program content or source choices by the operator.

[23] Sections 76.311 (a) and (b) of the rules, which we did not propose to amend, govern a system's direct "operational" EEO obligations, while §§ 76.311 (c), (d), and (e) impose filing and reporting requirements which are designed primarily to assist the Commission in its monitoring and enforcement responsibilities. There is, of course, some overlap between these two broad categories of the rules. In particular, the detailed provisions of § 76.311(c)(2) concerning the contents of an operator's EEO program statement are clearly indicative of the types of actions which we intend an operator's actual employment program to encompass. Indeed, we commend these provisions to all operators as helpful in particularizing the requirements of § 76.311(b).

[24] See 60 FCC 2d at 622, n. 5.

19. We expressly invited comment in the notice on the foregoing clarifications of our rules, but the parties participating in this proceeding have been, at least with respect to the specific elements of our statement, uniformly silent. Whatever the import of this fact, we believe the guidance afforded by our observations is both warranted and helpful in assisting cable operators to understand their obligations and thus in promoting our equal employment goals. Accordingly, we shall adopt the clarifications outlined in the notice and reiterated herein. We should note, however, that the clarification should not be taken as exhaustive or as in any way limiting the scope of actions which cable systems might incorporate in their employment programs. Rather, it is intended to highlight and exemplify some of the more critical, and we believe minimally necessary, elements of an effective and therefore compliant program.

ANALYSIS OF EEO PROGRAM

20. Our experience in conducting the study of 1974 cable employment statistics and the general review of our EEO rules and procedures which we undertook prior to initiating this proceeding led us to conclude in the Notice that various amendments to the filing and reporting requirements of §§ 76.311 (c) and (d) were warranted. These changes would, we suggested, clarify some provisions and generally improve the usefulness of the employment information reported to the Commission. This would, in turn, upgrade both our and the operators' ability to analyze existing EEO programs and to detect and remedy noncompliance with the rules.

21. *Specific proposals.* Currently, our rules do not oblige a system to provide us with data concerning the percentages of minority groups and women in the local labor pool area from which system employees are drawn or reasonably could be drawn. We indicated in the Notice, however, that such an "availability survey" would afford the Commission and the system a valuable analytical tool in evaluating the effectiveness of EEO programs since it would establish the reference base against which the actual employment profile of a system as reported in its FCC form 395A could be compared. Accordingly, we proposed to require cable television systems to include an availability survey as part of their EEO program statement. Recognizing that there is no single definition of "local labor pool," we also suggested that each system should define this concept in the context of its own circumstances and location and then supply corresponding data.[25] Finally, we pointed out that where a comparison of a system's work force and availability figures demonstrates a substantial incongruity, specific remedial steps may be required to correct the deficiencies, unless there is a satisfactory explanation of the incongruity.

22. The Notice also advanced the suggestion that because affirmative action programs are by their nature evolving and dynamic, statements of these programs, and the availability data which they would include, should be updated at regular intervals rather than simply amended or supplemented at the operators' discretion as currently permitted.[26] We therefore proposed that revised EEO program statements be filed every 3, or perhaps every 5 years, observing that this filing interval should provide reasonably current data yet permit recognizable trends to develop. The Notice further sought comment on an appropriate employee level threshold for the filing of these written program statements. In this connection, we stated:

> It would appear that the imposition of such [filing] requirements may be unnecessarily burdensome on cable systems with less than five (or perhaps 10) full-time employees, and that reliable statistical analysis is more difficult for smaller employment units. 60 FCC 2d at 624.[27]

We added, however, that regardless of the filing threshold ultimately adopted, if information developed indicating a need, the Commission might require additional reports, data or other appropriate remedial steps from any operator irrespective of its number of full-time employees. Moreover, the Notice remarked that this filing threshold concept would not affect the obligation of all systems to comply with other pertinent provisions of § 76.311. Appropos of this observation, we expressly proposed an amendment to § 76.311(d) to clarify that every operator is required to file an annual report of complaints without regard to employee levels.

23. In an attempt to lessen the burden imposed by our proposals and to channel system EEO efforts into meaningful areas, we proposed to exempt from coverage in any system's employment program and thus from coverage in the system's program statement, any minority group "insignificantly represented" in the system's local labor pool area. In connection with this suggestion, we invited particular comment on what population proportion might define "significant." Finally, as mainly a procedural amendment, we proposed to delete the provisions of § 76.311(c)(2) dealing with the contents of EEO program statements and to instead substantially reflect these requirements in a "Sample Affirmative Action Program." [28] The proposed sample program also included appropriate sections reflecting the relevant amendments to the program statement provisions advanced elsewhere in the Notice (e.g., section IX of the sample program provides for reporting of the availability survey data discussed in paragraph 21, supra). We sought comment on the sample program itself and on whether it should be adopted as a guideline in conjunction with our proposed amendments to § 76.311(c) or whether it should be adopted as an official Commission form.

24. *Comments.* With the exception of NBMC, the commenting parties generally oppose the imposition of the additional filing requirements contemplated by the Notice. Cablecom, indeed, suggests that the Commission should not amend its EEO rules in any respect. Instead, it is argued, the Commission should utilize available and forthcoming data in this area to analyze its need for EEO jurisdiction and then present its conclusions to Congress in connection with the pending congressional review of the Communications Act. NCTA contends that the cable industry has recently undertaken great efforts to improve its EEO performance and that notable indications of success, particularly in the major television market areas where the bulk of minority populations reside, are becoming evident. NCTA concludes that the Commission should afford the industry a reasonable time to bring these efforts to full fruition

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[25] The Notice remarked, however, that where a system is situated in a Standard Metropolitan Statistical Area (SMSA), we would consider the SMSA to be the local labor pool area for purposes of the availability survey. We also noted that where this was not the case, city or county-based figures would suffice, and indicated appropriate sources for this data.

[26] Presently, § 76.311(c)(1) imposes a one-time program statement filing requirement and § 76.311(c)(1)(i)(a) requires that any changes to this statement be filed with the Commission by May 31 of each year. There is, however, no obligation to periodically update the statement once it has been submitted.

[27] Under the existing rules, a five or more employee threshold is utilized to determine the obligation of systems to file program statements. Section 76.311(c)(1)(i)(b). For purposes of determining the number of employees in the context of this filing requirement, any system which constitutes a part of a "single employment unit" within the meaning of § 76.311(b)(3) must aggregate all employees of the "employment unit." If this aggregate total is less than 5, no statement need be filed by any system comprising the "employment unit." If the total is 5 or more, however, the systems comprising the "employment unit" must file a combined statement. See § 76.311(c)(1)(i)(c)(1). We note that while the Notice proposed possible amendment of the number of employees defining the filing threshold, no change was contemplated in the methods or consequences of aggregating employees set by the current rules and summarized here.

[28] 60 FCC 2d 618 at appendix 2.

before imposing further EEO requirements that may prove unnecessary. CZR argues that our proposed filing requirements would clearly constitute an additional and significant burden for an industry already encumbered by detailed Federal regulation and reporting obligations and observes that such a result is in direct conflict with the intent of Congress as expressed in the Federal Reports Act, 44 U.S.C. 3512. This result is also inconsistent, in Sammons' view, with the Commission's stated purpose in this proceeding of avoiding unnecessary increases in the regulatory burden on cable television operators. NBMC, on the other hand, characterizes our proposals as basically requiring the filing of a single form and suggests that such a requirement cannot be considered overly burdensome, especially in view of the critical objective which the Commission is seeking to serve.

25. More specifically, NCTA, Oregon Cable Communications Association (OCCA) and Liberty Communications, Inc. (Liberty) point to the availability survey aspect of our proposals as posing significant problems. They argue that most cable systems operate in areas outside of SMSA's and that in these locations and statistical information required by the availability survey is difficult if not impossible to obtain.[29] Moreover, it is reasoned, the suggestion that such systems define their own local labor pool area in constructing appropriate survey data is impractical, given the resources and expertise of most systems, and is seriously complicated by the fact that many integrated systems operate in several communities with disparate demographic characteristics. If the Commission considers this data vital, NCTA, OCCA and Liberty conclude, the Commission itself should gather the relevant figures since it is clearly better equipped to do so and has greater access to the needed information.

26. In conjunction with our proposal to require availability surveys, we adverted to "substantial incongruity" between the data reported therein and a system's employment profile as a basis for further Commission action with respect to that system's employment performance. NCTA finds this reference disturbing because the concept of incongruity is not defined, thus leaving cable operators uncertain as to what is expected of them. NBMC, however, objects to this approach for very different reasons. It believes that our suggestion does not go far enough and that all systems found by our statistical comparison to be "outside the zone of reasonableness" should be required to devise and make available for public inspection "self-articulated goals and timetables for correcting employment incongruities."

27. Burden considerations similar to those advanced in opposition to the availability survey requirement also convince most parties (NCTA, OCCA, Liberty, Sammons and CZR) that our proposal to require periodic updating of EEO program statements is unwise. Several of these commenters suggest that the information supplied on cable systems' annual employment reports is more than adequate to accomplish the Commission's essential purpose of monitoring the industry's compliance with EEO policies and rules, and appear to contend as a result that program statements should not be required at all. At the very least, it is urged, the Commission should not demand more than the one-time statement filing dictated by the present rules. Alternatively, Liberty and OCCA suggest that the Commission could require updated program statements only where a system's annual employment reports indicated a need for such revision. If the Commission determines nonetheless to adopt a periodic filing requirement, these parties strongly favor a 5-year, as opposed to a 3-year, interval. In this regard, they point out that 5-year filings would reduce the compliance burden, and would coincide with both CARS license terms and with the availability of interim census data. By contrast, NBMC points to the "dismal" minority and female employment record of the cable industry as underscoring the need for close Commission scrutiny of cable system employment programs. To this end, NBMC urges that EEO program statements should be required of cable operators annually.

28. Various responses were received in connection with our request for comment on an appropriate employee level threshold for filing program statements. At one extreme, CZR proposes that our filing requirement should apply only to systems with 50 or more employees, noting that neither the U.S. Equal Employment Opportunity Commission (EEOC) nor the Office of Federal Contract Compliance Programs (OFCCP), which have specific statutory responsibilities for EEO matters, requires written reports from employers of less than 50 individuals. CZR contends that these agencies have set their reporting thresholds on the proper assumption that statistical information from smaller employee units is less valuable, and argues that the Commission should adopt a similar approach. At the very least, however, CZR urges that as between the 5- and 10-employee levels suggested by the Notice, the Commission should elect the higher figure. In this regard, CZR contends that statistical data gathered from such small units as 5-employee cable systems would be practically worthless and that reporting requirements for these systems would consequently constitute an utterly unnecessary burden. Moreover, this burden would be particularly keenly felt due to the limited resources which these small enterprises command. Finally, CZR notes that the Commission has adopted a 10-employee filing criterion in the broadcast area and that no logical reason exists to support any lower figure in the context of cable television regulation. NCTA, Liberty, Sammons and OCCA variously advance similar arguments to support higher employee trigger levels, many suggesting that a 15-employee threshold would be appropriate. In this connection, several parties note that Congress has set the jurisdictional limit of EEOC's authority at 15 employees and that this fact indicates a congressional determination concerning the size of business entities susceptible to equal employment regulation which the Commission should respect. NBMC, however, contends that the filing threshold should be even less than the 5 employee mark utilized in our current rules and suggested as a lower limit in the Notice. NBMC argues that the statement filing requirement is essential in vindicating the Commission's responsibility to insure nondiscrimination in cable employment and that coverage of the entire industry by this provision is therefore necessary. NBMC consequently reasons that all cable systems, regardless of employee levels, should be under an obligation to file updated statements of their EEO programs.

29. Our proposal to exempt from coverage in a system's EEO program and program statement any minority "insignificantly" represented in the system's local labor pool area prompted concurrence by NCTA and dissent by NBMC. NCTA suggests that an appropriate population percentage defining "insignificant" might be 10 percent. NBMC suggests that the proposal should be dropped altogether, arguing that no rational basis exists for establishing an acceptable cut-off percentage. With respect to our proposed clarification of §76.311(d)(1), Sammons contends that requiring all systems to file an annual report of complaints regardless of system size is burdensome and should be reconsidered. Should the Commission elect to retain this obligation, however, Sammons urges us to incorporate the required report as part of the annual employment report (FCC form 395A) and thereby lessen the reporting burden imposed on all operators. Several other parties (NCTA, Liberty, OCCA) recommend a similar consolidation at

[29] Indeed, the parties generally observe that census data does not provide the kind of detailed minority class breakdowns which the survey contemplates.

least in cases where the reporting system has had no complaints filed against it during the year.

30. Finally, on the question of whether the sample affirmative action program presented in the Notice should be adopted as a guideline or an official form, NCTA recommends the latter on the grounds that a form would be simpler for systems to complete and easier for the Commission to process. Sammons, on the other hand, suggests a guideline approach since this would avoid rigidity and permit systems to experiment in constructing an effective EEO program. Beyond these format considerations, the parties have directed several miscellaneous comments to various substantive provisions of the sample program. Specifically, NCTA and Sammons express concern that section V of the sample program, which requests an analysis of a system's recruitment performance and new hires, may require operators to make and retain records indicating the race, religion, national origin and sex of job applicants that are illegal under various State laws. NCTA also questions the viability of the provision in section IV of the sample program which indicates that current employees are encouraged to refer minority and female applicants. Restricting such referrals to minorities and women, NCTA contends, may well pose problems of reverse discrimination.[30] With respect to section VI of the sample program, Sammons notes that many systems, particularly smaller ones, do not possess the resources needed to implement employee training programs. Section VI should, it is concluded, be amended to indicate that training programs are not required by the Commission's EEO rules.

31. *Discussion.* At the outset, we must reject the notion that amendments to our cable EEO rules or procedures should await either Congressional action revising the Communications Act of 1934[31] or possible positive developments in the industry's employment performance as a result of recent NCTA sponsored efforts in this direction. Discharge of our existing responsibility to devise and pursue the most effective regulatory program to assure nondiscrimination in cable employment cannot be made contingent on such uncertainties.[32] This is not to say, of course, that we do not encourage voluntary commitments to improve EEO performance. We intend only that the mere promise or prospect of improved EEO performance cannot, standing alone, justify regulatory reticence.[33] We are persuaded, nonetheless, by other, more concrete considerations not to adopt the bulk of the rule amendments advanced in the Notice. Specifically, we are convinced that the proposed availability survey and periodic statement filing requirements represent appreciable burdens for cable television operators which should not be presently imposed. We must emphasize that our conclusion in this regard in no way reflects a dulled sensitivity to the problems of equal employment in the cable industry or a lessened commitment on our part to insure that these problems are resolved. Rather, our decision reflects a conviction that alternative measures, less intrusive than those originally proposed in the Notice, might equally further our goal of improved EEO performance while also serving our stated purpose in this proceeding of minimizing increased recordkeeping and reporting burdens on cable systems. In this regard, we are persuaded that an increased allocation of Commission resources to EEO compliance matters, including a more active Commission role in data collection and significantly upgraded review, monitoring and enforcement efforts on our part, taken in conjunction with the heightened awareness by cable operators of their EEO obligations which our policy clarification engenders, can provide the impetus needed to better the industry's employment record. In any event, we believe it preferable to at least test these means before encumbering cable operators with additional regulatory demands.

32. In particular, we note that our proposal to require an availability survey rested primarily on a conviction that local labor pool data would provide a valuable "analytical tool for evaluating an effective affirmative action program."[34] We remain so convinced, but believe that Commission collection and collation of the pertinent demographic data can afford us this tool without the attendant research and reporting burdens which inhere in the survey obligation outlined in the Notice. Indeed, in some respects, our undertaking to gather the relevant data might better serve our purposes. Commission collection of labor force figures, for example, would permit us greater flexibility in updating this information than would be possible under a fixed 3- or 5-year filing procedure, and would also likely result in a more accurate statistical compilation since we can bring to the process a uniform expertise that disparate cable systems with widely varying resources could not. We are aware that centralized data collection may result in some statistical distortion as well, due to our inability to fully account for appropriate variations in the definition of local labor pool in areas outside of SMSA's. Our suggestion in the Notice, in fact, to permit each system to delineate its own labor pool area was prompted by concern for these local differences.[35] On balance, however, it does not appear that the availability survey mechanism would significantly ameliorate this distortion. System operators have uniformly decried their ability and resources to properly determine local labor pool boundaries and would likely eschew this determination, resorting instead to the widely available city or county-based demographic information which we expressly approved in the Notice as acceptable in constructing availability survey data.[36] System-based data submission would, in these circumstances, produce no less, and possibly more, distortion than Commission ascertainment of labor pool minority and female availability. In this respect, we note that in establishing our availability data base we shall endeavor to approximate suitable labor pool limits for each employment unit based on our analysis of relevant geographic and demographic considerations rather than by rigid reliance on single county or city boundaries.[37] In any event, any system whose EEO compliance we may suspect based on substantial incongruities between its Annual Employment Report statistics and our own demographic data would be afforded an opportunity to explain these incongruities, including an opportunity to redefine its local labor pool area

[30] CZR has addressed this question in a more general sense, contending that any affirmative action requirement may potentially result in reverse discrimination. CZR consequently recommends that our rules be amended to prohibit this possibility.

[31] 47 U.S.C. 151 et seq. See H.R. 13015, 95th Cong., 2d Sess. (1978).

[32] Clearly, the pendency of legislative deliberations contemplating the amendment of our statutory mandate does not affect our obligation to act in conformance with the requirements we perceive inherent in the present law. In this regard, Cablecom's implication that we should pause in our regulatory efforts to evaluate the need for our EEO jurisdiction is a moot point. We have long ago determined that the Commission should and could concern itself with equal employment matters. See *Report and Order in Docket 19246*, FCC 72-275, 34 FCC 2d 186 (1972). We have not altered this conviction, although we have, over time, more precisely defined the basis of our authority in this area. See paragraphs 9-16, supra. The essential question before us in this proceeding, then, is not our need for jurisdiction, but the appropriate nature and scope of a regulatory framework which will further our articulated employment goals without unduly impinging on competing regulatory objectives.

[33] See *Report and Order in Docket 19246, supra* at 189-90.

[34] 60 FCC 2d at 623.

[35] Id.

[36] 60 FCC 2d at 623, n. 6.

[37] We intend, moreover, to apply this same flexible approach to our determination of labor pool parameters for systems operating within SMSA's in order to obtain the most accurate data possible.

where this may be appropriate, before any final action is taken.[38]

33. Our decision to collect and update labor pool statistics ourselves also serves to substantially attenuate the need for a periodic filing requirement since a major concern in suggesting this provision was to obtain regularly revised availability figures (part IX, sample program). It is true, of course, that the proposed sample program also requested other information, such as recruitment sources (part IV), job hires (part V), and training benefits (part VI), which could be expected to change over time and which we sought to update as well. We do not believe, however, that this information is so critical to our fundamental purpose of improved monitoring and evaluation techniques as to separately justify periodic reporting. In this regard, we note that the data sought in these parts is primarily concerned with detailing corrective actions taken by a system whose actual minority and female employment figures would suggest substandard performance. In this sense, then, the data in parts IV, V and VI of the sample program becomes critical to our evaluation of system EEO performance only if an initial determination of employment disparity is made. By contrast, availability statistics are essential to a meaningful threshold evaluation of all systems' apparent compliance with our EEO rules. We believe it appropriate, therefore, to seek the type of information requested in parts IV, V and VI on a demand basis rather than requiring it to be regularly provided by every operator. In this connection, we note that updated EEO program statements, to include additional information not usually reported, may be required of any system whose employment performance is suspect based on our analysis of FCC form 395A data and corresponding labor pool figures.[39]

34. We will, however, continue to require all cable television systems with five (5) or more full-time employees[40] to file an initial EEO program statement.[41] We believe this requirement usefully functions to direct each system's attention to the need for a well-defined equal employment program and to provide the Commission with baseline information on these programs. In connection with our rules governing the contents of such statements, we have elected to retain the provisions of existing § 76.311(c)(2) rather than adopting a modified version of the sample program either as a guideline or as a Commission form. A basic purpose in proposing the sample program format was to provide an appropriate vehicle for reporting periodically updated information in several areas. In view of our actions today declining to adopt a regular revision requirement, however, this justification no longer obtains.[42] We shall also retain the provisions of current § 76.311(c)(1)(i)(a) requiring any amendments or changes to existing EEO program statements to be filed with the Commission by May 31 of each year.

35. With respect to our proposal permitting the exclusion of "insignificantly represented" minorities from coverage in a system's EEO program, we are persuaded by the paucity of the record on this issue, not to adopt such a provision at this time.[43] We are, on the other hand, convinced that our suggested amendment of § 76.311(d)(1) clarifying the obligation of all systems, regardless of employee levels, to file an annual report of complaints is warranted and we shall adopt it as proposed. Since all operators are required under our rules to provide equal opportunity in employment, the Commission should be made aware of discrimination complaints filed against any system subject to our jurisdiction, not just those with a set number of employees. Specific allegations of employment bias are, unlike statistical comparisons, not dependent for their reliability on employee levels. Consistent with our desire to minimize the reporting burden on cable systems, however, we are also persuaded that the annual report of complaints can properly be combined with the annual employment report required by § 76.311(e).[44] In fact, this change has already been reflected on more recent versions of FCC form 395A.[45] To formally recognize this reporting method, we are amending § 76.311(d) appropriately.

ENFORCEMENT AND MONITORING: COMPLAINTS

36. In paragraphs 21-26 of the Notice we considered the nature and scope of the monotoring and enforcement efforts which we intend to pursue in the EEO area, as well as our proposed use and disposition of individual complaints of employment discrimination in the context of our enforcement and monitoring program. At the outset, we discussed the broad principles governing complaint employment performance, stating:

> Both the Commission and the courts have recognized that nonproportionate minority and female employment—standing alone—does not necessarily evidence discrimination requiring administrative action. Thus, in *Stone* v. *FCC*, 466 F. 2d 316, *rehearing denied*, 466 F. 2d 331 (1971), the court noted that disproportionate minority employment was in a "zone of reasonableness" in light of the licensee's affirmative recruitment practices. Conversely, "* * * a disparity that is reasonable in light of a recruitment policy might not be reasonable in its absence." *Bilingual Bicultural Coalition of Mass Media, Inc.* v. *FCC*, 492 F. 2d 656 (D.C. Cir., 1974). In this regard, it should be noted that such a "zone" is not static and that continued operation of an affirmative action plan should result in additional employment opportunities for minorities and women. 60 FCC 2d at 625.

We then outlined those measures we would consider appropriate in seeking to remedy apparent deviations from this standard, including requests for

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[38] It is true, of course, that one objective in proposing system collection of availability data was to afford each operator access to the specific labor pool statistics needed for a critical self-analysis of its EEO program and that this purpose is undercut by the centralized data gathering approach we are adopting today. We consequently intend to investigate means by which the labor force figures compiled by the Commission can be made available to individual operators.

[39] Indeed, as we observed in the Notice, any system, irrespective of its obligation to file program statements under the rules, may be required to submit relevant information to the Commission if its employment performance appears inadequate.

[40] Considerable attention was directed in the comments to the appropriate employee level filing threshold for updated statements. Since, however, we are not adopting a periodic filing requirement but are substantially retaining the current filing obligation, we feel bound, at least on the record before us, to continue the existing employee level trigger. *See Office of Communication of the United Church of Christ* v. *FCC*, 560 F. 2d 529 (2nd Cir. 1977).

[41] Our action today eliminating the certification process does not affect this obligation. Under our new registration procedure, each operator with five or more full-time employees will be required to submit an EEO program statement at the time of registration. See *Report and Order in CT Docket No. 78-206*, FCC 78-690, (1978) at para. 14, and new rule § 76.12(g) adopted therein. In this connection we are amending § 76.311(d) to delete reference to former rule § 76.13(a)(8) and to add a reference to § 76.12(g).

[42] Our decision not to adopt the sample program renders moot several points addressed to its provisions by various parties. See para. 30, supra.

[43] Our collection and use of availability data should give us experience in delineating the concept of "insignificantly represented" minorities in the context of cable employment patterns. We shall, therefore, consider revisiting this rule proposal after dealing with this data for some time.

[44] Section 76.311(e) implies that only those systems with five or more full-time employees would file FCC form 395A, thus rendering this report unsuitable as a means of reporting compliants. In actuality, however, *all* systems are sent these forms and all systems must sign and return them to the Commission, although only those with five or more full-time employees are required to complete the employment profile section. We are amending § 76.311(e) to clarify this point.

[45] See § 76.403. The form provides a block to be initialed by each operator if no complaints have been filed against the system during the calendar year. If complaints have been filed, an appropriate report is required to be attached.

more specific data, use of on-site investigations and, in the case of significantly deficient EEO programs, the establishment of goals and timetables. In connection with the last of these alternatives, we explained that the fixing of specific goals and timetables would be left initially to the operator concerned, noting, however, that our evaluation of the operator's overall performance would be based on whether the system had established meaningful goals and made substantial efforts to achieve them. Finally, we expressly retained the option to order a hearing in cases where substantial and material questions of fact relating to a system's employment policies and practices could not be otherwise resolved, although we anticipated that such a procedure should be rarely required.

37. In paragraphs 25-26 of the Notice, we reiterated our intention to refer individual complaints of discrimination against cable television systems to appropriate local, State and Federal agencies, remarking that this approach was consistent with our view that it is beyond our responsibility to remedy individual employment discrimination. We urged prospective complainants, therefore, to register their grievances with these various agencies directly: we did, however, indicate that in the event no local, State or Federal body had jurisdiction over a cable-related discrimination complaint, we would hear specific allegations of violations of our EEO rules and determine what action might be appropriate. We observed that such complaints may result in an internal audit of the relevant system's Form 395A and EEO program to determine whether the operator appears to be discriminating in its employment practices. If such a determination is made, we indicated we would notify the local franchising authority of this fact and of whatever remedial action we had directed. Lastly, we noted that wherever any local, State or Federal agency or court of competent jurisdiction makes a final determination that a cable television system has engaged in employment discrimination, we would consider such findings. We expressly emphasized, however, that these findings would not necessarily present a substantial question or a basis for further inquiry under the Communications Act or under our own rules.

38. *Comments.* As a general matter, several parties (NCTA, CZR, Sammons, Liberty, OCCA) express concern that our proposed procedures would be grossly duplicative of the enforcement and oversight functions of numerous other agencies, both local and national, and particularly of EEOC. More specifically, Sammons suggests that the detailed enforcement methods outlined in the Notice, especially the imposition of corrective employment goals and timetables, constitute regulation of employment discrimination per se, and are, therefore, beyond the scope of this Commission's statutory authority as defined in *FPC*. And, in connection with the "goals and timetables" remedy, both CZR and NCTA contend that this approach treads perilously close to an unconstitutional quota system, with its attendant reverse discrimination implications. NCTA also urges that the Commission's proposed enforcement mechanisms are predicated on ill-defined or undefined standards and that cable operators are consequently left uncertain as to their potential liability. Pointing variously to our use of such terms as "zone of reasonableness," "significantly deficient EEO program" and "substantial incongruity" as criteria for evaluating the adequacy of system EEO performance, NCTA complains that we have given these phrases no ascertainable substance.

39. In connection with our complaint procedures, NCTA is particularly disturbed by our stated intention to entertain individual complaints of employment discrimination and to take "appropriate action" based thereon. First, NCTA notes, the Commission has given no indication of what sanctions might constitute such appropriate action. Moreover, it is argued, the court of appeals' decision in *FPC* expressly found the adjudication of individual complaints to be beyond the jurisdiction of an agency lacking explicit statutory authority to regulate employment discrimination. This Commission's role in processing complaints, NCTA concludes, should be limited to "educating cable operators, maintaining records respecting employment and monitoring the resolution of complaints filed with other more appropriate agencies." If required, NCTA concedes, we could refer complaints to these agencies for their disposition. And, given the abundance of EEO-concerned agencies at all levels of government and the almost certain existence of a local franchising authority for any particular cable system, NCTA contends there is little likelihood that there would be no appropriate agency which could accept such referrals. Sammons, on the other hand, sees no need to refer complaints or related employment information to local franchising authorities at all, arguing that any such information would be available for public inspection at the cable system concerned and thus easily accessible to local authorities.

40. NBMC takes issue with our conclusion in paragraph 26 of the Notice that a finding of discrimination by another agency or entity would not necessarily prompt action or further inquiry on our part. This conclusion, NBMC argues, cannot be reconciled with the testimony of former Commissioner Hooks and former Chairman Wiley before the House Subcommittee on Communications in 1976, where, in part, it was stated:

> Mr. HOOKS. [I]t is still my position that a reasonable cause determination [by another agency] at the very least raises a roadblock of some sort which the Commission is obligated on its own to investigate * * *.
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> Mr. WILEY. I would not disagree with that.

And, of these two contrasting positions, NBMC contends the latter clearly reflects the proper, indeed the mandatory, course.

41. *Discussion.* The contention that our enforcement role in EEO matters duplicates that of EEOC and is therefore unnecessary rests on the faulty assumption that the functions and objectives of this Commission and EEOC are substantially identical. In point of fact, however, our purposes, and consequently our enforcement mechanisms, are considerably different. Thus, as we observed in *National Broadcasting Company, Inc.*, FCC 76-135, 58 FCC 2d 419, (1976), *aff'd sub nom., National Organization for Women* v. *FCC*, 555 F. 2d 1002 (D.C. Cir 1977):

> Our reading of the legislative history of the Civil Rights Act of 1964, particularly of its 1972 amendments, impresses upon us that EEOC, through conciliation if at all possible, attempts to make aggrieved persons whole. The Communications Act of 1934, as amended, is of a different character, however. The basic purpose of the Act is regulation in the public interest and not the creation of private rights. *Daly* v. *Columbia Broadcasting System, Inc.*, 309 F. 2d 83, 85 (1962). Our rules are promulgated and enforced consistent with our primary statutorily defined objectives, the regulation of interstate and foreign commerce in communications. (Footnote omitted.)

And, as the U.S. Court of Appeals for the District of Columbia Circuit more recently noted in *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC*,——F. 2d——(No. 75-1885, decided May 4, 1978) (Bilingual II):

> [T]he FCC functions very differently from the EEOC, both in the type of inquiries it makes and in the types of sanctions it can impose. The EEOC, aims primarily to remedy the effects of past discrimination; in its efforts to make aggrieved persons whole, it can invoke an array of *retrospective* remedies, including reinstatement, promotion, and restoration of seniority or back pay. The FCC, by contrast, is concerned primarily with the future: In its efforts to ensure that programming reflects minority interests, it invokes *prospective*, administrative sanctions * * *. [Slip Opinion at 14, footnotes omitted.]

Given these distinctions, we are not persuaded that our involvement in assuring compliance with our EEO rules constitutes duplicative regulation.

42. Nor do we believe that our proposed enforcement remedy of imposing employment goals and timetables is impermissible, either because it amounts to regulation of employment discrimination per se,[46] or because it creates an unconstitutional "quota" system. *Per se* regulation, in our view, involves administrative intervention in the specific, individual employment decisions and actions of an operator. It embraces, as the court of appeals stated in *FPC*, "[the] power * * * to prescribe personnel practices in detail and to receive complaints, adjudicate them, and punish directly infractions of those practices." [47] The use of employment goals and timetables does not approach this kind of intrusive regulation. It does not address the day-to-day personnel practices of an operator, nor does it dictate individual employment decisions. It is simply a means of stimulating and measuring improvement in a system's overall employment performance by setting objectives which the system can seek to achieve by whatever specific methods it elects. As to the constitutional objections raised against this mechanism, recent court decisions have made it clear that the imposition of employment goals and timetables, aimed at correcting administratively determined EEO deficiencies does not entail constitutionally proscribed reverse discrimination. *EEOC* v. *American Telephone & Telegraph Co.*, 556 F. 2d 167 (3rd Cir. 1977), *cert. denied*, 46 U.S.L.W. 3803 (U.S. June 27, 1978); *Regents of the University of California* v. *Bakke*, 46 U.S.L.W. 4896, 4905 (U.S. June 28, 1978).

43. NCTA's concern for precise definition of the criteria utilized by the Commission in evaluating system EEO performance is understandable. We believe, however, that the critical standard here—"zone of reasonableness" or "reasonable representation"—has been adequately described and developed in numerous Commission as well as court decisions. E.g., *Stone* v. *FCC, supra; Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC*, 492 F. 2d 656 (D.C. Cir. 1974); *Bilingual II, supra; National Organization for Women* v. *FCC, supra*, and cases cited therein at 1018, n. 106; *Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees, supra* at 242; *KCOP Television, Incorporated*, 57 FCC 2d 227 (1975), *remanded, Los Angeles Women's Coalition for Better Broadcasting* v. *FCC*,——*F. 2d*——(*D.C. Cir. No. 76-1133, decided September 12, 1978); Mission Central Company*, 54 FCC 2d 581 (1975); 1972 *License Renewal Applications, 53FCC 2d 104 (1975); License renewal applications of Certain Broadcast Stations Licensed for and Serving the State of Colorado*, FCC 77-433, 65 FCC 2d 96 (1977). In this connection, therefore, it suffices to say that we shall be guided in our analyses by these and similar cases.

44. It would appear from NCTA's objections to our proposed complaint handling procedures, that our intentions in this area have been misunderstood. When we indicated that we would consider individual complaints of employment discrimination where such complaints could not be referred to other, more specialized agencies, we did not mean to imply, as NCTA has apparently inferred, that we would adjudicate and remedy a particular individual's employment grievance. Such a procedure would clearly fall within the proscription of the court of appeals in *FPA* against employment regulation per se [48] and would contravene our own expressed purposes.[49] Rather, we intended that individual complaints of discrimination would be considered by the Commission to the extent that they constitute relevant evidence bearing on our evaluation of a system's compliance with our EEO rules. It is for this reason that individual complaints may result in an internal audit of a system's employment performance as reflected in its Form 395A reports and EEO program.[50] If our review of all the pertinent information, including the complaint, indicates apparent noncompliance, then sanctions directed to remedying the system's program deficiencies, not sanctions aimed at repairing injury to the individual complainant, will be considered. The nature of any sanction ultimately imposed, of course, would depend on the severity of the noncompliance.[51] Taken in this perspective, we believe our proposed complaint procedure is perfectly consistent with our statutory responsibilities and authority.

45. Similarly, we believe that our proposed treatment of discrimination findings by other agencies is consistent with our obligations. We stated in the Notice that such findings would not necessarily present a substantial question or a basis for further inquiry under the Communications Act of 1934, as amended, or under our own rules. This is not to say, however, that we would ignore such findings. On the contrary, we intend to evaluate these determinations "carefully and fully in light of [our] own established standards." *National Organization for Women* v. *FCC, supra* at 1018. This evaluation would include an internal review of the concerned system's employment record, and in some circumstances requests for additional information, but not necessarily further formal inquiry. So clarified, we do not believe our proposed procedure presents substantial differences from NBMC's position. In any event, however, we consider our proposal to comport with both our responsibilities and with judicial precedent. *National Organization for Women* v. *FCC, supra* be included as employees of a system.[53] We see no reason to deviate from this determination at this point. Suggesting another form of exception, Sammons has requested us to exempt from our EEO requirements all systems whose services are rendered pursuant to a federal government contract (e.g., cable systems operating on a military reservation) or whose operations are subject to local franchise provisions covering EEO matters. These systems, it is contended, are already regulated with respect to their employment practices and need not be further regulated by the Commission. We find this argument unpersuasive. Our EEO rules seek to accomplish specific goals dictated by our particular statutory responsibilities. We do not believe these ends may be satisfactorily served if various systems are excused from compliance with our uniform requirements and made subject only to disparate local demands or federal contract compliance standards, none of which are designed with our purposes in mind.

Conclusion

48. We believe that the policies, procedures and rule amendments set forth herein will clarify the EEO obligations of cable television systems and will substantially assist us in ensuring compliance with our EEO rules, thereby contributing significantly to the achievement of true equal employment opportunity throughout the cable industry. We believe, therefore, that adoption of these policies, procedures and amendments is in the public interest.

Authority for adoption of the rules herein is contained in sections 2, 4 (i)

[46] We have often stated that our responsibilities do not include the regulation of employment discrimination per se and we continue to adhere to that view. See, e.g., *National Broadcasting Company, Inc., supra* at 422; *Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees*, 60 FCC 2d 226, 229 (1976).

[47] 520 F. 2d at 435.

[48] See paras. 10 and 42, *supra*.

[49] See para. 41 and note 46, *supra*.

[50] 60 FCC 2d at 627.

[51] The Communications Act Amendments of 1978, Pub. L. 95-234, 92 Stat. 33, has added forfeiture to the range of remedies outlined in the *Notice* and discussed herein. As with the other remedies we have described, we will not hesitate to use our forfeiture authority where necessary to assure that cable companies meet their obligations under our equal employment rules.

[53] *Report and Order in Docket 19246*, 34 FCC 2d 186, 192 (1972).

and (j), 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

Accordingly, it is ordered, That part 76 of the Commission's rules and regulations is amended as set forth in the attached appendix B effective December 15, 1978.

It is further ordered, That, the proceeding in docket 20829 is terminated.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317, 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1088, 1089; (47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX A

PARTIES FILING COMMENTS

*Better TV, Inc., of Bennington
Cablecom-General, Inc.
Cole, Zylstra and Raywid
*Comax Telcom Corp., d.b.a. International Cable
*Connersville Cable Television, Inc.
*Dynamic Cablevision, Inc.
*Greater Boston Cablevision Corp.
*Hernando Cable TV, Inc.
*Mass. Cablevision, Inc.
National Black Media Coalition
National Cable Television Association
*Sammons Communications, Inc.
*TM Communications Co.
*Tri-County TV, Inc.
*U.S. Cablevision Corp.
*Video Enterprises, Inc.
*Video Enterprises of Western Mass.
*Westerly Cable Television, Inc.
*Whaling City Cable TV, Inc.

PARTIES FILING REPLY COMMENTS

Liberty Communications, Inc.
Oregon Cable Communications Association

APPENDIX B

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

§ 76.305 [Amended]

1. In § 76.305(a)(7), the reference to "§ 76.311(f)" is changed to "§ 76.311(j)", and in § 76.305(c), the reference to "§ 76.311(f)" is changed to "§ 76.311(j)".

2. Section 76.311 is revised to read as follows:

§ 76.311 Equal employment opportunities.

The following provisions apply to all operators of cable television systems, both in that capacity and as licensees or permittees of cable television relay service stations. Where a system or a headquarters office has employment whose duties are related to the operation of a cable television relay service station, these employees shall be considered employees of the system or headquarters office employees unit for purposes of this section.

(a) *General policy.* Equal opportunity in employment shall be afforded by all operators of cable television systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin, or sex.

(b) *Employment units.* The provisions of this section shall apply to cable television systems as employment units. Each cable system may be considered a single employment unit; however, where two or more systems are under common ownership or control and are interrelated in their local management, operation, and utilization of employees, they shall constitute a single employment unit. See also paragraph (c) of this section.

(c) *Headquarters office.* A multiple cable operator shall treat as a separate employment unit each headquarters office if the work of that office is primarily related to the operation of more than one employment unit as described in paragraph (b) of this section.

(d) *Exemptions.* Every employment unit (including headquarters offices) shall comply with the requirements of paragraphs (e), (f), (h), (i), and (j) of this section. Where an employment unit has five or more full-time employees, it shall also comply with paragraph (g) of this section.

(e) *Establishment of equal employment opportunity program.* Each employment unit shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of cable system employment policy and practice. Under the terms of its program, a unit shall:

(1) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opprtunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate the unit's equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, or sex from the unit's personnel policies and practices and working conditions.

(5) Conduct continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to assure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility in the employment unit.

(f) *Contents of equal employment opportunity program.* An employment unit's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent that they are appropriate in terms of employment unit size, location, etc.:

(1) Posting notices in the cable operator's offices and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of the community of a cable television system are Hispanic, such notice should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(2) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion, or national origin is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against;

(3) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(4) Recruiting through schools and colleges with significant minority-group enrollments;

(5) Maintaining systematic contacts with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority or female applicants;

(6) Encouraging present employees to refer minority or female applicants;

(7) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the cable operator hires;

(8) Instructing personally those on the staff of the employment unit who make hiring decisions that all applicants for all jobs are to be considered without discrimination;

(9) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opprtunity for em-

*Filed jointly.

ployment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(10) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females;

(11) Instructing personally those of the employment unit's staff who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(12) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counselling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(13) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect;

(14) Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found;

(15) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(g) *Filing of equal employment opportunity program.* Except as otherwise provided in paragraph (d) of this section, every employment unit shall file a statement of its equal employment opportunity program indicating specific practices to be followed in order to assure equal employment opportunity for females, blacks, Hispanics, American Indians or Alaskan Natives, and Asians or Pacific Islanders in such aspects of employment practices as recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff, and termination. Any changes or amendments to existing programs shall be filed with the Commission on or before May 31 of each year thereafter. If, pursuant to paragraphs (b) and (d) of this section or § 76.12(g), a cable operator has been exempted from the requirement that it file an equal employment opportunity program statement, but has failed to satisfy the conditions of that exemption at any time during the first 3 months of a calendar year, it shall file the statement on or before May 31 of that year.

(h) *Report of complaints.* Every employment unit shall submit an annual report to the Commission indicating whether any complaints regarding violations by the cable operator of equal employment provisions of Federal, State, territorial, or local law have been filed during the preceding calendar year before any body having competent jurisdiction. This report may be filed in conjunction with the report required by paragraph (i) of this section. The report shall state with respect to each such complaint: the parties involved, the date filed, the courts or agencies before which the matter has been heard, the appropriate file number (if any), and the respective disposition or current status of the complaint. Any cable operator who has filed such information with the Equal Employment Opportunity Commission need not do so with the Federal Communications Commission, if such previous filing is indicated.

(i) *Report of annual employment.* Every employment unit shall file with the Commission an annual employment report (FCC form 395-A). However, only employment units with five or more full-time employees need complete the employment data portions of the form. employment data shall reflect the figures from any one payroll period in January, February, or March of the year during which the report is filed. The same payroll period should be used in each year's annual employment report.

(j) *Records available for public inspection.* (1) A copy of every annual employment report, equal employment opportunity program statement, and complaint report that has been filed with the Commission, and copies of all exhibits, letters, and, other documents filed as part thereof, all amendments thereto, all correspondence between the cable operator and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission in Washington, D.C.

(2) Every employment unit shall maintain for public inspection a file containing a copy of every document described in subparagraph (1) of this paragraph. Each document shall be retained for a period of 5 years, except for program statements, which must be retained until superseded. The file shall be maintained at the principal workplace of the employment unit, or at any accessible location (such as a public registry for documents or an attorney's office) in the principal community served by the employment unit. A headquarters office employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the headquarters office of the cable operator or at any accessible place in the community in which the office is located. The operator shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

APPENDIX C

CHART #1

TOTAL EMPLOYEES - 1974

JOB CATEGORIES	ALL EMPLOYEES			MINORITY GROUP EMPLOYEES								
				MALE				FEMALE				TOTAL
	Total (Col. 2+3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	American Indian (6)	Spanish Surnamed American (7)	Negro (8)	Oriental (9)	American Indian (10)	Spanish Surnamed American (11)	All Minorities
Officials and managers	2,410	1,990	420	12	11	15	42	1	3	2	9	95
Professionals	740	670	70	11	1	6	15	2	-	1	-	36
Technicians	4,620	4,580	40	110	24	31	187	4	5	-	1	362
Sales workers	890	730	160	41	3	2	44	9	2	1	5	107
Office and clerical	3,990	230	3,760	25	7	4	16	90	25	18	176	361
Craftsmen (Skilled)	2,600	2,530	70	134	8	27	161	3	2	-	6	341
Operatives (Semi-skilled)	1,620	1,600	20	75	9	10	107	-	1	1	1	204
Laborers (Unskilled)	260	250	10	13	3	1	12	-	-	-	-	29
Service workers	170	160	10	8	0	1	15	-	-	-	-	24
TOTAL	17,300	12,740	4,560	429	66	97	599	109	38	23	198	1,559

PERCENT OF TOTAL EMPLOYEES - 1974

JOB CATEGORIES	ALL EMPLOYEES			MINORITY GROUP EMPLOYEES								
				MALE				FEMALE				TOTAL
	Total (Col. 2+3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	American Indian (6)	Spanish Surnamed American (7)	Negro (8)	Oriental (9)	American Indian (10)	Spanish Surnamed American (11)	All Minorities
Officials and managers	14	12	2	.07	.06	.09	.2	.006	.02	.01	.05	.5
Professionals	4	4	.4	.06	.006	.03	.09	.01	-	.006	-	.2
Technicians	27	26	.2	.6	.1	.2	1	.02	.03	-	.006	2
Sales workers	5	4	.9	.2	.02	.01	.3	.05	.01	.006	.03	.6
Office and clerical	23	1	22	.1	.04	.02	.09	.5	.1	.1	1	2
Craftsmen (Skilled)	15	15	.4	.8	.05	.2	.9	.02	.01	-	.03	2
Operatives (Semi-skilled)	9	9	.1	.4	.05	.06	.6	-	.006	.006	.006	1
Laborers (Unskilled)	2	1	.06	.08	.02	.006	.07	-	-	-	-	.2
Service workers	1	.9	.06	.05	-	.006	.09	-	-	-	-	.1
TOTAL	100	74	26	2.5	.4	.6	3	.6	.2	.1	1	9

CHART # 3 TOTAL EMPLOYEES IN SAMPLE - 1976 APPENDIX C

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White	American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White
OFFICIALS & MANAGERS	404	6	4	-	15	288	3	1	3	3	81
PRO-FESSIONALS	38	2	2	-	-	31	-	-	1	-	2
TECHNICIANS	612	13	6	11	21	556	1	-	-	-	4
SALES WORKERS	214	1	-	3	6	137	-	1	1	5	60
OFFICE & CLERICAL	598	4	1	1	4	39	12	8	20	36	473
CRAFTSMEN (Skilled)	473	6	13	35	37	364	-	-	-	1	17
OPERATIVES (Semi-skilled)	151	-	5	3	26	116	-	-	-	1	-
LABORERS (Unskilled)	17	-	-	-	-	17	-	-	-	-	-
SERVICE WORKERS	20	-	-	2	-	17	-	-	-	-	1
TOTAL	2527	32	31	55	109	1565	16	10	25	46	638

CHART # 4 PERCENT OF TOTAL SAMPLE - 1976 APPENDIX C

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White	American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White
OFFICIALS & MANAGERS	15.99	0.24	0.16	-	0.59	11.40	0.12	0.04	0.12	0.12	3.20
PRO-FESSIONALS	1.51	0.08	0.08	-	-	1.23	-	-	0.04	-	0.08
TECHNICIANS	24.21	0.51	0.24	0.43	0.83	22.00	0.04	-	-	-	0.16
SALES WORKERS	8.47	0.04	-	0.12	0.24	5.42	-	0.04	0.04	0.20	2.37
OFFICE & CLERICAL	23.65	0.16	0.04	0.04	0.16	1.54	0.47	0.32	0.79	1.42	18.71
CRAFTSMEN (Skilled)	18.70	0.24	0.51	1.38	1.46	14.40	-	-	-	0.04	0.67
OPERATIVES (Semi-skilled)	5.98	-	0.20	0.12	1.03	4.59	-	-	-	0.04	-
LABORERS (Unskilled)	0.67	-	-	-	-	0.67	-	-	-	-	-
SERVICE WORKERS	0.79	-	-	0.08	-	0.67	-	-	-	-	0.04
TOTAL	100*	1.27	1.23	2.17	4.31	61.92	0.63	0.40	0.99	1.82	25.23

*Arithmetic disagreement due to rounding off of percentages.

CHART # 5 TOTAL EMPLOYEES IN SAMPLE - 1977 APPENDIX C

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White	American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White
OFFICIALS & MANAGERS	392	4	5	2	13	280	3	1	3	1	80
PRO-FESSIONALS	32	2	1	-	-	26	-	-	-	-	3
TECHNICIANS	613	9	5	13	15	560	1	-	-	-	10
SALES WORKERS	161	-	-	8	5	111	1	1	1	5	29
OFFICE & CLERICAL	658	-	2	3	2	48	9	10	25	38	521
CRAFTSMEN (Skilled)	461	1	16	33	32	373	-	-	-	-	6
OPERATIVES (Semi-skilled)	190	1	8	9	20	151	-	-	-	-	1
LABORERS (Unskilled)	24	-	-	-	-	24	-	-	-	-	-
SERVICE WORKERS	41	1	-	4	3	31	-	-	-	-	2
TOTAL	2572	18	37	72	90	1604	14	12	29	44	652

CHART # 6 PERCENT OF TOTAL SAMPLE - 1977 APPENDIX C

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White	American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White
OFFICIALS & MANAGERS	15.24	0.15	0.19	0.08	0.5	10.89	0.12	0.04	0.12	0.04	3.11
PRO-FESSIONALS	1.25	0.08	0.04	-	-	1.01	-	-	-	-	0.12
TECHNICIANS	23.82	0.35	0.19	0.05	0.58	21.77	0.04	-	-	-	0.39
SALES WORKERS	6.25	-	-	0.31	0.19	4.31	0.04	0.04	0.04	0.19	1.13
OFFICE & CLERICAL	25.61	-	0.08	0.12	0.08	1.87	0.35	0.39	0.97	1.48	20.27
CRAFTSMEN (Skilled)	17.91	0.04	0.62	1.28	1.24	14.50	-	-	-	-	0.23
OPERATIVES (Semi-skilled)	7.39	0.04	0.31	0.35	0.78	5.87	-	-	-	-	0.04
LABORERS (Unskilled)	0.93	-	-	-	-	0.93	-	-	-	-	-
SERVICE WORKERS	1.59	0.04	-	0.15	0.12	1.20	-	-	-	-	0.08
TOTAL	100*	0.70	1.43	2.79	3.49	62.35	0.55	0.47	1.13	1.71	25.37

*Arithmetic disagreement due to rounding off of percentages.

[FR Doc. 78-32231 Filed 11-16-78; 8:45 am]

proposed rules

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

[6325-01-M]

CIVIL SERVICE COMMISSION

[5 CFR Part 334]

TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN EXECUTIVE AGENCIES AND STATES, LOCAL GOVERNMENTS, AND INSTITUTIONS OF HIGHER EDUCATION

Proposed Rulemaking

AGENCY: U.S. Civil Service Commission.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule seeks to amend part 334 to: Reflect the inclusion of Indian tribal governments and the Northern Mariana Islands as eligible participants under the mobility provisions of the Intergovenmental Personnel Act, as amended; limit back-to-back assignments; limit total time spent on assignment(s) by an individual employee; encourage more cost-sharing; require forwarding of assignment agreement within 15 days after start of assignment; allow 30 days advance notice on early terminations; limit participation of noncareer employees; and clarify employee's right to return to original position. These amendments are intended to strengthen the administration and regulation of the mobility program.

DATE: Comments must be received by January 15, 1979.

ADDRESS: Comments should be directed to Miriam Ershkowitz, Director, Office of Faculty Fellows and Personnel Mobility, Bureau of Intergovenmental Personnel Programs, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Ardrey Harris, Office of Faculty Fellows and Personnel Mobility, Bureau of Intergovenmental Personnel Programs, Room 2A11, 1900 E Street NW., Washington, D.C. 20415, telephone 202-632-5373.

It is proposed that 5 CFR Part 334 be revised to read as follows:

PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN EXECUTIVE AGENCIES AND STATES, LOCAL AND INDIAN TRIBAL GOVERNMENTS, AND INSTITUTIONS OF HIGHER EDUCATION

Sec.

334.101 Purpose.
334.102 Definitions.
334.103 Length of assignments.
334.104 Requirement for written agreement.
334.105 Termination of agreement.
334.106 Reports required.

AUTHORITY: 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971-1975)

§ 334.101 Purpose.

The purpose of this part is to carry into effect the objectives of title IV of the Intergovernmental Personnel Act of 1970, which authorizes the temporary assignment of employees between Executive agencies and States, local and Indian tribal governments, and institutions of higher education.

§ 334.102 Definitions.

In this part: (a) "Assignment" means a period of service under chapter 33, subchapter VI of Title 5, United States Code.

(b) "Employee" means an individual employed in a career position or as an attorney or presidential management intern in an executive agency; or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, or an institution of higher education;

(c) "Executive agency" has the meaning given that term by section 105 of Title 5, United States Code;

(d) "Institution of higher education" means a domestic, accredited public or private 4-year college, university, or a technical or junior college;

(e) "Indian tribal government" refers to any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, S. 105);

(f) "Local government" means any political subdivision, instrumentality, or authority of a State or States; and any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(g) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, and a territory or possession of the United States; and an instrumentality or authority of a State or States; and a Federal-State authority or instrumentality.

§ 334.103 Length of assignment.

(a) An assignment may be made for up to 2 years and may be extended by the head of the executive agency for up to 2 additional years.

(b) An Executive agency may not send or receive on assignment an employee who has served for 4 continuous years on an assignment without at least a 12-month return to duty with his or her original employer.

(c) Assignments less than 60 calendar days apart involving the same participants, are a continuous assignment.

(d) An executive agency may not send on assignment an employee who has served on mobility assignments for more than a total of 6 years during his or her Federal career. The Commission may waive this provision upon the written request of the agency head.

§ 334.104 Requirement for written agreement.

(a) Before an assignment is made, the executive agency and the State, local or Indian tribal government, or institution of higher education, and the assigned employee shall enter into a witten agreement which records the obligations and responsibilities of the parties as specified in Federal Personnel Manual chapter 334.

(b) Where the Federal agency pays more than 50 percent of the costs of the mobility assignment involving a Federal employee and the period of assignment exceeds 6 months, the agency must document the rationale for the cost-sharing arrangements in the mobility agreement.

(c) Two copies of the original agreement, as well as any modification, must be sent to the U.S. Civil Service Commission within 15 days of the date that the assignment or modification becomes effective.

§ 334.105 Termination of agreement.

(a) An assignment may be terminated at any time at the request of the executive agency or the State, local,

Indian tribal government, or institution of higher education involved. The party terminating the assignment prior to the agreed upon date should provide 30 days advance notice along with a statement of reasons to the other signers of the agreement.

(b) At the end of the assignment, agencies must return the employee to the same position occupied prior to the mobility assignment or reassign the employee to another position of like pay, grade level, and kind. If promoted while on assignment, the employee must be returned to the new position at the completion of the assignment.

§ 334.106 Reports required.

An executive agency which assigns an employee to or receives an employee from a State, local, Indian tribal government, or institution of higher education in accordance with this part shall submit to the Commission such reports as the Commission may request.

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

[FR Doc. 78-32026 Filed 11-16-78; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 552]

[No. 78-605]

FEDERAL SAVINGS AND LOAN SYSTEM

Mergers and Consolidations for Federal Stock Associations

NOVEMBER 8, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed regulations.

SUMMARY: The proposed regulations would provide merger rules for savings and loan associations having Federal stock charters. The Board believes such rules are necessary because merger questions relating to Federal stock associations have arisen and the present regulations are silent on this matter.

DATE: Comments must be received on or before: January 15, 1979.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 17th and G Street NW., Washington, D.C. 20552. Comments available for public inspection at this address.

FOR FURTHER INFORMATION, CONTACT:

Douglas P. Faucette, Associate General Counsel, Federal Home Loan Bank Board (202-377-6410), at the above address.

SUPPLEMENTARY INFORMATION: On October 28, 1974, the National Housing Act was amended by Pub. L. 93-495 to provide Federal mutual associations converting to the stock form of organization the opportunity to retain their Federal charters. In implementation thereof, the Board adopted part 552 of the rules and regulations for the Federal Savings and Loan System (12 CFR 552, Resolution No. 75-414; May 9, 1975). It was intended that part 552 would constitute the minimal regulations necessary for the operation of Federal stock associations; the Board stated in the preamble to its March 7, 1975, proposal of part 552 (Board Resolution No. 75-226) that regulations relating to corporate actions such as mergers would be proposed at a later date.

Promulgation of merger regulations was deferred at that time in order to (1) provide implementing regulations without undue delay, (2) concentrate limited staff resources on initial conversions, and (3) gain experience with the new Federal stock associations. These objectives have been achieved. Accordingly, the Board proposes new §§ 552.13, 552.14, and 552.15, to read as set forth below.

PART 552—STOCK ASSOCIATIONS

§ 552.13 Combinations involving charter S associations.

(a) *Scope and authority.* Charter S associations may enter into combinations only in accordance with the provisions of this section.

(b) *Definitions.* (1) Association—any building and loan, savings and loan, or homestead association, or cooperative bank, organized under Federal or State law.

(2) Consolidation—fusion of two or more associations into a newly created association having the combined powers and rights of all its constituents.

(3) Constituent association—resulting or disappearing association.

(4) Disappearing association—(i) any association whose corporate existence does not continue after a merger effected under this section, (ii) any constituent association consolidating under this section, or (iii) the selling association in the case of a bulk sale in exchange for assumption of liabilities.

(5) Merger—uniting two or more associations by the transfer of all property rights, and franchises to one, which retains its name and corporate identity.

(6) Mutual association—any association organized in a form not requiring nonwithdrawable stock under Federal or State law.

(7) Stock association—any association organized in a form requiring nonwithdrawable stock.

(8) Resulting association—an association which continues its corporate existence after, or is created by, a combination effected under this section.

(9) State—includes the District of Columbia, Commonwealth of Puerto Rico, and States, territories, and possessions of the United States.

(c) *Forms of combination.* Charter S associations may combine with other associations in the following ways:

(1) Mergers or bulk purchases of assets in exchange for assumption of liabilities: *Provided,* that (i) all constituent associations have accounts insured by the Federal Savings and Loan Insurance Corporation, and (ii) if any constituent is a mutual association, the resulting association shall be mutually held.

(2) Consolidations among Federal associations resulting in Federal mutual associations.

(d) *Board approval.* Prior written approval of the Board is required for every combination. In determining whether to confer such approval, the Board shall apply the criteria set forth in § 571.5 of this chapter.

(e) *Approval of board of directors.* Before filing for Board approval, the combination shall be approved by each constituent association's board of directors: (1) By a two-thirds vote of the entire board of each Federal association, and (2) as required by State law for other constituents.

(f) *Combination agreement.* (1) All terms, conditions, agreements or understandings, or other provisions with respect to the combination, shall be set forth fully in a written combination agreement.

(2) The combination agreement shall state: (i) that the combination shall not be effective unless and until approved by the Board; (ii) which constituent association is to be the resulting association; (iii) the name of the resulting association; (iv) the location of the home office and any other offices of the resulting association; (v) the terms and conditions of the combination and method of effectuation; (vi) any charter amendments, or the new charter in the event of consolidation; (vii) the manner of converting or exchanging the stock of each constituent association into stock, savings accounts, or other securities of the resulting association or cash, property, rights, or securities of any other entity in connection with the combination; (viii) the basis upon which the savings accounts of the resulting association shall be issued; (ix) the number, names and residence addresses, and terms of directors; (x) the effect upon and assumption of any liquidation account of a disappearing association by

the resulting association; and (xi) such other provisions, agreements, or understandings as relate to the combination.

(g) *Application for Board approval.* (1) *Contents.* Applications shall be in a form prescribed by the Board and shall include appropriate information regarding fairness and legal, economic, managerial, financial, disclosure, accounting, and tax aspects of the combinaton.

(2) *Filing requirement.* Constituent associations shall file jointly two copies of applications prepared pursuant to this section with their Principal Supervisory Agent, and two with the Board's Office of the Secretary.

(h) *Notice.* (1) *Publication of notice.* Constituent associations shall jointly publish notice within 15 days of filing an application with the Board. Notice shall be published on the same day of each of 2 consecutive weeks in a newspaper printed in the English language and having a general circulation in the community or communities served by the constituent associations. If the Supervisory Agent determines that the primary language of a significant number of the adult residents of the community is a language other than English, she/he may require that notice also be given in the appropriate language(s). The notice shall include: (i) A statement that an application under this section has been filed with the Board; (ii) the name and address of the home or principal office of each constituent association; (iii) a brief summary of the principal terms of the combination agreement; (iv) the name and address of the home office of the resulting association; (v) a statement as to which offices of constituent associations are to be maintained as home office or branches and which are to be discontinued; (vi) a statement that any person may file written comments concerning the application which will be considered by the Board if filed with the Office of the Principal Supervisory Agent and the Board's Office of the Secretary (with addresses disclosed) within 10 days (or within 30 days if advice is filed within the first 10 days stating that more time is needed to furnish additional information) of publication or such later date as may be permitted by the Office of the Principal Supervisory Agent; and (vii) a statement that the application and all comments filed pursuant to the notice shall be available for public inspection by any person at the above offices, except for any material exempt from disclosure pursuant to the Freedom of Information Act. Promptly after publication of the notice, the constituent associations shall jointly file with the Board two copies of the notice and publisher's affidavit of publication.

(2) *Notice to State officials and other interested persons.* The Supervisory Agent shall give notice of the application to the State official who supervises savings and loan associations in the State in which the constituent associations are located, and to persons whose requests for announcements under § 563e.6 of the rules and regulations for insurance of accounts have been received in time for such notification; these notices shall be in addition to legal notification as set forth in subparagraph (h)(1) of this paragraph. The Supervisory Agent may also give notice to any other persons she/he believes might have an interest in the application.

(3) *Republication.* In the event of a determination by the Board's Office of the General Counsel that at the time notice was published the application was materially incomplete, each constituent association shall, in accordance with the directions of that Office, republish or redeliver such notice.

(4) *Notice to stockholders.* In addition to publication, constituent Charter S associations shall mail notice of the filing of applications to stockholders within 10 days of filing. The contents of such notice shall be in the form prescribed by subparagraph (1).

(5) *Procedure.* Processing of an application under this section shall follow the procedures set forth in this paragraph and in § 543.2(e)(2)-(5) and § 543.2(f).

(i) *Approval by charter S stockholders.* (1) *Prior Board approval.* No meeting for the purpose of voting on a combination agreement shall be held, and no proxies for such meeting of a stock association shall be solicited, prior to the approval of the combination agreement by the Board.

(2) *Charter S stockholder approval.* Except as provided below in this section, an affirmative vote of two-thirds of the outstanding voting stock shall be required for approval of the combination agreement. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required votes shall be taken at a meeting of the association.

(3) *Exceptions.* Stockholders of the resulting association need not authorize a combination agreement if: (i) The association's charter is not changed; (ii) each share of stock outstanding immediately prior to the effective date of the combination is to be an identical outstanding share or a treasury share of the resulting association after such effective date; and (iii) either (*a*) no shares of voting stock of the resulting association and no securities convertible into such stock are to be issued or delivered under the plan of combination, or (*b*) the authorized unissued shares or the treasury shares of voting stock of the resulting association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15 percent of the total shares of voting stock of such association outstanding immediately prior to the effective date of the combination.

(j) *Disclosure.* The Board may require, in connection with a combination under this section, such disclosure of information as it deems necessary or desirable for the protection of investors in any of the constituent associations.

(k) *Articles of combination.* (1) Following stockholder approval, articles of combination shall be executed in duplicate by each association, by its chief executive officer or executive vice president and by its secretary or an assistant secretary, and verified by one of the officers of each association signing such articles, and shall set forth: (i) The plan of combination; (ii) the number of shares outstanding in each association; and (iii) the number of shares in each association voted for and against such plan.

(2) Both sets of articles of combination shall be filed with the Office of the Secretary which shall, if it finds that such articles conform to the requirements of this regulation, endorse the articles and return one set to the resulting association.

(l) *Effective date.* No combination under this section shall be effective until approved by the Board. The effective date of a combination in which the resulting association is a Charter S association shall be the date of endorsement of the articles of combination by the Office of the Secretary. The effective date of a combination in which the resulting association is not a Federal association shall be a date subsequent to Board approval prescribed by the law of the State under which the resulting association is chartered. If a disappearing association combining under this section is a Charter S association, its charter shall be deemed to be canceled as of the effective date of the combination; such charter shall be surrendered to the Board at the time of filing of the articles of combination.

(m) *Mergers and consolidations: Transfers of assets and liabilities to resulting association.* Upon the effective date of merger or consolidation under this section, if the resulting association is a Federal association, all assets and property (real, personal, and mixed, tangible and intangible, choses in action, rights, and credits)

then owned by each constituent association or which would inure to any of them, shall immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting association. The resulting association shall be deemed to be a continuation of the entity of each constituent association, the rights and obligations of which shall remain unimpaired, and the resulting association, on the effective date of merger or consolidation, shall succeed to such rights and obligations and the duties and liabilities connected therewith.

§ 552.14 Appraisal rights.

(a) *Right to demand payment for appraised value.* Except as provided in paragraph (b) of this section, any stockholder of a Charter S association combining in accordance with § 552.13 of this part shall have the right to demand payment of the appraised value of his stock: *Provided,* That such stockholder has not voted in favor of the combination and complies with the provisions of subsection (c) of this section.

(b) *Exceptions.* No stockholder required to accept only qualified consideration for his stock shall have the right under this section to demand payment of the stock's appraised value if (1) such stock was listed on a national securities exchange on the date of the meeting of stockholders at which the combination was acted upon; or (2) stockholder action is not required for a combination made pursuant to § 552.13(i)(3) of this part. "Qualified consideration" means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national securities exchange, or any combination of shares of stock and cash described above.

(c) *Procedure.*

(1) *Notice.* Each constituent Charter S association shall notify all stockholders entitled to rights under this section, not less than 20 days prior to the meeting at which the combination agreement is to be submitted for stockholder approval, of the right to demand payment of appraised value of shares, and shall include in such notice a copy of this section. Such notice shall be sent individually to stockholders of record and may be part of management's proxy solicitation for such meeting.

(2) *Demand for appraisal and payment.* Each stockholder electing to make a demand under this section shall deliver to the Charter S association, before voting on the combination, a writing identifying himself and stating his intention thereby to demand appraisal of and payment for his shares. Such demand must be in addition to and separate from any proxy or vote against the combination by the stockholder.

(3) *Notification of effective date.* Within 10 days after the effective date of the combination, the resulting association shall individually notify stockholders of constituent Charter S associations, who have complied with the provisions of subparagraph (c)(2) and have not voted in favor of the combination, of the effective date of the combination and inform them that, within 60 days of such date, the respective requirements of subparagraphs (c) (4) and (5) (set out in the notice) must be satisfied.

(4) *Stock certificates to be noted.* Within 60 days after the effective date of the combination, each stockholder demanding appraisal and payment under this section shall submit to the transfer agent his certificates of stock for notation thereon that an appraisal and payment have been demanded with respect to such stock and that appraisal proceedings are pending. Any stockholder who fails to submit his stock certificates for such notation shall no longer be entitled to appraisal rights under this section and shall be deemed to have accepted the terms offered under the combination.

(5) *Petition to be filed.* Within 60 days after the effective date of the combination, stockholders of a constituent Charter S association who have complied with the provisions of subparagraphs (c) (2) through (4) and who are otherwise entitled to appraisal rights under this section, may file a petition with the Board, with a copy by registered or certified mail to the resulting association, demanding a determination of the fair market value of the stock of all such stockholders. A stockholder entitled to file a petition under this section who fails to file such petition shall be deemed to have accepted the terms offered under the combination.

(6) *Withdrawal of demand.* Notwithstanding the foregoing, at any time within 60 days after the effective date of the combination, any stockholder shall have the right to withdraw his demand for appraisal and to accept the terms offered upon the combination.

(7) *Valuation and payment.* The Board shall direct the Office of Economic Research, or if it so elects, appoint one or more independent persons, to appraise the shares, determining their fair market value exclusive of any element of value arising from the accomplishment or expectation of the combination. Appraisals prepared by independent persons shall be reviewed and opined upon by the Office of Economic Research as to the suitability of the appraisal methodology and the adequacy of the analysis and supportive data. The Board after consideration of the appraisal report and the advice of the Office of Economic Research shall if it concurs in the valuation of the shares direct payment by the resulting association of the appriased fair market value of the shares, upon surrender of the certificates representing such stock. Payment shall be made, together with interest from the effective date of the combination, at a rate deemed equitable by the Board.

(8) *Voting and distribution.* Any stockholder who had demanded his appraisal rights as provided in subparagraph (2) of this paragraph shall thereafter neither be entitled to vote such stock for any purpose nor be entitled to the payment of dividends or other distributions on the stock (except dividends or other distribution payable to, or a vote to be taken by stockholders of record at a date which is on or prior to, the effective date of combination): *Provided,* That if any stockholder becomes unentitled to appraisal and payment of appraised value with respect to such stock and accepts or is deemed to have accepted the terms offered upon the combination, such stockholder shall thereupon be entitled to vote and receive the distributions described above.

(9) *Status.* Shares of the resulting association into which shares of the stockholders demanding appraisal rights would have been converted or exchanged, had they assented to the combination, shall have the status of authorized and unissued shares of the resulting association.

§ 552.15 Supervisory mergers.

Notwithstanding the foregoing provisions of this Part, the Board may determine to waive or deem inapplicable any part of §§ 552.13 or 552.14 insofar as it is deemed necessary to avert imminent failure of a Charter S association. For purposes of such action under subsection 5(d) of the Home Owners Loan Act, the term "member" shall include stockholders of a Charter S association.

(Sec. 105, Pub. L. 93-495, Oct. 28, 1974; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorganizational Plan. No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-32391 Filed 11-16-78; 8:45 am]

[1505-01-M]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 120]

BUSINESS LOAN POLICY

Proposed Rulemaking

Correction

In FR Document 78-29282 appearing at page 47734 in the issue for Tuesday, October 17, 1978, the date of deadline for comments given in the "Date" paragraph on page 47734 should have been "December 18, 1978" instead of "November 16, 1978".

[3510-17-M]

DEPARTMENT OF COMMERCE

Office of the Secretary

[15 CFR Part 15]

PROHIBITION OF DISCRIMINATION AGAINST THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OPERATED BY THE DEPARTMENT OF COMMERCE

Proposed Rule

AGENCY: Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule is to implement section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 as it applies to federal financial assistance administered by the Department of Commerce. Section 504 provides in relevant part that: "No otherwise qualified handicapped individual * * * shall, solely by reason of his handicap, be exluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This proposed regulation covers all recipients of federal financial assistance and is intended to insure that their federally assisted programs and activities are operated without discrimination on the basis of handicap.

DATE: All interested persons and organizations are invited to submit written comments no later than January 2, 1979.

ADDRESS: Director, Office of Civil Rights, Department of Commerce, Room 4065, 14th and Constitution Avenue NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Alice K. Helm, Deputy Assistant General Counsel for Administration Management, 202-377-5391.

SUPPLEMENTARY INFORMATION: On April 28, 1976, President Ford issued Executive Order 11914 (41 FR 17871) to effect uniform implementation of section 504 of the Rehabilitation Act of 1973 as amended (Pub. L. 93-112, 29 U.S.C. 794). Executive Order 11914 directed the Secretary of the Department of Health, Education, and Welfare to coordinate implementation of section 504 by Federal agencies.

On January 13, 1978, HEW's coordinating regulations (43 FR 2132) took effect. Section 85.4 of these regulations required that all agencies administering programs of federal financial assistance draft proposed handicap regulations consistent with HEW's regulations.

In response to the above obligations, the Department of Commerce now proposes to add 15 CFR Part 15 as follows.

Dated: November 1, 1978.

JUANITA M. KREPS,
Secretary.

Sec.
15.1 Purpose.
15.2 Application.
15.3 Definitions.
15.4 General prohibition of discrimination against the handicapped.
15.5 Employment.
15.6 Program accessibility.
15.7 Compliance.
15.8 Enforcement.

AUTHORITY: Executive Order 11914; sec. 504, Rehabilitation Act of 1973, as amended (Pub. L. 93-112, 29 U.S.C. 794).

§ 15.1 Purpose.

This rule is intended to prohibit discrimination against the handicapped in programs operated by recipients of Federal financial assistance authorized by the Department of Commerce. Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794, and Executive Order 11914 require the Department of Commerce to issue the following proposed regulation based on regulations issued by the Department of Health, Education, and Welfare on January 13, 1978 (43 FR 2132).

§ 15.2 Application.

This part applies to each recipient and program or activity that receives or benefits from Federal financial assistance administered by the Department of Commerce.

§ 15.3 Definitions.

(a) "Executive order" means Executive Order 11914 titled "Nondiscrimination with respect to the Handicapped in Federally Assisted Programs," issued April 28, 1976.

(b) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 794, as amended by section 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 706.

(c) "Agency" means the Department of Commerce and any of its constituent units empowered to provide Federal financial assistance.

(d) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision any public or private agency, institution, organization, or other entity to which Federal financial assistance is provided, either directly or through another recipient. This includes successors, assignees, and transferees, but excludes the ultimate beneficiary of the assistance. Wherever the term "recipient" appears, it shall be read to include "other parties" (see definition below).

(e) "Other parties" includes, in addition to recipients subject to this regulation, any person, any governmental, public, or private agency, institution or organization that, because of direct or substantial participation in any federally assisted program, is prohibited from engaging in the discriminatory acts covered by this part. Examples are; Contractors, subcontractors, employers, users of facilities or services, and commercial or industrial organizations located in a federally assisted industrial park.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or an insurance or guaranty contract), or any other arrangement by which an agency provides assistance in the form of:

(1) Funds;

(2) Service of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the federal share or its fair market value is not returned to the Federal government.

(g) "Facility" includes but is not limited to all or any portion of buildings, ships, equipment, roads, parking lots, parks, industrial parks, or other real or personal property or interest in such property.

(h) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(i) "Physical or mental impairment" means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, respiratory, cardiovascular, reproductive, digestive,

genitourinary, hemic and lymphatic, skin, endocrine, special sense organs, speech organs, or

(ii) Any mental or psychological disorder such as mental retardation, oranic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) "Major life activities" includes self-care, working, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning.

(3) "Has a record of such an impairment" means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means has a physical or mental impairment that, while not substantially limiting major life activities, is treated by the recipient as so limiting;

(i) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(ii) Has none of the impairments defined in paragraph (h)(1) of this section but is treated by recipient as having such an impairment.

(i) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; and

(2) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§ 15.4 General provisions on discrimination.

(a) A recipient of Federal financial assistance shall not discriminate in any way against qualified individuals because they are handicapped. Examples of prohibited discrimination include but are not limited to the following:

(1) Providing assistance to the handicapped that is not equal to or as effective as that provided for the nonhandicapped.

(2) Aiding or perpetuating discrimination against qualified handicapped persons by providing assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients' program.

(3) Otherwise limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(b) Recipients shall administer programs, activities, and services in a setting that permits the greatest possible degree of integration between handicapped and nonhandicapped persons. Program benefits or services shall be provided separately to qualified handicapped persons only where necessary to afford them equivalent benefits and services.

(c) Recipients shall insure that all necessary information is available in a form appropriately accessible to all handicapped applicants, employees, and beneficiaries. (Example: Braille and tapes for visually handicapped persons.)

(d) A recipient shall not deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards.

(e) In determining the site or location of a facility, a recipient may not make selections that would discriminate against the handicapped.

(f) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons, or the exclusion of specific classes of handicapped persons from a program limited to other classes of handicapped persons by Federal statute or executive order, is not prohibited by this part.

§ 15.5 Employment.

(a) *General prohibitions against employment discrimination.* (1) No recipient of Federal financial assistance may discriminate in any phase of employment against qualified handicapped persons. Similarly, no recipient may engage in employment practices that, regardless of the recipient's intentions, have the effect of discriminating against the handicapped. Areas of prohibited employment discrimination include but are not limited to: Recruitment, hiring, compensation, training, job assignments, tenure, seniority, leave, or any other condition or privilege.

(2) A recipient may not participate in a contract that involves discrimination against the handicapped. Examples: Contracts with employment and referral agencies, labor unions, organizations providing training or apprenticeship programs, and suppliers and administrators of fringe benefits.

(b) *Reasonable accommodation.* A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee, unless the recipient shows that such accommodation would impose an undue hardship on a program's operation or cause the program to be discontinued. Reasonable accommodation may include:

(1) Making facilities used by employees and beneficiaries readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) *Employment criteria.* A recipient may not use employment tests or criteria that discriminate against handicapped persons. A recipient also must ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(d) *Preemployment inquiries.* A recipient may not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person. A recipient may make preemployment inquiries only as to an applicant's ability to perform job-related functions.

(e) *Affirmative action.* When a recipient is taking remedial action to correct the effects of past discrimination, or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped. *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose that the information is solely for use in remedying past discrimination or in effecting affirmative action under section 503 of the Act (29 U.S.C. 793); and

(2) The recipient makes clear that the information is being requested on a strictly voluntary basis, will be kept confidential, and that failure to provide it will not adversely affect an applicant or employee.

(f) *Employment on ships.* The Department of Commerce incorporates by reference the physical and mental requirements for serving on ships established by the U.S. Coast Guard (46 CFR 10.01-1 et seq.). Since it is highly improbable that more than a few handicapped individuals could satisfy the Coast Guard requirements, the Department exempts all cargo ships, but not passenger ships, from the requirements of this part. Should any qualified handicapped person meet the Coast Guard requirements, reasonable accommodation shall be made on an individual basis.

§ 15.6 Program accessibility.

(a) *General requirement.* A program facility's alleged inaccessibility to or

unusability by the handicapped shall not be an excuse for denying qualified handicapped persons the benefits of or participation in any program receiving Federal financial assistance. However, a recipient is not required to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons, so long as the program as a whole is accessible to the handicapped.

(b) *Existing facilities.* A recipient shall operate each program and/or activity so that, as a whole, they are readily accessible to and usable by qualified handicapped people.

(c) *Structural changes in existing facilities.* Where needed to make programs accessible to or usable by qualified handicapped persons, structural changes in existing facilities shall be made as soon as possible, but in any event no later than three (3) years after these regulations take effect.

(d) *New construction.* New facilities shall be designed and constructed so as to be readily accessible to and usable by the handicapped. Alterations to existing structures shall be subject to this same requirement.

(e) The minimum standards for structural accessibility shall be those prescribed by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971), and these standards are incorporated by reference in this part (copies available from the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018).

§ 15.7 Compliance.

(a) *Notice.* No later than ninety (90) days after this rule takes effect, a recipient shall take steps to notify all current and future employees and beneficiaries that it does not discriminate against the handicapped in compliance with section 504 and this regulation.

(b) *Assurance.* All recipients of Federal financial assistance to which this regulation applies shall sign a written form assuring that the programs and facilities receiving Federal financial assistance will be conducted in compliance with this regulation. If assistance is in the form of property or an interest in property, an assurance shall obligate the recipient not to discriminate against the handicapped for as long as the property is used for the general purpose for which the assistance is extended. Similar assurances may also be required from contractors, subcontractors, subgrantees, or other participants in the program.

(c) *Self-evaluation.* Within one (1) year after this regulation becomes effective, recipients shall evaluate their policies and practices to determine if they comply with this regulation; interested handicapped persons shall be asked to participate in this self-evaluation process. At a minimum, recipients shall ascertain the following:

(1) The extent to which discrimination against the handicapped still exists;

(2) The rate at which this problem is being resolved;

(3) Deficiencies in current practices;

(4) The specific steps that will be taken to remedy such deficiencies.

The results of the self-evaluation will be reviewed by the head of the Department of Commerce unit extending the Federal financial assistance. Following the initial self-evaluation recipients shall conduct a 504 self-evaluation at least once every two (2) years.

(c) *Authority delegation.* The Department of Commerce proposes to delegate to HEW the authority to monitor compliance with section 504 in higher education. This authority delegation would be coextensive with that already given HEW under Title VI.

§ 15.8 Enforcement.

The Department of Commerce incorporates by reference its Title VI enforcement proceedings (15 CFR 8.7-8.14).

[FR Doc. 78-32321 Filed 11-16-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 781 0023]

INDIANA DENTAL ASSOCIATION, ET AL.

Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require an Indianapolis, Ind., dental association and its 14 component societies to cease establishing or engaging in any policy, act, or practice that may induce their members to refuse to submit data requested by third-party payers for benefit determination; compel third-party payers to alter provisions of any health care benefits program; influence members to render other than independent judgments; or restrict consumers and third-party payers in their choice of dentists and/or dental consultants. The association and its component societies would be further required to mail a copy of the complaint and order to each of their members, together with a letter advising them that they are free to choose their own course of action in dealing with dental health care insurance plans.

DATE: Comments must be received on or before January 15, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

FTC/CD, Alan K. Palmer, Washington, D.C. 20580, 202-523-3455.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 781 0023]

INDIANA DENTAL ASSOCIATION, ET AL.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Indiana Dental Association, a corporation; First District Dental Society, a corporation; Indianapolis District Dental Society, a corporation; Isaac Knapp Dental Society, a corporation; Western Indiana Dental Society, a corporation; Ben Hur Dental Society, an unincorporated association; East Central Dental Society, an unincorporated association; Eastern Indiana Dental Society, an unincorporated association; Greene District Dental Society, an unincorporated association; North Central Dental Society, an unincorporated association; Northwest Dental Society, a corporation; South Central Dental Society, an unincorporated association; South Eastern Dental Society, an unincorporated association; Wabash Valley Dental Society, an unincorporated association; and West Central Dental Society, an unincorporated association.

The Federal Trade Commission having initiated an investigation of certain activities of the Indiana Dental Association (IDA), a corporation, and of the component dental societies chartered by IDA (Component Societies), as named in the caption hereof, and IDA and the Component Societies having determined that they are willing to enter into an agreement to cease and desist from said activities;

It is hereby agreed by and between the IDA and the Component Societies, by their duly authorized officers and their attorneys,

and counsel for the Federal Trade Commission that:

1. Respondent IDA is an Indiana corporation with its principal office at 402 Jefferson Building, 1 Virginia Avenue, Indianapolis, Ind. IDA charters, and is divided into, 14 geographic component socieities, more particularly described below:

Respondent First District Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Steven E. Dixon, 3700 Bellemeade Avenue, Evansville, Ind.

Respondent Indianapolis District Dental Society, an Indiana corporation, is a component society of IDA with its principal office at the Illinois Building, 17 West Market Street, Indianapolis, Ind.

Respondent Isaac Knapp Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Emory W. Bryan, Jr., 700 Indiana Bank Building, Fort Wayne, Ind.

Respondent Western Indiana District Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Robert H. Michaels, 3120 Wabash Avenue, West Terre Haute, Ind.

Respondent Ben Hur Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Michael A. McDonald, 1606 North Lebanon, Lebanon, Ind.

Respondent East Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Paul B. Risk, 610 South Tillotson Avenue, Muncie, Ind.

Respondent Eastern Indiana Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. John P. Backmeyer, 2519 East Main Street, Richmond, Ind.

Respondent Greene District Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Keith M. Broshears, 290 A Street, Linton, Ind.

Respondent North Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Dennis M. Miller, 3608 Pleasant Street, South Bend, Ind.

Respondent Northwest Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Edward Young, 808 Madison Street, LaPorte, Ind.

Respondent South Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Peter H. Leonard, 2739 Central Avenue, Columbus, Ind.

Respondent South Eastern Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Elbert P. Combs, 411 Clifty Drive, Madison, Ind.

Respondent Wabash Valley Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. F. Wesley Peik, 3429 South La Fontaine Street, Kokomo, Ind.

Respondent West Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Lewis J. Urschel, 2204 Scott Street, Lafayette, Ind.

2. Only for the purpose of this proceeding, and for compliance and enforcement proceedings under the order contemplated hereby, IDA and the Component Societies individually and severally admit all the jurisdictional allegations set forth in the draft of the complaint here attached and waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

3. This agreement shall not become a part of the official record of this proceeding unless and until it is accepted by the Commission. The Commission may (1) accept the agreement; (2) reject it and issue a complaint for adjudication; or (3) take such other action as it may deem appropriate. If this agreement is accepted, the Commission will place said agreement on the public record, and at the same time will make available an explanation of the provisions of the order and the relief to be obtained thereby and any other information which it deems helpful in assisting interested persons to understand the terms of the order. For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments or views concerning the order that may be filed by any interested persons. Thereafter, if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate, the Commission may withdraw its acceptance of this agreement and so notify IDA and the Component Societies, in which event the Commission will take such other action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require), and decison, in disposition of the proceedings.

4. This agreement is for settlement purposes only and does not constitute an admission by IDA or any of the Component Societies that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to IDA or any of the Component Societies, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached, and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so issued, the order to cease and desist shall have the same force and effect as, and may be altered, modified, or set aside in the same manner and within the same time as provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to IDA and the Component Societies at the addresses stated in this agreement shall constitute service. IDA and the Component Societies waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

6. IDA and each of the Component Societies have read the proposed complaint and order contemplated hereby, and each understands that once the order has been issued, IDA and each of the Component Societies will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by then existing law for each violation of the order after it becomes final.

7. Nothing in this agreement shall affect any complaint or order which the Commission may issue with respect to IDA or any one or more of the Component Societies if this agreement is not accepted by the Commission.

ORDER

I

It is ordered, That the following definition shall apply in this order: "Third-party payer" or "payer" means any entity that provides a program of reimbursement for dental health care services to employees or members of any business organization, and any person, such as an independent claims adjuster, who provides evaluative services in connection with any such reimbursement program.

It is further ordered, That respondents, their successors or assigns, and the officers, agents, representatives and employees of each of them, directly or through any subsidiary, division, or other device, shall cease and desist from engaging in any activity, course of conduct, practice, or policy that in whole or in part:

A. Requests, urges, recommends, or suggests that dentists, or has the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pretreatment and post-treatment reports, analyses and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers;

B. Compels or coerces any third-party payer to incorporate, delete or odify any provision in any existing or proposed dental health care benefits program;

C. Has the purpose of causing or inducing consumers to choose dentists who do not cooperate with third-party payers, or influencing, to any degree, consumers' choice of dentists based on the degree and/or manner of noncooperation between such dentists and any third-party payer or payers;

D. Has the purpose of compelling, coercing, or inducing any third-party payer to select particular dental consultants for reasons other than the expertise of such consultants; or

E. Has the purpose or effect of influencing any dental consultant to render any opinion other than that which reflects his independent expert judgment.

III

It is further ordered, That, within thirty (30) days after this order becomes final, each respondent shall mail to each of its members a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown as "appendix A"

to this order, advising that respondents have abandoned all policies, guidelines, and principles, that request, urge, recommend, or suggest that dentists, or have the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pretreatment and post-treatment reports, analyses and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers. Furthermore, the letter shall further advise that dentists are free to choose to deal with any such programs and payers in such manner as they decide individually. In addition to the foregoing, each respondent shall mail a copy of the aforementioned complaint, order, and letter to every person who joins such respondent within five (5) years of the date of service of this Order: *Provided, however,* That mailing by the Indiana Dental Association will relieve the appropriate component society of the obligation of such mailing to a member of the Indiana Dental Association.

IV

It is further ordered, That, within sixty (60) days after service of this order, and annually on the anniversary date of the original report, for each of the five (5) years thereafter, each respondent shall individually file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

V

It is further ordered, That nothing in this order shall be construed to exempt any respondent from compliance with the antitrust laws or the Federal Trade Commission Act, and the fact that any activity is not prohibited by this Order shall not bar a challenge to it under such laws and statute.

VI

It is further ordered, That each respondent shall notify the Commission at least thirty (30) days prior to any proposed change in it, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

APPENDIX "A"

(Respondent's Letterhead)

DEAR DOCTOR: As you may be aware, the Federal Trade Commission (FTC) has been investigating certain activities of the Indiana Dental Association (IDA) and its component societies. IDA and its component societies have voluntarily entered into an agreement with the FTC which resulted in the issuance by the Commission on [date] of a complaint and the entry of a consent order which requires, in essence, that IDA and its component societies cease and desist from certain activities that are concerned with dental health care benefits programs and cooperation by dentists with the administrators of such programs. The order also requires that you be sent a copy of the complaint and order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that IDA and its component societies have abandoned all policies, guidelines and principles which request, urge, recommend, or suggest that dentists, or have the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pretreatment and post-treatment reports, analyses, and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers. You are further notified that you are free to choose to deal with any such payers and programs in such manner as you decide individually.

Copies of the FTC's complaint and order are enclosed.

Sincerely,

President.

Enclosure.

ANALYSIS TO FACILITATE PUBLIC COMMENT ON PROPOSED CONSENT ORDER

The Federal Trade Commission has accepted an agreement containing a proposed consent order from the Indiana Dental Association ("IDA") and the fourteen component societies chartered by IDA ("component societies"). The file reference for the agreement is 781-0023.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become a part of this record. At the conclusion of the public record period, the Commission will review the agreement and all comments and determine whether to withdraw the agreement or make the order final.

The investigation of IDA and the component societies is one of a number that the Commission has conducted in various areas of the health care field. Of particular concern in this case is the impact of the practices of certain dental associations on insurance carrier cost control programs in the dental field. These programs comprise: (1) The limitation of reimbursement to the least costly adequate treatment, and (2) the determination of benefits before nonemergency treatment is rendered. In these insurance programs, when a treating dentist submits a treatment plan that raises questions as to whether it calls for the least costly, yet adequate approach, a dental consultant employed by the third-party payer reviews the treatment plan and diagnostic data to make the benefit determination. If the plan which the treating dentist proposes calls for other than the least costly, yet adequate approach, the third-party payer's liability is limited to reimbursement based on the less expensive but still adequate treatment. The patient remains free to elect the treatment he wishes but, if he chooses the more costly treatment, he must pay the difference between that charge and the amount reimbursed for the less expensive treatment. By making this review and determination of the amount to be paid prior to commencement of the treatment or the patient's commitment to it, the limits of the carrier's liability are clearly understood and the patient is better informed about his choices.

The Indiana Dental Association is a corporation with about 2,000 members. It is governed by an elected house of delegates which in turn elects trustees and officers who together constitute the board of trustees of IDA, which manages the affairs of the association between sessions of the house of delegates. Active membership in IDA is open to dentists licensed in Indiana. The component societies are district dental societies chartered by IDA. Their members constitute the membership of IDA and elect its house of delegates. Each component society has a council that coordinates IDA policy for dealing with insurance plans.

The Commission's proposed complaint alleges that, in 1961, IDA began to develop and distribute standards which indicated that dentists should not cooperate with dental insurance plans by submitting X-rays to the insurers. When the demand for dental insurance grew rapidly in the late 1960's, IDA revised its standards to address more precisely the submission of X-rays to third-party payers and, through its component societies, it actively sought the adherence of all dentists to these uniform standards for dealing with insurance plans. The complaint further charges that IDA and its components violated section 5 of the Federal Trade Commission Act in that their acts to control the design of insurance plans and to assure the uniform manner in which dentists deal with the plans have the effects of eliminating competition among dentists, tampering with the cost of dental services, and being unfair to consumers by denying them the benefits of carriers' cost-controlling efforts and of the second professional opinions provided by the carriers' dental consultants. IDA and the component societies have agreed to a consent order that requires them to cease from engaging in any activity, course of conduct, practice, or policy that:

(a) Requests, urges, recommends, or suggests that dentists, or has the purpose or effect of requiring or organizing dentists to:

(1) Refuse to submit X-rays or pretreatment and post-treatment reports, analyses, and materials to third-party payers (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) requested for benefit determination; or

(2) Refuse to deal in any particular way with any third-party payer;

(b) Compels or coerces any third-party payer to change any provision in any existing or proposed dental health care benefits program;

(c) Has the purpose of causing or inducing or influencing, to any degree, consumers' choice of dentists based on the degree or manner of noncooperation between such dentists and any third-party payer;

(d) Has the purpose of compelling, coercing, or inducing any third-party payer to select particular dental consultants for reasons other than the expertise of such consultants; or;

(e) Has the purpose or effect of influencing any dental consultant to render any opinion other than that which reflects his independent expert judgment.

In addition, IDA and its component societies are to mail to each of their members copies of the complaint and order in this matter and advise them that IDA and the components have abandoned all policies and practices that require or induce dentists not

to cooperate with features of insurance plans. This letter will also inform the members that they are free to determine individually how they will deal with dental health care services insurance plans.

To ensure that the order is obeyed, IDA and each of the components must, within sixty (60) days after the effective date of the order, file with the Commission a written report showing in detail the manner and form of its compliance. Similar reports are to be filed annually for the next 5 years. Moreover, IDA and each of the components must notify the Commission at least thirty (30) days prior to any proposed change in their organization which might affect their obligations under the order. Finally, the order contains a provision affirming that activities not specifically encompassed by the order may nonetheless be subject to challenge under the antitrust laws or the Federal Trade Commission Act.

This order is part of a continuing effort by the Commission to promote the provision of health care services to the public at a fair and reasonable cost.

This analysis is intended to encourage public comment; it does not constitute an official interpretation of the agreement and proposed order or a modification of their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-32316 Filed 11-16-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 154]

RATE SCHEDULES AND TARIFFS

Proposed Rulemaking Which Would Clarify the 36-Month Purchased Gas Adjustment Clause Cost of Service Filing Requirement

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking in docket No. RM79-2.

SUMMARY: The Commission proposes to amend its rules to clarify existing purchased gas cost adjustment clause regulations for interstate natural gas pipelines. If adopted, the regulations would require a full cost review of a pipeline's rates at least every 3 years if the pipeline has a purchased gas cost adjustment clause in its tariff.

DATE: Comments are due on or before December 11, 1978.

ADDRESS: File comments with: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Charles E. Bullock, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-4232.

A. BACKGROUND

The Commission's regulations covering purchased gas adjustment clause (PGA clause) provisions in pipelines' FERC gas tariffs require a pipeline restate its base tariff rate at least every 36 months. The filing is accompanied by a cost of service study for the most recently available 12 months of actual costs. The intent of these regulations is to insure that pipelines which are granted the right to maintain a PGA clause in their tariffs will be subject to a full rate review at least once every 36 months as provided by the current § 154.38(d) (4)(vi)(*a*).

The beginning of the 36-month period is determined by § 154.38(d)(4)(vi)(*b*), which now states: "(b) If a section 4(e) case is filed before the expiration of the 36-month period, a new 36-month period will start running when the proposed rates go into effect. Rates determined by the Commission in section 4(e) or a 5(a) proceeding or rates in a settlement agreement approved by the Commission shall establish the new base tariff rate when they become effective pursuant to a final order, and a new 36-month period will start running".

In the Federal Power Commission (FPC) order Nos. 452 and 452-A, the FPC allowed pipelines to include purchased gas adjustment provisions in their tariffs to permit them to file abbreviated rate filings to reflect changes in purchased gas costs without filing a general section 4 rate case showing the pipeline's overall costs and revenues. However, to insure that its overall costs and revenues were in balance, the FPC, in those orders, promulgated § 154.38(d)(4)(vi) to require that a pipeline's base tariff rate be restated at least once every 3 years, accompanied by a full cost of service and revenue study.

The present § 154.38(d)(4)(vi)(*b*) allows a pipeline in a section 4(e) rate settlement to update its original cost of service, and to establish a new base tariff rate after the rates in the docket originally become effective, subject to refund, in that docket.[1] This could encourage delays in resolving rate cases by encouraging pipelines to delay negotiating settlements so as to establish new base tariff rates after the date the rates originally become effective subject to refund.

Furthermore, it is not clear from the language of § 154.38(d)(4)(vi)(*a*) that the 36-month overall rate review requirement is a continuing obligation, and not one merely to be met after a PGA clause first becomes effective.

SUMMARY OF THE PROPOSED AMENDMENT

This Commission believes that the most appropriate way to accomplish the objective of § 154.38(d)(4)(vi) is to start the 36-month period from the latest of three dates. These are the dates on which (1) the proposed rates in a general section 4(e) rate case, which is filed before the expiration of the last 36-month period, become effective after notice, and suspension if any; or (2) rates are established by final order pursuant to a general section 5(a) rate investigation; or (3) a revised base tariff rate becomes effective, subject to refund, as a result of a filing made pursuant to § 154.38(d)(4)(vi)(*a*). Accordingly, this Commission proposes to amend § 154.38(d)(4)(vi)(*b*) to reflect the method for determining the 36-month period, as discussed above. Furthermore, the Commission proposes to amend § 154.38(d)(4)(vi)(*a*) to make it clear that the 36-month overall rate review requirement is a continuing obligation, and not merely one to be met after a PGA clause first becomes effective.

PUBLIC COMMENT PROCEDURES

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 11, 1978. Each person submitting a comment should include his name and address, identify the notice (docket No. RM79-2), and give reasons for any recommendations. An original and 14 conformed copies should be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. Written comments shall be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426, during regular business hours.

(Administrative Procedure Act (5 U.S.C. 553), Natural Gas Act, as amended (15 U.S.C. 717), Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, it is proposed to amend Part 154, Subchapter E, Title 18, Code of Federal Regulations, as set forth below:

By the direction of the Commission.

KENNETH F. PLUMB,
Secretary.

1. Section 154.38 is proposed to be amended in paragraph (d) by revising clauses (vi)(*a*) and (vi)(*b*) of subparagraph (4) to read as follows:

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[1] See: Algonquin Gas Transmission Co., order issued Oct. 13, 1978, in docket No. RP78-74.

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* * * *
(4) * * *
(vi) * * *

(*a*) Upon the expiration of 36 months after the effective date of the PGA clause, and thereafter, upon the expiration of 36 months from the date the base tariff rate was last established pursuant to the provisions of clause (vi)(*b*), the company shall file a tariff sheet(s) restating its rates to establish a new base tariff rate. The Company shall state its agreement that this filing will automatically be subject to refund concurrently with the filing at the end of 36 months of the tariff sheets establishing a new base tariff rate until an agreement is reached or a Commission determination is made. With this tariff sheet(s) the company shall file a study in the form and with the content prescribed by § 154.63 of the regulations, except statements O and P, to support the new base tariff rate. (If the company has a section 5(a) case pending a final order or has made a section 4(e) filing for which the proposed rates would not become effective before termination of the 36-month period, a study from that proceeding may be utilized.) This study shall be based upon actual costs for the 12 months of most recently available experience, provided that the 12-month period used ends not more than 4 months prior to the expiration of the 36-month period. Annualization for changes which actually occurred in the 12 months will be permitted. This study shall be served on the company's jurisdictional customers and interested State commissions concurrently with the company's filing with the Commission.

(*b*) For purposes of caluse (vi)(*a*) of this subparagraph, the 36-month period shall begin, and the base tariff rate shall be deemed to have been established, on the latest of the dates on which: the rates in a general section 4(e) rate case, which is filed before the expiration of the last 36-month period, has become effective after notice, and suspension if any; or rates are established by final order pursuant to a general section 5(a) rate proceeding, if that occurs prior to the expiration of the last 36-month period; or a revised base tariff rate becomes effective, subject to refund, as a result of a filing made pursuant to clause (vi)(*a*) of this subparagraph.

[FR Doc. 78-32326 Filed 11-16-78; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 56]

WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Amendments Establishing New Procedures for the Determination of the Sanction Period

AGENCIES: Department of Labor and Department of Health, Education, and Welfare.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this proposed rulemaking is to amend the regulations governing the work incentive program (WIN) for AFDC applicants or recipients. These amendments would remove provisions of the regulations which impose a fixed period of AFDC ineligibility (sanction period) on those individuals who are deregistered from the WIN program for failure or refusal to participate without good cause. In the place of the fixed sanction period, the proposed regulations would establish a flexible period of ineligibility—one which bases the length of time during which an individual loses AFDC benefits on the length of time the person has refused to participate. The length of time the person has refused to participate will be that which exists between the individual's first refusal to participate in the WIN program and the date on which a notice of intended deregistration is sent. Procedures for determining when refusal to participate starts are also prescribed.

DATE: Comments are due by January 16, 1978. Comments, communications, and inquiries concerning the proposed amendments to 29 CFR Part 56 and 45 CFR Part 224 should be directed to Mr. Hans at the address set forth below. Comments shall be in writing and submitted in duplicate.

FOR FURTHER INFORMATION CONTACT:

Merwin S. Hans, Executive Director, National Coordination Committee, Work Incentive Program, Room 5102, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213, telephone number 202-376-6694.

SUPPLEMENTARY INFORMATION: These proposed regulations concern one aspect of the work incentive (WIN) program. They are being proposed in response to several court actions, including *McLean* v. *Califano*, No. 76 Civ. 1572 (CES) (S.D.N.Y., filed June 27, 1977).

The work incentive program is a national work and training program designed to provide services and opportunities necessary to enable applicants for aid to families with dependent children (AFDC) and recipients of AFDC to become economically independent through employment. The program is administered jointly by the Department of Labor and the Department of Health, Education, and Welfare.

Legislative requirements for the WIN program are contained in title IV, parts A and C of the Social Security Act. According to these provisions certain persons must register with the WIN program in order to be eligible for AFDC. Persons who must register with the program are required to participate in employment and training activities which will enable them to become employed in the shortest time possible. Those required to register but who refuse to participate in the program may be deregistered and are subject to loss of their part of an AFDC grant. No one may be deregistered without being offered an opportunity for a fair hearing.

These proposed regulations involve the period of AFDC ineligibility (sanction period) imposed on those individuals who are deregistered from the WIN program for failure or refusal to participate in a WIN activity without good cause.

On June 23, 1977, the U.S. District Court for the Southern District of New York held that the provision of the WIN regulations entitled, "Subsequent WIN Registration by Deregistered Individuals" (29 CFR 56.77; 45 CFR 224.77) was inconsistent with the Social Security Act. *McLean* v. *Califano*, No. 76 Civ. 1572 (CES) (S.D.N.Y., filed June 27, 1977). A final order and judgment in this case was entered on September 14, 1977.

Section 402(a)(19)(F) of the Social Security Act provides in relevant part that: "* * * if and for so long as any individual * * * has been found by the Secretary of Labor * * * to have refused without good cause to participate * * * or to have refused without cause to accept employment (that individual's) * * * need shall not be taken into account in making the determination * * * (of the family's AFDC benefits)."

The existing regulations, at 29 CFR 56.77 and 45 CFR 224.77, provide that a WIN registrant is automatically subject to a 90-day sanction period for the first failure of refusal to participate in the WIN program without good cause and a 6-month sanction period for subsequent failures or refusals. These time periods apply regardless of the length of the actual period during which an individual has failed or refused to participate in the program.

The district court in New York invalidated this provision because it

found that the statutory term, "if and for so long as" requires that the length of the sanction period must be related to the period of time the particular individual has actually refused to participate. The court also held that a fixed sanction period which is not related to the actual period of nonparticipation does not comport with the Act.

Although the decision in *McLean* v. *Califano* applied by its own terms only to deregistered WIN registrants in the State of New York, it would be inappropriate to use one system of sanctions for registrants in the State of New York and a different system elsewhere in the United States. The result of a dual system of sanctions would be that registrants in different States would be subject to different sanctions for engaging in similar conduct that constitutes failure or refusal to participate in the WIN program without good cause. Similarly, a dual system of sanctions would be inconsistent with principles of sound program administration. These considerations have also been brought to the attention of the two Departments by the institution of several lawsuits which seek to implement the *McLean* decision in other States. Accordingly, these proposed regulations would establish a single system for determining the sanction period which, in the Departments' view, is consistent with the *McLean* holding.

The Departments considered the possibility of adopting one policy for persons who refuse or fail to participate in the WIN program for the first time, and another policy for persons who refuse or fail to participate in WIN on more than one occasion. However, *McLean* v. *Califano* may preclude the use of two different policies since that opinion emphasizes "an individual determination for each individual" and also stresses the words of the statute—"if and for so long as." Moreover, the *McLean* case involved an individual who failed or refused to participate in WIN on more than one occasion. Therefore, these proposed regulations treat those who refuse on more than one occasion to participate in a WIN activity for the first time. The Departments invite comment on this issue. Should all persons who fail or refuse to participate in a WIN activity have their sanction period calculated in the same manner, or should a different method of calculating the sanction period be used for those who fail or refuse to participate in a WIN activity on more than one occasion? If *McLean* precludes the adoption of different policies for the first and second refusers, should the Department seek legislation which would permit them to treat first and second refusers differently?

In formulating the proposed regulations to replace the current scheme set forth principally in 29 CFR 56.77 and 45 CFR 224.77, the Departments were guided by two important aspects of the *McLean* decision. First, the court clearly rejected an argument that WIN registrants cannot be deregistered for failure or refusal to participate in the WIN program without good cause. The court said: "[A]lthough we understand plaintiff's argument that an individual who is so sanctioned under the regulations is precluded from the very benefits which Congress hoped would function as positive incentives to becoming a wage earner, we do not believe that the creation of negative incentives is beyond the discretionary powers which Congress invested in the Secretaries of HEW and Labor." Therefore, the authority to deregister registrants who fail to participate in the program without good cause is a valid exercise of the Secretaries' statutory authority, set forth in section 439 of the Social Security Act, to promulgate regulations for the operation of the WIN program, and is not inconsistent with the purposes of the Act.

Another important aspect of the *McLean* decision was its holding that the statute did not require that the sanction period equal, with mathematical precision, the period of failure or refusal to participate. Rather, the decision said that "a close approximation as to each individual" would suffice.

The WIN process may be summarized as follows. A person is required to register for a WIN activity. Staff work is completed on the person—an appraisal of the supportive services needs and an employment evaluation of the person is made. The person may be referred to a WIN activity. The person may fail or refuse to report to a WIN office or to a Win activity. If this happens, a conciliation period of up to 30 days takes place during which a WIN counselor attempts to persuade the person to participate in WIN. If the person continues to fail or refuse to participate in WIN, he is sent a notice of intended deregistration. Following the notice a hearing may take place if requested. If the hearing results in a finding that there is no good cause for the person's failure or refusal to participate, he is deregistered. A 60-day counseling period then takes place. During this counseling period, the person may appeal the finding of the hearing to the State Appellate Board or to the National Review Panel which sits in Washington, D.C. After the 60-day counseling period, the person will be subjected to a sanction if counseling is unsuccessful.

The major problems which are inherent in formulating the proposed rules are:

(1) When does failure or refusal to participate begin; and

(2) When does it end.

The proposed rules address these problems by specifying that failure or refusal to participate begins on the date of the individual's first failure or refusal to participate in a WIN activity without good cause, and ends on the date a "notice of intended deregistration" is sent to the individual. The length of time that elapses between these two dates will determine the length of the subsequent sanction period during which an individual is ineligible to register for WIN and receive AFDC benefits.

The proposed rules provide that a notice of intended deregistration will not be sent to an individual until all efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant have been exhausted. (This conciliation effort may continue for a period not to exceed 30 days, but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner.) The proposed rules also provide that the notice of intended deregistration will specify the determined date of the registrant's first failure or refusal to participate in WIN activity without good cause. The notice will also include, among other information, notification of the registrant's right to a hearing where he or she believes the proposed action and/or proposed length of the sanction period is incorrect. (It should be noted that according to the current rules governing the program if the hearing decision is adverse to the individual and he or she participates in counseling for a period of up to 60 days aimed at persuading him/her to participate in the WIN program, no sanction may be imposed during that period. Furthermore, if such counseling is successful, no sanction may be imposed.)

Because it is not always clear when the individual has first failed or refused to participate, the regulations further spell out how this determination is to be made. They provide that this date will be determined by identifying the date on which the individual first expressly refused to participate (overt or express refusal), or the date on which he or she began to act in such a way that failure or refusal to participate can be implied (defacto refusal).

With respect to whether a failure or refusal to participate can be implied from an individual's actions, the regulations do not attempt to spell out each and every action that may give rise to such an implication. There are a variety of ways that an individual may indicate an unwillingness to par-

ticipate. It would be impossible to identify all of these in regulations.

However, a refusal may be deemed to have occurred if the individual takes any of the actions set forth in chapter 9, section B-3b of the WIN Handbook. According to that section of the handbook the following actions may constitute a failure or refusal to participate.

(1) A registrant, after two call-in notices, refuses or fails without good cause to appear for an appraisal or other interview;

(2) A certified registrant fails to appear without good cause for a job referral or interview when the referral is made by the WIN sponsor staff, and the job meets appropriate work criteria and is consistent with the employability plan;

(3) A registrant repeatedly fails to show up for work or for WIN sponsor and/or SAU interviews, appointments, classes, etc., without good cause;

(4) A registrant seriously disrupts a WIN activity or the orderly administration of the overall program, or his behavior constitutes a threat or hazard to fellow registrants;

(5) A registrant possesses the required education, experience, or aptitude to perform the assignment but makes no noticeable effort to benefit from the WIN activity. The registrant's performance must be at a level consistently below the normal range of achievement of the individual's fellow WIN registrants. The determining factors would be the WIN staff's best judgment as to whether the individual is performing at or near his actual potential;

(6) The registrant quits his job without good cause or is fired for cause during the initial 90 days of employment. The determination as to whether an individual was fired for cause is made by the WIN sponsor, based on unemployment insurance service criteria;

(7) The registrant refuses without good cause to accept suitable child care, thereby precluding participation in WIN;

(8) A registrant refuses without good cause to accept other services, such as transportation, thereby precluding participation in work or training. However, a registrant may not be compelled to accept major medical services even if the refusal of such services precludes further participation.

The first failure or refusal to participate is used to measure the beginning of the sanction period. As noted, where the failure or refusal to participate is implied by a person's actions, the date the individual began the pattern of misbehavior is used to measure the beginning of the sanction period. Accordingly, since the determination of the beginning of the pattern will indeed be judgmental, this determination will be subject to review under 29 CFR 56.65 and 45 CFR 224.65. These sections are being amended by this proposed rulemaking to provide that the length of the sanction period is subject to review under the WIN adjudication system.

The Departments have noted that under the proposed method for calculating the sanction period, persons whose failure or refusal to participate is implied from a pattern of behavior will always be subject to a greater sanction than persons whose failure or refusal to participate is express. Therefore, to make certain that persons fully understand the consequences of their failure to refusal to participate, the Departments will put into effect program policy to adequately warn each person at the time of registration that either an express (overt) refusal, or a pattern of behavior (de facto or implied refusal) that frustrates the intent of the program without good cause, could result in the loss of a portion of the family's cash benefits. The Departments invite comment on problems which may result from imposing a greater sanction on those whose failure or refusal to participate is attributable to a pattern of behavior.

With regard to the ending date for measuring the sanction period, the proposed rules use the date of the notice of intended deregistration. This date has been chosen because it will establish a standard, nondiscretionary rule applicable to all program registrants and will enable the WIN sponsor to include this information in the notice. The registrant will then have the opportunity to decide whether to raise the length of the sanction period as an issue at the hearing. We considered other alternatives, including the date of request for a hearing and the date of the hearing decision. However, since use or either of these dates would have the effect of extending the length of the sanction period and thereby penalizing registrants for exercising their right to a hearing, these dates were not chosen.

Accordingly, it is proposed to amend title 29, part 56 as follows:

PART 56—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. Section 56.51 is amended by: Revising paragraph (a); adding the following new paragraphs (b) and (c); and renumbering the existing paragraph (b) and subsequent paragraphs accordingly.

§ 56.51 Sanctions.

A State plan under title IV-A of the Act shall provide that:

(a) When a registered recipient has been found to have failed or refused without good cause to participate in the WIN program, the following sanctions shall apply for so long as the registrant fails or refuses to participate. This period will be determined in accordance with paragraph (b) of this section.

(b) The period of sanction resulting from a failure or refusal to participate without good cause shall be measured by the length of time that elapsed from the date of the registrant's first failure or refusal to participate in the WIN program to the date of the WIN sponsor's issuance of the notice of intended deregistration.

(c) The first failure or refusal to participate in the WIN program may be manifested either by an overt (express) refusal or de facto failure to participate.

(1) An overt (express) refusal is a written or oral statement which indicates that an individual will not participate in the WIN program. Where this expression is made, the first refusal to participate shall be deemed to have occurred on the date of that expression.

(2) A de facto refusal is any act or pattern of behavior which indicates that an individual will not participate in the WIN program. Where a de facto failure is one act on the part of the individual, the first failure to participate shall be deemed to have occurred on the date of that act. Where a de facto failure is a pattern of behavior on the part of the individual, the first failure to participate shall be deemed to have occurred on the date the pattern began.

* * * * *

2. Section 56.63 is amended by: Revising paragraph (a); adding the following new paragraph (b)(2); by renumbering the existing subparagraphs in paragraph (b) accordingly; and by amending the new paragraph (b)(3) as follows:

§ 56.63 Requirement of conciliation and notice.

(a) All efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant must be exhausted prior to the issuance of a notice of intended deregistration. This conciliation effort may continue for a period not to exceed 30 days but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner. Immediately after the conciliation period has terminated, or the dispute remains unresolved after 30 days, the WIN sponsor shall mail to the registrant a notice of intended deregistration.

(b) The notice shall include:

(1) * * *

(2) Notice of the determined date of first failure or refusal to participate in the WIN program without good cause, and the consequent length of the sanction period.

(3) Notification of the registrant's right to a hearing if the registrant believes the proposed action is incorrect and/or the length of the sanction period is incorrect, provided a request for a hearing is filed as prescribed in § 56.64.

* * * * *

3. Paragraph (a) of § 56.65 is revised to read as follows:

§ 56.65 Issues subject to hearing.

(a) Under the WIN adjudication system a hearing officer will hear and decide WIN program issues arising subsequent to registration by certified and uncertified registrants. WIN program issues include failure or refusal to appear for appraisal, assignment to a WIN component, unresolved WIN grievances, failure or refusal without good cause to accept employment or otherwise participate in the WIN program, and the determination of the length of the sanction period.

* * * * *

4. Paragraph (a) of § 56.68 is amended by revising subparagraph (5) as follows:

§ 56.68 Decisions of the hearing officer.

(a) The hearing officer may rule:

* * * * *

(5) That the length of the period of the registrant's failure or refusal to participate was not correctly determined.

The hearing officer may also render such other rulings as are appropriate to the issues in question. However, a hearing officer shall not consider the validity or constitutionality of the regulations in this part or of the Act.

* * * * *

5. Paragraph (a) of § 56.77 is revised to read as follows:

§ 56.77 Subsequent WIN registration by deregistered individuals.

(a) An individual who was deregistered on the basis of a "failure or refusal to participate without good cause" determination, upon application, may again register for WIN, provided the sanction period specified in § 56.51(b) has elapsed and the individual has given evidence to the WIN project staff of willingness to participate.

* * * * *

Signed at Washington, D.C., this 7th day of November, 1978.

RAY MARSHALL,
Secretary of Labor.
JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

[FR Doc. 78-32120 Filed 11-16-78; 8:45 am]

[7600-01-M]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

[29 CFR Parts 2200 and 2201]

RULES OF PROCEDURE

Extension of Time for Comments on Proposed Rulemaking

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Occupational Safety and Health Review Commission extends the comment period on a previously published proposed rule document relating to rules of procedure. The extension is granted in order to permit sufficient time for all interested persons to submit comments on the proposed rules.

DATE: Comments must be submitted by December 15, 1978.

ADDRESS: Comments should be addressed to Robert C. Gombar, Acting General Counsel, Occupational Safety and Health Review Commission, 1825 K Street NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gombar, Acting General Counsel, 202-634-4015.

SUPPLEMENTARY INFORMATION: On August 18, 1978, the Occupational Safety and Health Review Commission proposed the amendment of several of its rules of procedure as well as the adoption of certain additional rules of procedure (43 FR 36854). The Commission held a public hearing on these proposed revisions in Chicago, Ill., on October 30, 1978. The period for commenting on these proposed revisions was to close on November 10, 1978. The American Bar Association Committee on Occupational Safety and Health has requested an extension of time to file comments, stating that the illness of a key committee member as well as other administrative difficulties have delayed the preparation of its comments. The Commission is concerned that all interested persons have sufficient time to analyze its proposed rule changes and to submit well-documented comments. In order to achieve this and to accommodate the American Bar Association as well as other persons who may be similarly situated, the Commission is extending the comment period until December 15, 1978.

One significant change to the Commission rules of procedure proposed August 18 is the adoption of a new set of rules of simplified proceedings designed to reduce both paperwork and expense to parties as well as to make Commission adjudications less complex and time consuming. The Commission also proposed a number of other changes, including the following: A new rule on interlocutory appeals, the elimination of the 20-day period between the mailing of a judge's initial decision to the parties and the filing of his report with the Commission, the reinstitution of a 25-day deadline for the filing of petitions for discretionary review, a new rule on briefs, and a rule on settlements designed to give better notice of settlement proposals to affected employees.

Signed at Washington, D.C., this 13th day of November 1978.

ROBERT C. GOMBAR,
Acting General Counsel.

[FR Doc. 78-32398 Filed 11-16-78; 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[30 CFR Part 46]

STATE GRANTS

Amendment and Recodification of Regulations

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule will establish procedures and requirements for applying for, receiving, and administering State grants under section 503 of the Federal Mine Safety and Health Act of 1977. The proposed rule will establish a new part 46 of title 30, Code of Federal Regulations and will replace the regulations relating to State grants previously authorized under the Federal Coal Mine Health and Safety Act of 1969 and published by the Secretary of the Interior in 30 CFR 651.

DATES: Comments must be received on or before January 16, 1979.

ADDRESS: Send comments to Frank A. White, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203.

FOR FURTHER INFORMATION CONTACT:

Adam W. Hare, Deputy Chief, Branch of Contracts and Grants, Room 723, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, telephone 703-235-8454.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164 (Act), applies to all coal and other (metal and nonmetal) mines, amends the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91-173 and repeals the Federal Metal and Nonmetallic Mine Safety Act of 1966, Pub. L. 89-577. Section 503 of the Act allows States in which coal or other mining takes place to receive grants from the Secretary of Labor for the purposes of developing and enforcing effective coal or other mine health and safety laws and regulations consistent with the provisions of section 506 of the Act and improving State worker's compensation and occupational disease laws and programs related to coal or other mine employment. The funds may also be used to promote effective Federal-State coordination and cooperation in the field of mine safety and health. In addition, the Mine Safety and Health Administration (MSHA) will assist the States in developing and administering miner training programs, while also providing safety and health training opportunities to State mine inspection agencies. MSHA believes these grant and training programs will strengthen Federal-State coordination in promoting mine safety and health.

II. APPLICABILITY

These proposed rules set forth the procedures and requirements for any State in which coal or other mining takes place to apply for, receive, and administer State grants under section 503 of the Act. These rules will replace those existing regulations dealing with State grants previously issued by the Secretary of the Interior and published in Chapter VI, Part 651, Title 30, Code of Federal Regulations. Those regulations applicable to State grants and published in part 651 of title 30 will be inoperative after promulgation of new part 46 in title 30.

III. PUBLIC COMMENTS

These proposed rules are not subject to the notice and comment procedures in 5 U.S.C. 553 because they deal with grants and are exempt under 5 U.S.C. 553(a)(2). However, the Assistant Secretary of Labor for Mine Safety and Health wishes to afford interested persons the opportunity to comment upon the proposed rules. Therefore, interested persons may participate in the rulemaking process by submitting written data, views, and arguments. Copies of these proposed rules will be sent to the States that are affected by them.

IV. DRAFTING INFORMATION

The principal persons responsible for drafting these proposed rules are: Frank A. White, Office of Standards, Regulations and Variances, MSHA, Department of Labor; Adam W. Hare, Branch of Contracts and Grants, MSHA, Department of Labor; and Bernard R. McGuire, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

V. REGULATORY ANALYSIS

NOTE.—It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044, Improving Government Regulations (43 FR 12661, Mar. 24, 1978), or the Department of Labor's proposed guidelines for implementing the Executive Order (43 FR 22915, May 26, 1978).

Dated: November 14, 1978.

ROBERT B. LAGATHER,
Assistant Secretary of Labor for Mine Safety and Health.

It is proposed to add a new Part 46 to Chapter I, Title 30, CFR as follows:

SUBCHAPTER G—FILING AND OTHER ADMINISTRATIVE REQUIREMENTS

PART 46—STATE GRANTS FOR ADVANCEMENT OF HEALTH AND SAFETY IN COAL AND OTHER MINES

Subpart A—General

Sec.
46.1 Purpose and scope.
46.2 Definitions.
46.3 Purpose of making and States eligible to receive grants.

Subpart B—Application for Grants

46.4 Manner of submission.
46.5 Delegation of authority.
46.6 Information required.

Subpart C—Approval of Applications and Limitations

46.7 Requirements for approval.
46.8 Defective applications and modifications.
46.9 Limitations.
46.10 Termination.
46.11 Appeals and hearings.

Subpart D—Fiscal and Accounting

46.12 Procedures for obtaining payments.
46.13 Accounting records.
46.14 Procurement standards.
46.15 Property management standards and patents and copyrights.

Subpart E—Reports

46.16 State monitoring of grant-supported activities; reports.
46.17 Acknowledgment of Federal Government participation.

Subpart F—Consultation and Cooperation

46.18 Consultation and cooperation.

AUTHORITY: Sections 503 and 508 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164.

Subpart A—General

§ 46.1 Purpose and scope.

This part provides the procedures for making grants to States under the provisions of section 503 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173 as amended by Pub. L. 95-164). Additional standards contained in Office of Management and Budget Circular A-102 (revised) "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" dated August 24, 1977 (42 FR 45828-45891), are also applicable to grant instruments entered into between the Federal and State governments.[1]

§ 46.2 Definitions.

As used in this part and in grants entered into pursuant to this part:

(a) "Government" means the United States of America.

(b) "Secretary" means the Secretary of Labor or his authorized representative.

(c) "MSHA" means the Mine Safety and Health Administration of the U.S. Department of Labor.

(d) "Assistant Secretary" means the Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, or his authorized representative.

(e) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territories of the Pacific Islands, in which coal or other mining takes place.

(f) "Fiscal Year" means a 12-month period ending on September 30.

(g) "Act" means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164.

§ 46.3 Purpose of making and States eligible to receive grants.

(a) The Secretary, in coordination with the Secretary of Health, Education, and Welfare and the Secretary of Interior, is authorized by section 503(a) of the Act to make grants to any State in which coal or other mining takes place to: (1) Assist in developing and enforcing effective coal or other mine health and safety laws and regulations; (2) improve State

[1] The Office of Management and Budget Circular No. A-102 is available for inspection at the State Grants Program Office, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203.

worker's compensation and occupational disease laws and programs related to coal or other mine employment; and (3) promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal or other mines.

(b) Grants shall be made to a State through its official coal or other mine inspection or safety agency, and executed by an individual authorized to act for the State agency.

Subpart B—Application for Grants

§ 46.4 Manner of submission.

(a) An original and two copies of the application shall be submitted through the State clearinghouse as required by Office of Management and Budget Circular A-95 to the Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, Va. 22203.

(b) The Application for Federal Assistance (nonconstruction programs) contained in Attachment M of Office of Management and Budget Circular A-102 (revised) shall be used when applying for grants.

(c) States shall report deviations from grant budgets and shall request approval for budget revisions in accordance with the provisions of Attachment K, Office of Management and Budget Circular A-102 (revised).

§ 46.5 Delegation of authority.

General authority and responsibility for the administration and enforcement of mine safety and health programs, including the authority of the Secretary to review applications for grants and to make awards under section 503 of the Act, has been delegated to the Assistant Secretary by Secretary of Labor Order 3-78, effective March 9, 1978. The Assistant Secretary may redelegate authority to such officers and employees as he deems appropriate. The delegation to the Assistant Secretary, therefore, includes the authority to issue, amend, and repeal rules under this part and to provide policy, regulations, and guidelines by which this part is implemented. The Assistant Secretary may, with respect to any grant award, impose additional conditions prior to or at the time of the award when, in his judgment, such conditions are necessary to assure safe and healthful working conditions for individuals working in mines, or to promote the conservation of grant funds.

§ 46.6 Information required.

Applications shall be in the form of proposals, which consistent with the purposes of the grant must:

(a) Set forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of section 503(a) of the Act. An application may provide for: (1) Assistance to States in developing and enforcing effective coal or other mine health and safety laws and regulations consistent with the provisions of section 506 of the Act; (2) improvement to State worker's compensation and occupational disease laws and programs related to coal or other mine employment; and (3) promotion of Federal-State coordination and cooperation in improving the health and safety conditions in the coal or other mines.

(b) Designate the State coal or other mine inspection or safety agency as the sole agency responsible for administering the grant throughout the State, and contain satisfactory evidence that such agency will have the authority to carry out the purpose of a grant provided under this part.

(c) Give assurances satisfactory to the Assistant Secretary that such agency has or will have an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal or other mine inspections within such State.

(d) Provide for the extension and improvement of the State program for the improvement of coal or other mine health and safety in the State, and provide that no advance notice of an inspection will be provided to anyone.

(e) Contain assurance satisfactory to the Assistant Secretary that grants provided under this part will supplement, not supplant, existing State coal or other mine health and safety programs.

(f) State the period of time during which each of the programs will be pursued.

(g) Contain a financial plan (budget information) submitted on the "Application for Federal Assistance (nonconstruction programs)" contained in Attachment M of Office of Management and Budget Circular A-102 (revised).

(h) Provide such fiscal control and fund accounting procedures as may be necessary to comply with the requirements of this part and as may be appropriate to assure proper disbursement and accounting of grants made under this part.

(i) Provide the name and title of the person who will direct the program.

(j) Provide the approximate number and general qualifications of the personnel who will work on the program.

(k) Indicate the location or locations at which the various projects in the program(s) will be pursued.

(l) Provide assurances satisfactory to the Assistant Secretary that, if the grant is made, the required funds (matching share) from non-Federal sources will be forthcoming. Matching share represents the portion of project costs not borne by the Federal Government. General guidelines for computing matching share are defined in Attachment F, Office of Management and Budget Circular A-102 (revised).

(m) Indicate whether the programs or any part of the programs have been or will be submitted to other organizations for the purpose of obtaining a grant.

(n) Agree that the official coal or other mine inspection or safety agency designated pursuant to paragraph (b) of this section shall make the reports required by § 46.16 (State monitoring of grant supported activities reports) of this part and shall abide by all other terms and conditions which the Assistant Secretary may prescribe.

Subpart C—Approval of Applications and Limitations

§ 46.7 Requirements for approval.

The Assistant Secretary shall approve only those applications, or requests for renewals, that meet the requirements set forth in the Act and this part.

§ 46.8 Defective applications and modifications.

(a) Any application, or request for renewal, that does not meet the requirements of this part shall be returned promptly and the state shall be requested to modify, amend, or revise the application as necessary in order to meet the requirements and to resubmit the application or request for renewal.

(b) The Assistant Secretary will not finally disapprove any State application or modification, amendment, or revision thereof without first affording the State agency reasonable notice and opportunity for a public hearing, as provided in § 46.11 (appeals and hearings) of this part.

§ 46.9 Limitations.

(a) Applications shall only be considered for programs that meet the purposes and objectives of section 503 of the Act and this part.

(b) Grants shall be made on a fiscal year basis or portion thereof.

(c) Each grant shall be covered by a grant agreement between the Government and the State. The grant agreement shall establish the purposes, objectives, total estimated cost of the program during the fiscal year for which the grant is to be made, and the approved financial plan.

(d) Federal funds will be granted on the basis of grant applications, and the amount granted to any State for a fiscal year under this section shall not exceed 80 percentum of the amount expended by such State in such year for carrying out the approved grant. The Assistant Secretary may allocate

funds between States and may fix the grant at less than 80 per centum, and the percentages may be unequal between grants and between States.

(e) None of the funds granted by the Government or provided by the State shall be used for any purpose not specifically provided in the grant agreement.

(f) Any State accepting a grant or grants under this part shall agree that neither the Government nor any of its officers, agents, or employees shall be responsible or liable for any loss, expense, damage to property, or for death or bodily injury to persons, which may arise from or be incident to any project or grant coming hereunder, and the State shall agree to hold the Government and its officers, agents, or employees harmless from all such claims.

(g) Reimbursement for travel expenses shall be in accordance with the State's regular lawfully established policies and prcedures, except they may not exceed those authorized in Standardized Government Travel Regulations (Federal Property Management Regulations, 41 CFR Parts 101[141).[2]

(h) The State shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d 1970) which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and with the implementing regulation issued by the Secretary of Labor with the approval of the President (29 CFR Part 31). Any grant for a project which involves a federally assisted construction contract, as defined in Executive Order 11246, as amended, shall be subject to the condition that the grantee shall be subject to the condition that the grantee shall comply with the requirements of the Executive order, as amended, and with the applicable rules, regulations, and procedures.

(i) Under the provisions of the Federal Hatch Act (Political Activities Act of Aug. 2, 1939, as amended, 5 U.S.C. 1501-1508 (1976)), all State or local agencies, officers and employees whose principal employment is in connection with activities financed by any grant under this part, irrespective of whether the employees are under a merit system, are prohibited, with certain exceptions, from:

(1) Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

[2]The Federal Property Management Regulations are available for inspection at the State Grants Program Office, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, VA. 22203.

(2) Directly or indirectly coercing, attempting to coerce, commanding, or advising any other State or local officer or employee to pay, lend, or contribute anything of value to any party, committee, organization, agency, or person for political purposes.

(3) Being a candidate for elective office. Inquiries with respect to the provisions of the Federal Hatch Act as it affects grants awarded under this Part should be directed to the Office of the Assistant Secretary, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203.

§ 46.10 Termination.

(a) A State grant may be terminated by the State upon written notice to the Assistant Secretary, specifying the date upon which the State grant shall be terminated, but which date of termination shall not be less than 30 days from the date of the notice.

(b) Any grant awarded under this part may be revoked or terminated, in whole or in part, by the Assistant Secretary at any time within the period of the grant, whenever the Assistant Secretary finds, after giving due notice to the State and affording the State an opportunity for a hearing under § 46.11 (appeals and hearings) of this part, that the State has failed to comply with the terms and conditions of the grant or the regulations of this part. The State shall be notified of such findings in writing and given the reasons therefor, together with the effective date.

§ 46.11 Appeals and hearings.

(a) The proposed disapproval by the Assistant Secretary of any initial State application, request for renewal, or modification of grant funds, or proposed termination of State grants shall be given to the State by written notice setting forth the reasons for the proposed disapproval or termination. The State, through its designated coal or other mine inspection or safety agency, may appeal such decision by the mailing of a notice of appeal and request for a public hearing to the Assistant Secretary within 30 days after receipt of the notice of proposed disapproval or termination.

(b) A notice of hearing under this section shall be published in the FEDERAL REGISTER and the period of time between such publication and the date fixed for the hearing shall not be less than 30 days. The nature of the hearing shall be dependent upon the issues involved. The notice of hearing shall prescribe the rules of the proceeding.

(c) The final decision of the Assistant Secretary disapproving any initial application or modification, or request for renewal, or terminating a grant shall be conclusive unless the State within 30 days from the date of such decision shall file a petition in the U.S. Court of Appeals for the District of Columbia stating that such decision should be modified or set aside in whole or in part. The filing of a petition shall not stay the application of the decision of the Assistant Secretary except as ordered by the court.

Subpart D—Fiscal and Accounting

§ 46.12 Procedures for obtaining payments

(a) States shall be paid under one of the methods defined in Attachment J, Office of Management and Budget Circular A-102 (revised).

(b) States shall comply with the provisions of Attachment A, Office of Management and Budget Circular A-102 (revised) when operating with federally advanced funds.

§ 46.13 Accounting records.

(a) State financial management systems shall be maintained in accordance with the provisions of Attachment G, Office of Management and Budget Circular A-102 (revised).

(b) The State's records relating to each grant, with all supporting and related documents shall, at all reasonable times, be made available, upon request for inspection and audit by the Assistant Secretary, the Secretary, or by the Comptroller General of the United States or their authorized representatives. If desired, microfilm copies may be substituted in lieu of original records.

(c) The State's records relating to each grant shall be retained and made available until the expiration of 3 years from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of each annual expenditure report, with the following qualifications:

(1) The records shall be retained beyond the 3-year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Federal grant funds shall be retained for 3 years after its final disposition.

(3) When grant records are transferred to or maintained by MSHA, the 3-year retention requirement is not applicable to the grantee.

§ 46.14 Procurement standards.

(a) The State is the responsible authority, without recourse to MSHA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant. This includes but is not limited to disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to

such local, State, or Federal authority as may have proper jurisdiction.

(b) States may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with Federal grant funds adhere to the standards set forth in Attachment O, Office of Management and Budget Circular A-102 (revised).

§ 46.15 Property management standards and patents and copyrights.

(a) Except as specified in paragraphs (b) (1) and (2) below, the "Property Management Standards" contained in Attachment N of Office of Management and Budget Circular A-102 (revised) are applicable to all grants.

(b) Specific standards for control of copyrights and patents are:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to MSHA. MSHA shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be allocated and administered in order to protect interest consistent with the Act.

(2) Where the grant results in a book or other copyrightable material, any such work normally becomes the property of the Government, and the grantee would not be authorized to secure a copyright thereon. However, educational institutions and individuals in the field of education may be granted the right to publish works arising out of the grant provided that the Government secures a royalty-free, nonexclusive, and irrevocable license to publish, reproduce, use, and dispose of the work, and to authorize or ratify the acts of others to do the same.

Subpart E—Reports

§ 46.16 State monitoring of grant-supported activities; reports.

(a) States shall constantly monitor the performance of grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

(b) States shall submit a quarterly performance report for each grant which briefly presents the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data shall be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) States shall submit financial reports in accordance with Attachment H of Office of Management and Budget Circular A-102 (revised).

(d) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the State shall inform MSHA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(e) If any performance review conducted by the State discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K, Office of Management and Budget Circular A-102 (revised), the State shall submit a request for budget revision.

§ 46.17 Acknowledgment of Federal Government participation.

Appropriate acknowledgment shall be given by the State of the Department of Labor's participation in financing each project. Such acknowledgment shall be included in all publications, news releases, and other information media developed to publicize, describe, or report on activities and accomplishments carried out in whole or in part with funds received under provisions of the Act.

Subpart F—Consultation and Cooperation

§ 46.18 consultation and cooperation.

(a) As contemplated by the Act, the Assistant Secretary will consult and cooperate with the State in accomplishing the purposes of the grant, including, but not limited to, the furnishing of advice and assistance to promote the objectives of the Act and the coordination of projects.

(b) In addition to cooperating in carrying out the purposes of State grants, the Assistant Secretary also shall cooperate with such States in training Federal and State inspectors jointly, and in establishing a system by which State and Federal inspection reports of coal or other mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

[FR Doc. 78-32472 Filed 11-16-78; 8:45 am]

[4110-92-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 224]

WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Amendments Establishing New Procedures for the Determination of the Sanction Period

AGENCIES: Office of Human Development Services, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this proposed rulemaking is to amend the regulations governing the work incentive program (WIN) for AFDC applicants or recipients. These amendments would remove provisions of the regulations which impose a fixed period of AFDC ineligibility (sanction period) on those individuals who are deregistered from the WIN program for failure or refusal to participate without good cause. In the place of the fixed sanction period, the proposed regulations would establish a flexible period of ineligibility—one which bases the length of time during which an individual loses AFDC benefits on the length of time the person has refused to participate. The length of time the person has refused to participate will be that which exists between the individual's first refusal to participate in the WIN program and the date on which a notice of intended deregistration is sent. Procedures for determining when refusal to participate starts are also prescribed.

DATES: Comments are due by January 16, 1979. Comments, communications, and inquiries concerning the proposed amendments to 29 CFR Part 56 and 45 CFR Part 224 should be directed to Mr. Hans at the address set forth below. Comments shall be in writing and submitted in duplicate.

FOR FURTHER INFORMATION CONTACT:

Merwin S. Hans, Executive Director, National Coordination Committee,

Work Incentive Program, Room 5102, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213, Telephone Number 202-376-6694.

SUPPLEMENTARY INFORMATION: These proposed regulations concern one aspect of the Work Incentive (WIN) Program. (See Department of Labor 29 CFR Part 56 Regulations elsewhere in this issue.) They are being proposed in response to several court actions, including *McLean* v. *Califano*, No. 76 Civ. 1572 (CES) (S.D.N.Y., filed June 27, 1977).

The work incentive program is a national work and training program designed to provide services and opportunities necessary to enable applicants for Aid to Families with Dependent Children (AFDC) and recipients of AFDC to become economically independent through employment. The program is administered jointly by the Department of Labor and the Department of Health, Education, and Welfare.

Legislative requirements for the WIN program are contained in title IV, parts A and C of the Social Security Act. According to these provisions certain persons must register with the WIN program in order to be eligible for AFDC. Persons who must register with the program are required to participate in employment and training activities which will enable them to become employed in the shortest time possible. Those required to register but who refuse to participate in the program may be deregistered and are subject to loss of their part of an AFDC grant. No one may be deregistered without being offered an opportunity for a fair hearing.

These proposed regulations involve the period of AFDC ineligibility (sanction period) imposed on those individuals who are deregistered from the WIN program for failure or refusal to participate in a WIN activity without good cause.

On June 23, 1977, the United States District Court for the Southern District of New York held that the provision of the WIN regulations entitled, "Subsequent WIN Registration by Deregistered Individual" (29 CFR 56.77; 45 CFR 224.77) was inconsistent with the Social Security Act. *McLean* v. *Califano*, No. 76 Civ. 1572 (CES) (S.D.N.Y., filed June 27, 1977). A final order and judgment in this case was entered on September 14, 1977.

Section 402(a)(19)(F) of the Social Security Act provides in relevant part that: "* * * if and for so long as any * * * individual * * * has been found by the Secretary of Labor * * * to have refused without good cause to participate * * * or to have refused without good cause to accept employment (that individual's) need shall not be taken into account in making the determination (of the family's AFDC benefits)."

The existing regulations, at 29 CFR 56.77 and 45 CFR 224.77, provide that a WIN registrant is automatically subject to a 90-day sanction period for the first failure or refusal to participate in the WIN program without good cause and a 6-month sanction period for subsequent failures or refusals. These time periods apply regardless of the length of the actual period during which an individual has failed or refused to participate in the program.

The District Court in New York invalidated this provision because it found that the statutory term, "if and for so long as" requires that the length of the sanction period must be related to the period of time the particular individual has actually refused to participate. The court also held that a fixed sanction period which is not related to the actual period of nonparticipation does not comport with the Act.

Although the decision in *McLean* v. *Califano* applied by its own terms only to deregistered WIN registrants in the State of New York, it would be inappropriate to use one system of sanctions for registrants in the State of New York and a different system elsewhere in the United States. The result of a dual system of sanctions would be that registrants in different States would be subject to different sanctions for engaging in similar conduct that constitutes failure or refusal to participate in the WIN program without good cause. Similarly, a dual system of sanctions would be inconsistent with principles of sound program administration. These considerations have also been brought to the attention of the two Departments by the institution of several lawsuits which seek to implement the *McLean* decision in other States. Accordingly, these proposed regulations would establish a single system for determining the sanction period which, in the Departments' view, is consistent with the *McLean* holding.

The Departments considered the possibility of adopting one policy for persons who refuse or fail to participate in the WIN program for the first time, and another policy for persons who refuse or fail to participate in WIN on more than one occasion. However, *McLean* v. *Califano* may preclude the use of two different policies since that opinion emphasizes "an individual determination for each individual" and also stresses the words of the statute—"if and for so long as." Moreover, the *McLean* case involved an individual who failed or refused to participate in WIN on more than one occasion. Therefore, these proposed regulations treat those who refuse on more than one occasion to participate in a WIN activity the same way as those who refuse to participate in a WIN activity for the first time. The Departments invite comment on this issue. Should all persons who fail or refuse to participate in a WIN activity have their sanction period calculated in the same manner, or should a different method of calculating the sanction period be used for those who fail or refuse to participate in a WIN activity on more than one occasion? If *McLean* precludes the adoption of different policies for the first and second refusers, should the Departments seek legislation which would permit them to treat first and second refusers differently?

In formulating the proposed regulations to replace the current scheme set forth principally in 29 CFR 56.77 and 45 CFR 224.77, the Departments were guided by two important aspects of the *McLean* decision. First, the court clearly rejected an argument that WIN registrants cannot be deregistered for failure or refusal to participate in the WIN program without good cause. The court said: "[A]lthough we understand plaintiff's argument that an individual who is so sanctioned under the regulations is precluded from the very benefits which Congress hoped would function as positive incentives to becoming a wage-earner, we do not believe that the creation of negative incentives is beyond the discretionary powers which Congress invested in the Secretaries of HEW and Labor." Therefore, the authority to deregister registrants who fail to participate in the program without good cause is a valid exercise of the Secretaries' statutory authority, set forth in Section 439 of the Social Security Act, to promulgate regulations for the operation of the WIN program, and is not inconsistent with the purposes of the Act.

Another important aspect of the *McLean* decision was its holding that the statute did not require that the sanction period equal, with mathematical precision, the period of failure or refusal to participate. Rather, the decison said that "a close approximation as to each individual" would suffice.

The WIN process may be summarized as follows. A person is required to register for a WIN activity. Staff work is completed on the person—an appraisal of the supportive services needs and an employment evaluation of the person is made. The person may be referred to a WIN activity. The person may fail or refuse to report to a WIN office or to a WIN activity. If this happens, a conciliation period of up to 30 days takes place during which a WIN counselor attempts to persuade the person to participate in WIN. If the person continues to fail or refuse

to participate in WIN, he is sent a notice of intended deregistration. Following the notice a hearing may take place if requested. If the hearing results in a finding that there is no good cause for the person's failure or refusal to participate, he is deregistered. A 60 day counseling period then takes place. During this counseling period, the person may appeal the finding of the hearing to the State Appellate Board or to the National Review Panel which sits in Washington, D.C. After the 60 day counseling period, the person will be subjected to a sanction if counseling is unsuccessful.

The major problems which are inherent in formulating the proposed rules are:

(1) When does failure or refusal to participate begin; and

(2) When does it end.

The proposed rules address these problems by specifying that failure or refusal to participate begins on the date of the individual's first failure or refusal to participate in a WIN activity without good cause, and ends on the date a "notice of intended deregistration" is sent to the individual. The length of time that elapses between these two dates will determine the length of the subsequent sanction period during which an individual is ineligible to register for WIN and receive AFDC benefits.

The proposed rules provide that a notice of intended deregistration will not be sent to an individual until all efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant have been exhausted. (This conciliation effort may continue for a period not to exceed 30 days, but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner.). The proposed rules also provide that the notice of intended deregistration will specify the determined date of the registrant's first failure or refusal to participate in WIN activity without good cause. The notice will also include, among other information, notification of the registrant's right to a hearing where he or she believes the proposed action and/or proposed length of the sanction period is incorrect. (It should be noted that according to the current rules governing the program if the hearing decision is adverse to the individual and he or she participates in counseling for a period of up to 60 days aimed at persuading him/her to participate in the WIN program, no sanction may be imposed during that period. Furthermore, if such counseling is successful, no sanction may be imposed.)

Because it is not always clear when the individual has first failed or refused to participate, the regulations further spell out how this determination is to be made. They provide that this date will be determined by identifying the date on which the individual first expressly refused to participate (overt or express refusal), or the date on which he or she began to act in such a way that failure or refusal to participate can be implied (defacto refusal).

With respect to whether a failure or refusal to participate can be implied from an individual's actions, the regulations do not attempt to spell out each and every action that may give rise to such an implication. There are a variety of ways that an individual may indicate an unwillingness to participate. It would be impossible to identify all of these in regulations.

However, a refusal may be deemed to have occurred if the individual takes any of the actions set forth in chapter 9, section B-3b of the WIN handbook. According to that section of the handbook the following actions may constitute a failure or refusal to participate.

(1) A registrant, after two call-in notices, refuses or fails without good cause to appear for an appraisal or other interview;

(2) A certified registrant fails to appear without good cause for a job referral or interview when the referral is made by the WIN sponsor staff, and the job meets appropriate work criteria and is consistent with the employability plan;

(3) A registrant repeatedly fails to show up for work or for WIN sponsor and/or SAU interviews, appointments, classes, etc., without good cause;

(4) A registrant seriously disrupts a WIN activity or the orderly administration of the overall program, or his behavior constitutes a threat or hazard to fellow registrants;

(5) A registrant possesses the required education, experience, or aptitude to perform the assignment but makes no noticeable effort to benefit from the WIN activity. The registrant's performance must be at a level consistently below the normal range of achievement of the individual's fellow WIN registrants. The determining factors would be the WIN staff's best judgment as to whether the individual is performing at or near his actual potential;

(6) The registrant quits his job without good cause or is fired for cause during the initial 90 days of employment. The determination as to whether an individual was fired for cause is made by the WIN sponsor, based on unemployment insurance service criteria;

(7) The registrant refuses without good cause to accept suitable child care, thereby precluding participation in WIN;

(8) A registrant refuses without good cause to accept other services, such as transportation, thereby precluding participation in work or training. However, a registrant may not be compelled to accept major medical services even if the refusal of such services precludes further participation.

The first failure or refusal to participate is used to measure the beginning of the sanction period. As noted, where the failure or refusal to participate is implied by a person's actions, the date the individual began the pattern of misbehavior is used to measure the beginning of the sanction period. Accordingly, since the determination of the beginning of the pattern will indeed be judgmental, this determination will be subject to review under 29 CFR 56.65 and 45 CFR 224.65. These sanctions are being amended by this proposed rulemaking to provide that the length of the sanction period is subject to review under the WIN adjudication system.

The Departments have noted that under the proposed method for calculating the sanction period, persons whose failure or refusal to participate is implied from a pattern of behavior will always be subject to a greater sanction than persons whose failure or refusal to participate is express. Therefore, to make certain that persons fully understand the consequences of their failure or refusal to participate, the Departments will put into effect program policy to adequately warn each person at the time of registration that either an express (overt) refusal, or a pattern of behavior (defacto or implied refusal) that frustrates the intent of the program without good cause, could result in the loss of a portion of the family's cash benefits. The Departments invite comment on problems which may result from imposing a greater sanction on those whose failure or refusal to participate is attributable to a pattern of behavior.

With regard to the ending date for measuring the sanction period, the proposed rules use the date of the notice of intended deregistration. This date has been chosen because it will establish a standard, nondiscretionary rule applicable to all program registrants and will enable the WIN sponsor to include this information in the notice. The registrant will then have the opportunity to raise the length of the sanction period as an issue at the same hearing available on the issue of his refusal to participate. We considered other alternatives, including the date of request for a hearing and the date of the hearing decision. However, since use of either of these dates would have the effect of penalizing registrants for exercising their right to

a hearing, these dates were not chosen.

Accordingly, it is proposed to amend Title 45, Part 224 as follows:

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. Section 224.51 is amended by: revising paragraph (a); adding the following new paragraphs (b) and (c); and renumbering the existing paragraph (b), (c), and (d) as paragraphs (d), (e) and (f) respectively.

§ 224.51 Sanctions.

A State plan under title IV-A of the Act shall provide that:

(a) When a registered recipient has been found to have failed or refused without good cause to participate in the WIN program, the following sanctions shall apply for so long as the registrant fails or refuses to participate. This period will be determined in accordance with paragraph (b) of this section.

* * * * *

(b) The period of sanction resulting from a failure or refusal to participate without good cause shall be measured by the length of time that elapsed from the date of the registrant's first failure or refusal to participate in the WIN program to the date of the WIN sponsor's issuance of the notice of intended deregistration.

(c) The first failure or refusal to participate in the WIN program may be manifested either by an overt (express) refusal or defacto failure to participate.

(1) An overt (express) refusal is a written or oral statement which indicates that an individual will not participate in the WIN program. Where this expression is made, the first refusal to participate shall be deemed to have occurred on the date of that expression.

(2) A defactor refusal is any act or pattern of behavior which indicates that an individual will not participate in the WIN program. Where a defacto failure is one act on the part of the individual, the first failure to participate shall be deemed to have occurred on the date of that act. Where a defacto failure is a pattern of behavior on the part of the individual, the first failure to participate shall be deemed to have occurred on the date the pattern began.

* * * * *

2. Section 224.63 is amended by: Revising paragraph (a); adding the following new paragraph (b)(2); by renumbering the existing paragraphs (b)(2)-(b)(7) as paragraphs (b)(3)-(b)(8) in paragraph (b) accordingly; and by amending the new paragraph (b)(3) as follows:

§ 224.63 Requirement of conciliation and notice.

(a) All efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant must be exhausted prior to the issuance of a notice of intended deregistration. This conciliation effort may continue for a period not to exceed 30 days but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner. Immediately after the conciliation period has terminated, or the dispute remains unresolved after 30 days, the WIN sponsor shall mail to the registrant a notice of intended deregistration.

(b) The notice shall include:

(1) * * *

(2) Notice of the determined date of first failure or refusal to participate in the WIN program without good cause, and the consequent length of the sanction period.

(3) Notification of the registrant's right to a hearing if the registrant believes the proposed action is incorrect and/or the length of the sanction period is incorrect, provided a request for a hearing is filed as prescribed in § 224.64.

3. Paragraph (a) of § 224.65 is revised to read as follows:

§ 224.65 Issues subject to hearing.

(a) Under the WIN adjudication system a hearing officer will hear and decide WIN program issues arising subsequent to registration by certified and uncertified registrants. WIN program issues include failure or refusal to appear for appraisal, assignment to a WIN component, unresolved WIN grievances, failure or refusal without good cause to accept employment or otherwise participate in the WIN program, and the determination of the length of the sanction period.

* * * * *

4. Paragraph (a) of § 224.68 is amended by revising subparagraph (5) as follows:

§ 224.68 Decisions of the hearing officer.

(a) The hearing officer may rule:

* * * * *

(5) That the length of the period of the registrant's failure or refusal to participate was not correctly determined.

The hearing officer may also render such other rulings as are appropriate to the issues in question. However, a hearing officer shall not consider the validity or consitutionality of the regulations in this part or of the Act.

* * * * *

5. Paragraph (a) of § 224.77 is revised to read as follows:

§ 224.77 Subsequent WIN registration by deregistered individuals.

(a) An individual who was deregistered on the basis of a "failure or refusal to participate without good cause" determination, upon application, may again register for WIN, provided the sanction period specified in § 224.51(b) has elapsed and the individual has given evidence to the WIN project staff of willingness to participate.

* * * * *

Dated: October 30, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Dated: November 7, 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-32119 Filed 11-16-78; 8:45 am]

[4110-02-M]

Office of Education

[45 CFR Part 139]

TRAINING PROGRAM FOR SPECIAL PROGRAMS STAFF AND LEADERSHIP PERSONNEL

Intent Not To Publish Final Regulations

AGENCY: Office of Education, DHEW.

ACTION: Notice of intent not to publish final regulations and withdrawal of proposed rulemaking.

SUMMARY: After extensive discussion and deliberation regarding the statute, the notice of proposed rulemaking published on January 12, 1978, and the subsequent public comments, the Commissioner of Education has decided that section 417B(f) of the Higher Education Act of 1965, as amended, does not require publication of a separate implementing regulation.

EFFECTIVE DATE: This notice is effective November 17, 1978.

FOR FURTHER INFORMATION, CONTACT:

Velma L. Monteiro, Bureau of Higher and Continuing Education, 7th and D Streets, SW., Regional Office Building 3, Room 3514, Washington, D.C. 20202, telephone 202-245-2511.

SUPPLEMENTARY INFORMATION: The Education Amendments of 1976 added a new subsection 417B(f), which authorized the Commissioner to award contracts to institutions of higher education and other appropriate public agencies and nonprofit private organizations to provide staff and training for leadership personnel in the projects of the special programs for students from disadvantaged backgrounds.

The Office of Education has awarded a contract based on requests for proposals (RFP). A synopsis of the initial RFP was published in the Commerce Business Daily on August 10, 1978, establishing September 8, 1978, as the closing date for receipt of proposals. The initial training contract was awarded on September 29, 1978.

(Catalog of Federal Domestic Assistance No. 13.592, Training Program for Special Programs Staff and Leadership Personnel.)

Dated: October 11, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: November 8, 1978.

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

[FR Doc. 78-32317 Filed 11-16-78; 8:45 am]

[4110-92-M]

Administration on Aging

[45 CFR Part 1321]

GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Withdrawal of Notice of Proposed Rulemaking

AGENCY: Office of Human Development Services, DHEW.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws proposed regulations published on December 5, 1977 (42 FR 61479). That proposal would have transferred, from the Commissioner on Aging to State agencies on aging, authority to approve extensions of a 3-year limitation of project awards under State and community programs on aging. It would also have established criteria to be used by State agencies to approve such extensions. The Older Americans Act Amendements of 1978 was passed October 18, 1978. This legislation will require a number of regulatory changes. We are therefore withdrawing the proposed rule in order to reevaluate it in light of the new legislation and to consider all necessary amendments to our regulations at the same time.

DATES: Effective on November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Martin Sicker, Ph. D., Office of Program Development, Administration on Aging, Office of Human Development Services, Department of Health, Education, and Welfare, telephone 202-245-6809.

(Secs. 304(c) and 305(a) of the Older Americans Act; 87 Stat. 40 (42 U.S.C. 3024(c) and 3025(a)).)

(Catalog of Federal Domestic Assistance Program No. 13.609, Special Programs for the Aging.)

Dated: September 14, 1978.

ROBERT BENEDICT,
Commissioner on Aging.

Dated: October 11, 1978.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Approved: November 11, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-32390 Filed 11-16-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-15-M]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

KANSAS ELECTRIC POWER COOPERATIVE, INC.

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration may prepare an environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with a proposed application for financing from Kansas Electric Power Cooperative, Inc. (KEPCo), 5709 West 21st Street, P.O. Box 4267, Gage Center Station, Topeka, Kans. 66604. The statement will cover proposed financing of KEPCo participation in the Wolf Creek Generating Station, unit No. 1, which is sponsored by Kansas Gas & Electric Co. and Kansas City Power & Light Co. The generator rated at 1150 MW will be driven by steam produced by a pressurized water nuclear reactor and will be located in Coffey County, Kans., approximately 53 miles south of Topeka, Kans. Approximately 180 miles of transmission line were constructed in conjunction with the project. KEPCo proposes to be a 17-percent participant in the ownership of the generating unit.

The U.S. Nuclear Regulatory Commission (NRC) Office of Nuclear Reactor Regulation published a draft environmental statement in July 1975 and a final environmental statement in October 1975 concerning this project. The NRC statement will be utilized by REA in making its decision. If prepared, the REA statement will supplement the NRC statement and will determine the environmental effect of the Federal financing proposed to be provided to KEPCo for its participation.

Interested persons are invited to submit comments which may be helpful to REA in preparing the draft EIS.

Comments should be forwarded to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to KEPCo, the proposed borrower, whose address is given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated at Washington, D.C., this 8th day of November 1978.

ROBERT W. FERAGEN,

Administrator, Rural Electrification Administration.

[FR Doc. 78-32277 Filed 11-16-78; 8:45 am]

[3410-18-M]

Economics, Statistics, and Cooperatives Service

STUDY OF FOREIGN INVESTMENT IN U.S. REAL ESTATE

AGENCY: Economics, Statistics, and Cooperatives Service.

ACTION: Notice.

SUMMARY: The Economics, Statistics, and Cooperatives Service (ESCS) will conduct a study of the feasibility of establishing a system to monitor foreign direct investments in agricultural, rural, and urban property. This study will be conducted between the date of publication of this notice and September 30, 1979. The information sought will be that which is useful in identifying regular and reliable sources of information on foreign ownership in U.S. real estate. Various local, State, and Federal agencies will be contacted, as well as buyers and sellers of real estate, officials of financial institutions, brokers, attorneys, and others who participate in the real estate market. All information on specific individuals, or their representatives, or other persons will be held confidential. Failure to provide information requested for this study will be subject to the enforcement provisions of 22 U.S.C. 3105.

FOR FURTHER INFORMATION CONTACT:

Gene L. Wunderlich, Natural Resource Economics Division, Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, Washigton, D.C. 20250, 202-447-9179.

SUPPLEMENTAL INFORMATION: The International Investment Survey Act of 1976 (22 USC 3101 et seq.) mandated a study of the feasibility of establishing a system to monitor foreign direct investments in agricultural, rural, and urban real property. ESCS has been designated to carry out this study. The relevant delegations of authority were published at 43 FR 37419, August 23, 1978.

STUDY OBJECTIVES

This study will be conducted between the date of publication of this notice and September 30, 1979. The product of the study will be a report to Congress covering the following topics:

(1) The real estate industry as an information system: A description of the real estate industry, those aspects particularly important in foreign investment, the sources of information about real estate. Background for other reports.

(2) A review of State law on restrictions on foreign investment in real estate, emphasizing reporting and registration.

(3) Restrictions, controls, and registration requirements as they pertain to U.S. investors abroad.

(4) Technical, economic and administrative feasibility of Federal registration and Federal reporting systems. A comparison of two types of centralized systems concerned exclusively with obtaining information on foreign investment in real estate.

(5) Legal analysis of the feasibility of systems designed solely to obtain information on foreign investment in real estate.

(6) Description of multipurpose data systems, specification of the uses and limits of multipurpose systems. Conceptual models and existing systems.

(7) State of arts of land record systems in the United States beginning with assessment records and emphasizing capabilities to identify and aggregate information on land owners including citizenship and residence of beneficial owners.

(8) Review of state of multipurpose cadastres abroad to determine systems or elements transferable to the United States. Analysis includes the usefulness of systems abroad in determining citizenship and residence of owners.

(9) Technical, economic, and administrative feasibility of land data systems that produce data on foreign ownership as a by-product. Comparison of county-record-oriented network with periodic full count of sample surveys. Evaluation will follow prescribed criteria.

(10) Legal analysis of multipurpose systems as they are designed and used

for compiling information on foreign investment in U.S. real estate.

(11) Secrecy and disclosure of information on land ownership and land transactions—an extension of an initial study.

(12) The economic impact of foreign investment in real estate: Analysis, based on available data, of the likely effects of foreign purchase and ownership of land on prices, employment, capital formation in the economy as a whole; and effect of foreign investment on farmland prices, size of farm, tenure, structure, productivity, and rural communities.

(13) Institutional analysis of land information systems which report foreign ownership of land. Emphasis of the analysis is on the control of information as an instrument of power; and effect of centralization and decentralization on management of information systems.

(14) Summary comparison of four scenarios of information systems so that tradeoffs between alternatives are clearly discernible. Within limits of available information, recommendations will be made.

(15) Bibliography.

SOURCES OF INFORMATION

Data will be gathered primarily through interviews with knowledgeable individuals who are associated with the transfer, financing, recordation, valuation, and management of real property. Categories of persons to be contacted include:

(1) *Real estate brokers.* Firms or persons acting for, and on behalf of, buyers and sellers of real property interests. May include firms and services such as property listing that are ancillary to transactions.

(2) *Real estate counselors.* Persons or firms who advise buyers, sellers, and others who hold, manage, appraise, finance, or assist in the trade of real estate.

(3) *Buyers and sellers.* Buyers and sellers of interests in real estate not limited to titles in fee simple.

(4) *Attorneys.* Persons licensed to practice law and others, including title examiners, directly involved in legal services pertaining to real estate. (No information will be sought the disclosure of which would breach the confidentiality of the attorney-client relationship.)

(5) *Financial officials.* Persons in financial institutions such as banks, savings and loans, and mortgage companies responsible for the financing of real property transfers or managing real estate for others.

(6) *Real estate managers.* Firms or persons responsible for the use of and income from real property owned by others.

(7) *Recorders.* The officials of local governments responsible for the recording of instruments affecting real estate titles. May also be titled registrar of deeds, recorder of deeds, or clerk.

(8) *Assessors.* The officials of local governments responsible for the identification and valuation of real property for tax purposes. May also be known as assessing officer and may also include appraisers, auditors, or treasurers to the extent that they create, hold, or use real property information.

Indivisuals within these categories will be selected for interview on the basis of self-advertisement or offering of services, published articles or books relating to the subject, referrals by professional or trade organizations, referrals by persons previously contacted, or position held in organizations known to be engaged in any of the activities mentioned.

STAFF AND CONTRACTORS

The data will be gathered and the report written by a combination of USDA staff and contractor personnel. Contractors engaged for this project are:

(1) Barlow Burke, Washington College of Law, The American University, Washington, D.C. 20016.
(2) Frances Flanagan, School of Business Administration, University of California, Berkeley, Calif. 94270.
(3) International Association of Assessing Officers, 1313 East 60th Street, Chicago, Ill. 60637.
(4) J. Dean Jansma, Department of Agricultural Economics and Rural Sociology, Pennsylvania State University, University Park, Pa. 16802.
(5) Lincoln Institute of Land Policy, 26 Trowbridge Street, Cambridge, Mass. 02138.
(6) John McMahan, 1 Embarcadero Center, San Francisco, Calif. 94111.
(7) Texas Real Estate Research Center, Texas A. & M. University, College Station, Tex. 77843.
(8) Robert Warren, College of Urban Affairs and Public Policy, University of Delaware, Newark, Del. 19711.
(9) Price Waterhouse and Co., Office of Government Services, 1801 K Street, Northwest, Washington, D.C. 20006.
(10) Bruce Zagaris, 1923 38th Street, Northwest, Washington, D.C. 20007.

CONFIDENTIALITY

22 U.S.C. 3104(c) provides that information collected in the course of this study on specific owners, buyers, sellers, or their representatives, or other persons questioned will be available only to officials or employees, consultants, and persons working under contract on this project. According to that section, such information may only be released as authorized by the President to other Government agencies or officials to further the purposes of the act.

ENFORCEMENT

Failure to supply information requested for this study will be subject to the enforcement provisions of 22 U.S.C. 3105, which provides for a civil penalty not exceeding $10,000; or a criminal penalty of a fine not to exceed $10,000, or imprisonment for not more than 1 year, or both.

Dated: November 9, 1978.

KENNETH R. FARRELL,
Administrator.

[FR Doc. 78-32463 Filed 11-16-78; 8:45 am]

[3410-03-M]

Science and Education Administration

NATIONAL AGRICULTURAL RESEARCH AND EXTENSION USERS ADVISORY BOARD

Meetings

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Science and Education Administration announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: December 6, 7, and 8, 1978.
Time: 9 a.m.
Place: Room 330, GHI Building, 500 12th Street SW., Washington, D.C.
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: To organize this new Board and initiate measures to develop independent advisory opinions on the food and agricultural sciences.
Contact person for agenda and more information: Dr. James Nielson, Executive Director of the Board, Science and Education Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-8662.

Done at Washington, D.C., this 13th day of November 1978.

ERNEST L. CARLEY,
Acting Executive Director, National Agricultural Research and Extension Users Advisory Board.

[FR Doc. 78-32320 Filed 11-16-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 33363]

FORMER LARGE IRREGULAR AIR SERVICE INVESTIGATION

Hearing

The hearing on the applications of Puerto Rico Airlines, announced in the order of the presiding administrative law judge of September 29, 1978,

will be held on December 19, 1978, at 9 a.m., in Room 1003, Hearing Room B, Universal Building North, 1875 Connecticut Avenue NW., Washington, D.C. 20428.

Dated at Washington, D.C., November 13, 1978.

RUDOLF SOBERNHEIM,
Administrative Law Judge.

[FR Doc. 78-32475 Filed 11-16-78; 8:45 am]

[6320-01-M]

[Order 78-11-45; Docket 26291]

IMMEDIATE RESTORATION OF ADEQUATE AIR SERVICE FOR AMERICAN SAMOA

Renewed Petition; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of November 1978.

1. BACKGROUND

On January 8, 1974, American Samoa filed a petition for immediate restoration of adequate service.[1] The impetus behind its petition was the fact that: (1) Pan American had eliminated service (two round trips) between Pago Pago and Papeete, Tahiti, and reduced Pago Pago-Honolulu service from six round trips, prior to October 28, 1973, to three; and (2) American Airlines had eliminated one of its two weekly Honolulu-Pago Pago-Auckland round trips. The day before Samoa filed its petition, American filed an application to suspend all service over its South Pacific route which included American Samoa.[2] Subsequently, Pan American increased its Honolulu-Pago Pago service to six weekly round trips. The sixth round trip was later discontinued.

By order 74-2-99, February 25, 1974, we granted American's suspension application and dismissed Samoa's petition without prejudice, stating that this action would "allow a later evaluation of Pan American's service, if necessary." The primary basis of our action was the increase in service by Pan American (p. 6). On April 18, 1975, we transmitted our recommended decision to the President for approval in the *American-Pan American Route Exchange Agreement* case which, among other things, eliminated U.S.-flag competition at American Samoa with the removal of American's services. Because the agreement had eliminated competitive service, we instituted a new route proceeding—the *South Pacific Service Case*—to consider the need for restoring competitive service in the South Pacific.[3] In approving the transfer, President Ford noted:

> I am concerned, however, that loss of competitive service not result in inadequate service. For that reason I recommend that the Board expedite its procedure so that its proposed decision in the *South Pacific Service* case can be submitted for my review by July, 1976, and that the Board inquire into the adequacy of service at American Samoa under existing route authority.

After a full evidentiary hearing, we rendered our decision in the *South Pacific Service* case, order 77-7-89, July 22, 1977, authorizing Continental to operate over a Los Angeles-Honolulu-American Samoa-Fiji-New Zealand-Australia route. In that decision, we reaffirmed our concern for sufficient service to Samoa, stating that "the special responsibility of the U.S. Government for the welfare of American Samoa, to whose economy air transportation and tourism are exceedingly important, cannot be stressed too often" (p. 24). That action resulted in the restoration of competitive U.S.-flag authority, but unfortunately has not resulted in the restoration of competitive service. Continental has not been able to institute service over its new route because the Australian Government has not approved Continental's schedules or new low fares in the United States-Australia market.[4]

2. RENEWED PETITION

On October 21, 1977, the Samoan authorities filed a renewed petition for an adequacy of service investigation (docket 26291). Samoa stated that Pan American had filed schedules (effective November 1, 1977) which would reduce the number of flights between Honolulu and Pago Pago from four weekly round trips to two, resulting in the elimination of all service to Australia; that it is not requesting that Pan American provide more service than that offered prior to November 1, 1977, but only that it restore and not reduce service below the four weekly flights offered until that date; and that, because Continental has not instituted its South Pacific service, there is no justification for Pan American to reduce service.[5]

By order 77-12-144, December 29, 1977, we deferred action on American Samoa's petition in docket 26291 and directed the Office of Community and Congressional Relations (OCCR) to hold discussions with Pan American and American Samoa to determine the latter's air transportation needs and the means for better satisfying them. OCCR held several meetings and had several telephone discussions with representatives of both parties, and it issued its report on April 5, 1978. Responses were filed by Pan American, Continental, and American Samoa.

OCCR concluded that, while Pan American could provide an increase in the level of service at American Samoa, the long-term solution of the problem is tied to the conclusion of bilateral negotiations with Australia so that Continental can begin service, and that an adequacy of service case is not justified. It recommended, therefore, that the petition be dismissed. It also endorsed the possibility of South Pacific Island Airways, a Samoan-based carrier, providing two round trips per week between Honolulu and Pago Pago.[6]

Continental contends that the authorization of South Pacific Island Airways is a "short-term" solution; that the Board should take all necessary steps to effectuate Continental's entry into the South Pacific markets; that Pan American has hindered its entry by increasing capacity in the United States-Australia market above the level it said it would operate without U.S.-flag competition; and that the Australian Government's objection is to excess capacity in the United States-Australia market, and not to Continental itself.

Pan American states that existing service to Pago Pago is adequate; that its modified schedules have not reduced traffic or resulted in unreasonable load factors; that OCCR's proposals for additional service by alteration of current schedules are impracticable; that it cannot be compelled to provide more service without notice and a hearing, and Samoa's request that show-cause procedures be used is improper; that Continental also has the responsibility to serve Samoa, and it can do so without also serving Australia; and that Pan American is not obligated to reduce its competitive efforts

[1] American Samoa is a United States possession in the South Pacific 2,599 miles from Hawaii and 2,737 miles from Sydney. In the Transpacific Route Investigation, docket 16242, Opinion of Nov. 18, 1968, p. 4., we emphasized our * * * "special responsibility to American Samoa, whose economic development is an important national objective."

[2] Concurrently, we had pending before us the joint application of Pan American and American for a route exchange under which American would trade its South Pacific authority to Pan American for certain Caribbean authority held by Pan American.

[3] Orders 75-6-152/153/154.

[4] During the *South Pacific* case, Continental stated that service over the new route would not be economically feasible without Australia. New Zealand has accepted Continental's designation as U.S.-flag carrier, but has indicated that it might not accept its proposed fares, and that further discussions may be necessary.

[5] During the *South Pacific* case, Pan American had stated that with competition it would be forced to reduce its service at Pago Pago to one round trip per week in the Honolulu-Pago Pago market. Of course, when Pan American announced its November schedules, Continental had not announced commencement of service.

[6] South Pacific Island Airways has filed an application for 401 authority between Honolulu and Pago Pago (docket 33139).

in the United States-Australia markets and provide the number of flights it forecast in the *South Pacific Service* case.

American Samoa argues that the OCCR report fails to note the United States' responsibility for Samoa, Samoa's heavy dependence on tourism and U.S. air service provided by Pan American, and the consequences of the loss of Australia service. It contends that the report provides a basis for sustaining its petition and asks us to direct Pan American to show cause why its Samoa service should not be restored to the pre-October 31, 1977, level.

3. DISPOSITION

We are fully cognizant of the serious service problems that have plagued American Samoa since 1974.[7] However, the history recounted above demonstrates the difficulties involved in assuring adequate service to American Samoa. Clearly, the long-term solution to American Samoa's service needs is the provision of competitive service by a willing carrier; and we have certificated Continental to be that carrier. The short term is the problem.[8]

The best method of bringing immediate improvements to American Samoa's air service is to authorize a competitor or competitors willing and able to institute service to American Samoa without the support of travelers flying beyond American Samoa to Australia or New Zealand. We recognize that an applicant for Pago Pago-Honolulu authority may need to support its service over that segment with traffic from some point behind Pago Pago or behind Honolulu. We are prepared to act quickly under the recently liberalized exemption provisions of section 416 of the Act to authorize service to any U.S. point which an applicant needs to support a reasonable pattern of round trip Pago Pago-Honolulu service.[9]

Applicants are free to request authority to any point west of American Samoa if they believe those beyond markets are necessary to a viable Honolulu-Pago Pago service, but we will not now decide whether any interim authority should include beyond rights to Australia and New Zealand, the most likely beyond markets west of American Samoa. Because of the uncertainties in our bilateral relationships with Australia and New Zealand, applicants for exemption authority which includes rights to these countries, and other interested persons, should provide information on the consumer and carrier need for such beyond operations for the interim period and the negotiating issues such authorization would raise.[10]

The Airline Regulatory Reform Act of 1978 added a new section 419 to the Federal Aviation Act designed to assure essential air transportation to eligible small communities. See Pub. L. 95-504, section 33 (1978). Pago Pago is an eligible point as defined in that section (sec. 419(a)(1)(A)). We have directed the staff to consult with representatives of the government of American Samoa and submit recommendations to enable us to make findings of American samoa's "essential air transportation." The new statute may make it possible for us to subsidize essential air service at American Samoa if no carrier is willing to provide that service without subsidy.

Finally, we will defer action on Samoa's petition for an adequacy of service investigation under section 404 of the Act until we have attempted these other methods of improving American Samoa's air service.

Accordingly,

1. We defer the petition of American Samoa in docket 26291;

2. We request carriers interested in temporary exemption authority to American Samoa to file applications within 30 days from the date of adoption of this order; and

3. We shall serve this order on all certificated scheduled and supplemental carriers, the Governor of American Samoa and South Pacific Islands Airways.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[11]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32476 Filed 11-16-78; 8:45 am]

[7] Pan American is now providing only two weekly Honolulu-Pago Pago round trips. Air New Zealand provides the only air service between Pago Pago and Auckland, with one weekly round trip. No direct air service is provided between Pago Pago and Sydney.

[8] Continental has stated that next May it plans to start a limited pattern of service to American Samoa serving New Zealand as a beyond point. Its petition to postpone inauguration of its South Pacific service until May 1, 1979 is now pending before the Board.

[9] Pub. L. 95-504, sec. 31 (1978).

[10] Continental has indicated that it will serve American Samoa as an intermediate point on its through services between Honolulu and Australia and New Zealand. However, difficulties with those countries have caused Continental to seek permission to delay the inauguration of those services. It may be some time before we will be able to reach agreement with the governments of Australia and New Zealand on all issues related to Continental's South Pacific service.

[11] All members concurred.

[6320-01-M]

[Docket 28475]

ST. LOUIS-KANSAS CITY SUBPART M PROCEEDING

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on December 5, 1978, at 10 a.m. (local time), in room 1003, hearing room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the order of administrative law judge, dated October 19, 1978, and other documents which are in the docket of this proceeding on file in the docket section of the Civil Aeronautics Board.

Dated at Washington, D.C., November 13, 1978.

RICHARD M. HARTSOCK,
Administrative Law Judge.

[FR Doc. 78-32474 Filed 11-16-78; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

WEBSTER ENTERPRISES, INC. ET AL.

Determinations of Eligibility To Apply For Trade Adjustment Assistance

Petitions have been accepted for filing from four firms: (1) Webster Enterprises, Inc., 3012 Keswick Road, Cleveland, Ohio 44120, a producer of children's squeeze toys (accepted November 8, 1978); (2) Knitcapers, Inc., 93-37 150th Street, Jamaica, N.Y. 11435, a producer of women's sweaters (accepted November 8, 1978); (3) Jolie Handbag, Inc., 416 West 13th Street, New York, N.Y. 10014, a producer of handbags and cosmetic bags (accepted November 9, 1978); and (4) Robert Lewis, Inc., 804 Broadway, West Long Branch, N.J. 07764, a producer of men's leather and cloth coats and jackets (accepted November 9, 1978). The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the U.S. Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial

separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the 10th calendar day following the publication of this notice.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-32307 Filed 11-16-78; 8:45 am]

[3510-13-M]

National Bureau of Standards

APPROVED INTERPRETATIONS FOR FEDERAL STANDARD COBOL (FIPS PUB 21-1)

Under the provisions of Pub. L. 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal ADP standards. FIPS PUB 21-1 specifies Federal Standard COBOL. The Standard defines the elements of the COBOL programming language and the rules for their use. During the use of the standard, questions arise as to the meaning of certain language specifications. FIPS PUB 29 defines the procedures to be followed in providing solutions to these questions. The procedures allow for the solutions to be used uniformly throughout the Federal Government and by all implementors of compilers acquired by the Federal Government. Accordingly, in the February 14, 1978, issue of the FEDERAL REGISTER (FR Doc. 78-4037, p. 6294), the National Bureau of Standards published a notice of proposed interpretation of Federal Standard COBOL as pertains to the specification of delimiters in the UNSTRING statement and the specification of literals (figurative constants) in the alphabet-name clause. All comments submitted concurred with the proposed interpretations.

Each of the following approved interpretations contains a definition of the problem, discussion of the issues, approved language interpretation, supporting justification, necessary clarifications, to Federal Standard COBOL, and the effective date of the interpretation. Each approved interpretation, as of the effective date, becomes an integral part of Federal Standard COBOL and, as such, is considered to be included whenever reference is made to Federal Standard COBOL.

Interested parties may, in accordance with FIPS PUB 29, Interpretation Procedures for Federal Standard COBOL, dated June 30, 1974, submit comments concerning interpretations of Federal Standard COBOL to the Chairman, Federal COBOL Interpretations Committee, c/o Associate Director for ADP Standards, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

Dated: November 8, 1978.

ERNEST AMBLER,
Director.

FEDERAL STANDARD COBOL INTERPRETATION NO. 2—THE UNSTRING STATEMENT

PROBLEM: When the UNSTRING statement with the ALL phrase is specified and the data being acted upon the UNSTRING statement contains two or more contiguous occurrences of the delimiter specified in the DELIMITED By phrase, how many occurrences of the delimiter are moved to the area referenced by identifier-5?

ISSUES: Given the following UNSTRING statement:

```
UNSTRING ID-1 DELIMITED BY ALL
  "AB"
INTO ID-4 DELIMITER IN ID-5 COUNT
  IN ID-6
ID-7 COUNT IN ID-9
POINTER ID-10
TALLYING IN ID-11.
```

and the following description of the data:

```
01 ID-1 PICTURE IS X(10) VALUE
  "12ABABABCD".
01 ID-4 PICTURE IS X(8) VALUE
  SPACE.
01 ID-5 PICTURE IS X(8) VALUE
  SPACE.
01 ID-6 PICTURE IS 99 VALUE ZERO.
01 ID-7 PICTURE IS X(8) VALUE
  SPACE.
01 ID-9 PICTURE IS 99 VALUE ZERO.
01 ID-10 PICTURE IS 99 VALUE 1.
01 ID-11 PICTURE IS 99 VALUE ZERO.
```

What is the content of these data items after execution of the UNSTRING statement, especially as it concerns ID-5?

INTERPRETATION: This interpretation applies to American National standard COBOL, X3.23-1974, as it has been adopted as Federal Standard COBOL, FIPS PUB 21-1. The interpretation is that only one occurrence of the delimiter in the data item referenced by identifier-1 is moved to the data item referenced by identifier-5 when the ALL phrase is specified, whether or not the delimiter is contiguous to one or more additional occurrences of itself.

SUPPORTING JUSTIFICATION: References—The following references to American National Standard COBOL, X3.23-1974, pertain to the issues involved in this interpretation:

(a) Page II-92, General Rule 5.21.4(8)—"When the ALL phrase is specified, one occurrence or two or more contiguous occurrences of literal-1 (figurative constant or not) or the contents of the data item referenced by identifier-2 are treated as if it were only one occurrence, and this occurrence is moved to the receiving data item according to the rules in General Rule (13)d."

(b) Page II-92, General Rule 5.21.4(11)—"Each literal-1 or the data item referenced by identifier-2 represents one delimiter. When a delimiter contains two or more characters, all of the characters must be present in contiguous positions of the sending item, and in the order given to be recognized as a delimiter."

(c) Page II-93, General Rule 5.21.4(13)d—"If the DELIMITER IN phrase is specified, the delimiting character(s) are treated as an elementary alphanumeric data item and are moved into the data item referenced by identifier-5 according to the rules for the MOVE statement."

DISCUSSION: Reference (a) specifies that, once a delimiter is encountered, that occurrence is moved to the receiving data item for the delimiter. Reference (a) also specifies that the existence of more than one contiguous occurrence of the delimiter (as in the case "12ABABABCD") is considered as one occurrence and this occurrence is moved. It can be argued that "this" occurrence means all of the contiguous occurrences of the delimiter, however, a careful reading of reference (a) reveals that the antecedent of "this" is "one occurrence" and therefore only "one occurrence" is moved.

Reference (b) defines how one delimiter of two or more characters is detected. Given the example above, in the case of a sending data item containing the value "12ABABABCD" with a delimiter specified of ALL "AB", the conditions are correct for encountering the delimiter specified.

Reference (c) discusses how the movement of the delimiter into the data item referenced by identifier-5 is accomplished.

Therefore, upon execution of the UNSTRING statement specified in the above example, the following will result:

```
ID—4=12bbbbbb
ID—5=ABbbbbbb
ID—6=02
ID—7=CDbbbbbb
ID—9=02
ID—10=11
ID—11=02
```

CLARIFICATION OF FEDERAL STANDARD COBOL: None.

EFFECTIVE DATE OF INTERPRETATION: This interpretation is effective on May 17, 1978.

FEDERAL STANDARD COBOL INTERPRETATION NO. 4—THE ALPHABET-NAME CLAUSE

PROBLEM: In order to determine what collating sequence has been specified in an alphabet-name clause, and whether that specification is correct, it is necessary to know to which characters the figurative constants HIGH-VALUE and LOW-VALUE refer if they are specified in the clause.

ISSUES: A figurative constant may be specified in a COBOL source program where a literal may be specified. The alphabet-name clause in the SPECIAL-NAMES paragraph permits the specification of a character in the native character set of the computer by means of an nonnumeric literal. There is no specific restriction upon using a figurative constant of HIGH-VALUE or LOW-VALUE as the specification of a nonnumeric literal in the alphabet-name clause. However, the character in the native character set referred to by one of these figurative constants HIGH-VALUE and LOW-VALUE is normally defined in terms of the program collating sequence; but the program collating sequence may be established by the definition in an alphabet-name clause. At issue are the following questions:

(a) If specified in the alphabet-name clause for an alphabet-name which is referenced in the PROGRAM COLLATING SEQUENCE clause of the OBJECT-COMPUTER paragraph, do the figurative constants HIGH-VALUE and LOW-VALUE result in unambiguous identification of the collating sequence for that alphabet-name?

(b) What is the collating sequence which is used to determine the actual characters referenced by HIGH-VALUE and LOW-VALUE when these figurative constants are specified in an alphabet-name clause?

INTERPRETATION: This interpretation applies to American National Standard COBOL, X3.23-1974, as it has been adopted as Federal Standard COBOL, FIPS PUB 21-1. The figurative constants LOW-VALUE and HIGH-VALUE and their equivalent forms LOW-VALUES and HIGH-VALUES, respectively, may be specified in an alphabet-name clause in the SPECIAL-NAMES paragraph of a COBOL source program, whether or not the alphabet-name which is the subject of the clause is referenced in the PROGRAM COLLATING SEQUENCE clause of the OBJECT-COMPUTER paragraph for that program. In all cases where such a specification of LOW-VALUE is made, the character referenced by the figurative constant LOW-VALUE is that character which has the lowest ordinal position in the native collating sequence for the native character set implemented on the computer specified in the OBJECT-COMPUTER paragraph. In all cases where such a specification of HIGH-VALUE is made, the character referenced by the figurative constant HIGH-VALUE is that character which has the highest ordinal position in the native collating sequence for the native character set implemented on the computer named in the OBJECT-COMPUTER paragraph.

SUPPORTING JUSTIFICATION: References.—The following references to American National Standard COBOL, X3.23-1974, pertain to the issues involved in this interpretation:

(a) Page I-81, paragraph 5.3.2.2.2.3, states in part: "A figurative constant may be used wherever a literal appears in a format, except that whenever the literal is restricted to having only numeric characters in it, the only figurative constant permitted is ZERO (ZEROS, ZEROES)." It further states: "When the figurative constants HIGH-VALUE(S) or LOW-VALUE(S) are used in the source program, the actual character associated with each figurative constant depends upon the program collating sequence specified."

(b) Page II-6, paragraph 3.1.2.4, specifies rules for the OBJECT-COMPUTER paragraph. In particular, General Rule (3) states: "If the PROGRAM COLLATING SEQUENCE clause is not specified, the native collating sequence is used." General Rule (4) states: "If the PROGRAM COLLATING SEQUENCE clause is specified, the program collating sequence is the collating sequence associated with the alphabet-name specified in that clause."

(c) Page II-8, paragraph 3.1.3.3, specifies Syntax Rules for the SPECIAL-NAMES paragraph. In particular, Syntax Rule (2) states: "If the literal phrase of the alphabet-name clause is specified a given character must not be specified more than once in an alphabet-name clause."

(d) Pages II-9 and II-10, paragraph 3.1.3.4, specifies General Rules for the SPECIAL-NAMES paragraph. In particular, the following General Rules are of interest:

(1) General Rule (3)d, Rule 1 states: "The value of each literal specifies:

1. The ordinal number of a character within the native character set, if the literal is numeric * * *.

2. The actual character within the native character set, if the literal is nonnumeric * * *."

(2) General Rule (3)d, Rule 3 states: "Any characters within the native collating sequence, which are not explicitly specified in the literal phrase, assume a position, in the collating sequence being specified, greater than any of the explicitly specified characters. The relative order within the set of these unspecified characters is unchanged from the native collating sequence."

(3) General Rule (3)d, Rule 5 states: "If the ALSO phrase is specified, the characters of the native character set specified by the value of literal-1, literal-3, literal-4, * * *, are assigned to the same position in the collating sequence being specified."

(4) General Rule (4) states: "The character that has the highest ordinal position in the program collating sequence specified is associated with the figurative constant HIGH-VALUE. If more than one character has the highest position in the program collating sequence, the last character specified is associated with the figurative constant HIGH-VALUE."

(5) General Rule (5) states: "The character that has the lowest ordinal position in the program collating sequence specified is associated with the figurative constant LOW-VALUE. If more than one charracter has the lowest position in the program collating sequence, the first character specified is associated with the figurative constant LOW-VALUE."

Discussion: An alphabet-name which is defined by an alphabet-name clause in which literals appear may be referenced in the PROGRAM COLLATING SEQUENCE clause of the OBJECT-COMPUTER paragraph and in the COLLATING SEQUENCE phrase of the SORT and MERGE statements. Consider the case where the alphabet-name defined in an alphabet-name clause containing literals is referenced in the PROGRAM COLLATING SEQUENCE clause. It cannot be supposed that the figurative constants LOW-VALUE and HIGH-VALUE specify characters from the native computer code set in terms of the program collating sequence being defined in the alphabet-name clause. Such a supposition would lead to inconsistencies. For example, LOW-VALUE if specified as the first literal in an alphabet-name clause would not uniquely identify any character; and LOW-VALUE specified other than as the first literal in an alphabet-name clause would be prohibited by reference (c). For HIGH-VALUE, the inconsistency would be that any unspecified character assumed to be highest in the program collating sequence, if specified by means of HIGH-VALUE in the alphabet-name clause, would then be explicitly specified and could not be the character referred to by HIGH-VALUE, according to references (d)(2) and (d)(4). These inconsistencies can only be avoided if either HIGH-VALUE and LOW-VALUE are syntactically incorrect specifications for literals in the alphabet-name clause or else HIGH-VALUE and LOW-VALUE specify characters in terms of some

other program collating sequence than that which is being defined. Because reference (a) allows a figurative constant to be used "wherever a literal appears in a format," and since there is no specific prohibition of any figurative constant being used in the alphabet-name clause, the interpretation is given that, while processing the alphabet-name clause and before the program collating sequence is established, the native collating sequence is the program collating sequence for purposes of determining the characters referred to by HIGH-VALUE and LOW-VALUE. The term "native character set" used in reference (d)(1) obviously embraces both the concepts of a native character code set and of a native collating sequence. The native character set must be ordered if meaning is to be given to the rule applying to numeric literals specified in an alphabet-name clause. This same ordering applies to the "actual character within the native character set, if the literal is nonnumeric." The use of the term "native character set" in reference (d)(1) is interpreted to mean that the native collating sequence is to be the program collating sequence used to determine the characters referred to by HIGH-VALUE and LOW-VALUE in the alphabet-name clause, even if the alphabet-name being defined is not specified in the PROGRAM COLLATING SEQUENCE clause.

Discussion of Examples: The following example is provided to illustrate the interpretation. Assume that a computer has a character set consisting of eight characters ordered, from low to high, in the native collating sequence A, B, C, D, E, F, G, H. The following alphabet-name clause is used to define a restructured collating sequence:

```
SPECIAL-NAMES.
RESTRUCTURED-ALPHABET IS:
    "C"
    "D" ALSO HIGH-VALUE ALSO LOW-
      VALUE
    "B".
```

Because of reference (a), HIGH-VALUE and LOW-VALUE are permitted in the clause because the General Format of the SPECIAL-NAMES paragraph permits literals where these figurative constants are used. Because of reference (d)(1), the native collating sequence is used as the program collating sequence for purposes of defining RESTRUCTURED-ALPHABET, regardless of what the program collating sequence is for the remainder of the COBOL source program. Therefore, the collating sequence established for RESTRUCTURED-ALPHABET at execution time is:

C (lowest ordinal position)
D and H and A (second ordinal position)
B (third ordinal position)
E
F
G (highest ordinal position)

If the OBJECT-COMPUTER paragraph specifies the clause "PROGRAM COLLATING SEQUENCE IS RESTRUCTURED-ALPHABET", the character referred to by LOW-VALUE, except in an alphabet-name clause, is the character "C"; and the character referred to by HIGH-VALUE, except in an alphabet-name clause, is the character "G".

CLARIFICATION OF FEDERAL STANDARD COBOL: None.

EFFECTIVE DATE OF INTERPRETATION: This interpretation is effective on May 17, 1979.

[FR Doc. 78-32318 Filed 11-16-78; 8:45 am]

[3510-13-M]

APPROVED INTERPRETATION FOR FEDERAL STANDARD COBOL (FIPS PUB 21-1)

Under the provisions of Pub. L. 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal ADP standards. FIPS PUB 21-1 specifies Federal standard COBOL. The standard defines the elements of the COBOL Programing Language and the rules for their use. During the use of the standard, questions arise as to the meaning of certain language specifications. FIPS PUB 29 defines the procedures to be followed in providing solutions to these questions. The procedures allow for the solutions to be used uniformly throughout the Federal Government and by all implementors of compilers acquired by the Federal Government. Accordingly, in the February 14, 1978 issue of the FEDERAL REGISTER (FR Doc 78-4037, page 6294), the National Bureau of Standards published a notice of proposed interpretation of Federal standard COBOL as pertains to the specification of a COPY statement in the Identifiation Division of a COBOL source program. All comments submitted about the proposed interpretation have been duly considered.

The following approved interpretation contains a definition of the problem, discussion of the issues, approved language interpretation, supporting justification, necessary clarifications to Federal standard COBOL, and the effective date of the interpretation. The approved interpretation, as of the effective date, becomes an integral part of Federal standard COBOL and, as such, is considered to be included whenever reference is made to Federal standard COBOL.

Interested parties may, in accordance with FIPS PUB 29, interpretation procedures for Federal standard COBOL, dated June 30, 1974, submit comments concerning interpretations of Federal standard COBOL to the Chairman, Federal COBOL Interpretations Committee, c/o Associate Director for ADP Standards, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

Dated: November 8, 1978.

ERNEST AMBLER,
Director.

FEDERAL STANDARD COBOL INTERPRETATION No. 3—THE COPY STATEMENT

PROBLEM: In order to determine whether or not the characters "COPY" when specified in a paragraph within the Identification Division cause text to be copied from a COBOL library, it is necessary to determine which characters in a COBOL source program constitute a comment-entry. If implementations of COBOL compilers differ with respect to whether a given instance of "COPY" causes text to be copied, portability of COBOL programs will be adversely impacted.

ISSUES: A COPY statement may be specified in a COBOL source program where a character-string may be specified; and a comment-entry is a character-string, but one for which the normal delimitation by separators does not apply in the same way as for other types of character-strings. At issue are the following two questions:

(a) What sequence of characters in a COBOL source program constitutes a single comment-entry?

(b) If a sequence of characters beginning with the characters "COPY" appears where a comment-entry may be specified but that sequence of characters is not a valid COPY statement, does an error exist in the program or are the characters considered to be part of a comment-entry?

INTERPRETATION: This interpretation applies to American national standard COBOL, X3.23-1974, as it has been adopted as Federal standard COBOL. FIPS PUB 21-1. The interpretation is in two parts. Each part addresses one of the issues related above.

(a) Any character other than a space character which immediately follows a period separator at a point in a COBOL source program where a comment-entry may be specified is either the first character of the specification of a COPY statement or else the first character of a comment-entry. Once the first character of a comment-entry has been encountered, that character and any succeeding characters up to, but not including, the period separator which immediately precedes the next header in the source program are all part of a single character-string, regardless of the appearance within this comment-entry character-string of any

space or period characters. Consequently, in the AUTHOR, INSTALLATION, DATE-WRITTEN, DATE-COMPILED, and SECURITY paragraphs of the Indentification Division, a COPY statement may be specified only immediately following the paragraph header or immediately following another COPY statement.

(b) If a sequence of characters beginning with the characters "COPY" appears following a period separator at a point where a comment-entry may be specified, and if that sequence of characters up to the next period character which is followed by a space character is not the specification of a valid COPY statement according to the general format and syntax rules for that statement, the program is syntactically correct with respect to this specification of characters; and the characters in question are within a comment-entry character-string.

SUPPORTING JUSTIFICATION: References: The following references to American national standard COBOL, X3.23-1974, pertain to the issues involved in this interpretation:

(a) Page I-58, paragraph 4.2, states the definition of an entry as: "Any descriptive set of consecutive clauses terminated by a period and written in the Identification Division, Environment Division, or Data Division of a COBOL source program."

(b) Page I-74, Paragraph 5.2.1.8, states in part: "Paragraphs within the Identification and Procedure Divisions, and the entries within the Environment and Data Divisions must be terminated by the separator period."

(c) Page I-76, paragraph 5.3.2.1, states in part: "The rules established for the formation of separators do not apply to the characters which comprise the contents of nonnumeric literals, comment-entries, or comment lines."

(d) Page I-76, paragraph 5.3.2.2, states: "A character-string is a character or a sequence of contiguous characters which forms a COBOL word, a literal, a PICTURE character-string, or a comment-entry. A character-string is delimited by separators."

(e) Page I-82, paragraph 5.3.2.2.4, states: "A comment-entry is an entry in the Identification Division that may be any combination of characters from the computer's character set."

(f) Page I-94, paragraph 5.4.3.1, specifies that, where a comment-entry appears, it may optionally be repeated.

(g) Page X-2, paragraph 2.2, specifies the general format of the COPY statement.

(h) Page X-2, paragraph 2.3, specifies syntax rules for the copy statement. In particular, syntax rule (2) states: "The copy statement must be preceded by a space and terminated by the separator period." Syntax rule (7) states: "A COPY statement may occur in the source program anywhere a character-string or a separator may occur except that a copy statement must not occur within a COPY statement."

Discussion: (a) A comment-entry is a character-string according to reference (d), but a comment-entry is also an entry according to reference (e). In order to be consistent with one another, these referenced language specifications require that, in the case of a comment-entry, the entry in question must consist of a single clause which must, in turn, consist of a single character-string.

(b) A character-string must be delimited by separators according to reference (d), and an entry is terminated by a period according to reference (a). Because the entry and the character-string consist of identical characters in the case of a comment-entry, the character-string must be terminated with a separator period.

(c) According to reference (c), the rules for the formation of separators are not applicable to the contents of a comment-entry, which may consist of any characters including space and period characters in any combination. Therefore, the period separator which delimits the comment-entry can only be that period separator which terminates the paragraph according to reference (b). Only that particular period separator, because of its preceding a header, can be distinguished from those characters constituting the comment-entry.

(d) When a COPY statement is specified in place of a comment-entry character-string according to reference (h), characters specified following that COPY statement may be a comment-entry because of the repetition allowed by reference (f). In fact, this is the only circumstance under which a comment-entry is repeated. If a comment-entry begins immediately after a paragraph header, there can only be a single comment-entry in the paragraph since the rules for the formation of separators do not apply.

DISCUSSION OF EXAMPLES: In the following examples, assume that ABC, file-history, and high-sec are text-names contained in a COBOL library but that low-sec is not a text-name contained in such a library.

(a) SECURITY. HOW DO WE COPY ABC. ENVIRONMENT DIVISION.

Because of reference (c), the space preceding "COPY" is not a separator; consequently, no COPY statement is specified. A single comment-entry has been specified consisting of the characters "HOW DO WE COPY ABC".

(b) DATE-WRITTEN. ORIGINAL PROGRAM WRITTEN JANUARY 9, 1975. FILE DESCRIPTIONS MAINTAINED ON-LIBRARY. COPY FILE-HISTORY. DATE-COMPILED.

Because of reference (c), the period and space preceding "copy" do not constitute a period separator; consequently, no copy statement is specified. A single comment-entry has been specified.

(c) SECURITY. COPY HIGH-SEC. ENVIRONMENT DIVISION.

A valid copy statement has been specified according to references (g) and (h) in a position where a character-string, namely a comment-entry, can be specified. Therefore, the library text with text-name HIGH-SEC is copied into the program.

(d) SECURITY. COPY ABC GERZUN NOT IN LIBRARY, ENVIRONMENT DIVISION.

A syntactically valid COPY statement has not been specified according to references (g) and (h), i.e., a period separator does not immediately follow "ABC". The sequence of characters "COPY ABC GERZUN NOT IN LIBRARY" is a comment-entry according to reference (e).

(e) SECURITY. COPY LOW-SEC. ENVIRONMENT DIVISION.

A valid COPY statement has been specified according to references (g) and (h) in a position where a character-string, namely a comment-entry can be specified. However, since there is no library text named LOW-SEC, an error exists.

(f) SECURITY. COPY ABC. COMMENT SOME MORE. ENVIRONMENT DIVISION.

A valid COPY statement has been specified. Library text with the text-name ABC is copied into the program. The library text logically replaces only "COPY ABC.". The source program text following the COPY statement is a valid comment-entry permitted by reference (f).

CLARIFICATION OF FEDERAL STANDARD COBOL: None.

Effective Date of Interpretations: This interpretation is effective on May 17, 1978.

[FR Doc 78-32319 Filed 11-16-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Surf Clam/Ocean Quahog Subcommittee of the Scientific and Statistical Committee of 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 revisions to the Surf Clam and Ocean Quahog Fishery Management Plan, and other business as necessary.

DATE: The meeting will convene on Wednesday, December 6, 1978, at 10 a.m. and adjourn approximately at 3 pm. This meeting is open to the public.

ADDRESS: The meeting will take place at the Best Western Philadelphia Airport Motel, Philadelphia Airport, Route 291, Philadelphia, Pa. 19153, 215-365-7000.

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: November 14, 1978.

WINFRED H. MEIBOHM
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-32421 Filed 11-16-78; 8:45 am]

[3510-22-M]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

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) Squid Fishery Management Plan, (2) Mackerel Fishery Management Plan, (3) Butterfish Fishery Management Plan, (4) Shark Fishery Management Plan, (5) Fluke Fishery Management Plan, (6) Status of Fishery Management Plans, (7) Other Administrative matters.

DATES: The meeting will convene on Wednesday, December 13, 1978, and will adjourn approximately at 1 p.m. on Friday, December 15, 1978.

ADDRESS: The meeting will take place at the Best Western Philadelphia Airport Motel, Philadelphia Airport, Route 291, Philadelphia, Pa. 19153, 215-365-7000.

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: November 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-32422 Filed 11-16-78; 8:45 am]

[6315-01-M]

COMMUNITY SERVICES ADMINISTRATION

NATIONAL CONSUMER COOPERATIVE BANK FEDERAL INTERAGENCY TASK FORCE

Meetings

ACTION: Notice of public meetings.

SUMMARY: The National Consumer Cooperative Bank Federal Interagency Task Force announces a series of 13 public meetings to provide general information on the Bank and to obtain specific comments on issues and questions generated by working subcommittees of the Interagency Task Force.

DATE, TIME, LOCATION, LOCAL LEAD AGENCY AND CONTACT PERSON:

Date and time	Location	Local lead agency	Local contact
Dec. 1, 9 a.m. to 5 p.m ..	215 Fremont St., room 605, San Francisco, Calif.	Department of Housing and Urban Development.	Sharon Brown, 415-556-8484.
Dec. 2, 9 a.m. to 5 p.m ..	College of Santa Fe, Cerrillos Rd. and St. Michaels Dr., the Forum, Santa Fe, N. Mex.	Department of Agriculture.	Don Purcell, 505-766-3956.
Dec. 4, 9 a.m. to 5 p.m ..	Denver Marina Hotel, 303 West Colfax Ave., Big Horn Room, Denver, Colo.	ACTION	Karen Paget or Wayne Olson, 303-837-2671.
Dec. 4, 9 a.m. to 5 p.m ..	Federal Building, 228 Walnut St., third floor, Harrisburg, Pa.	National Credit Union Administration.	Joyce Stydinger, 717-782-4595
Dec. 4, 9 a.m. to 5 p.m ..	Federal Building, 26 Federal Plaza, room 1-102, New York, N.Y.	Department of Commerce	Al Funai, 212-264-5647.
Dec. 5, 9 a.m. to 5 p.m ..	Radisson-Cadillac Hotel, 1114 Washington Blvd., Woodward Room, Detroit, Mich.	Department of Housing and Urban Development.	Doris Mersdorf, 313-353-5834.
Dec. 5, 10 a.m. to 7 p.m.	Park Place Plaza, EPA Conference Room, 1200 Sixth Ave., Seattle, Wash.	Department of Health, Education, and Welfare.	Harvey Chester, 206-442-0486.
Dec. 8, 9 a.m. to 5 p.m ..	Fort Snelling, 266 Federal Bldg., conference room 564, St. Paul, Minn.	Community Services Administration.	Bev Gleeson, 612-296-5740.
Dec. 11, 9 a.m. to 5 p.m.	McCormack Federal Bldg., Devonshire St. and Post Office Sq., room 208, Boston, Mass.	ACTION	John Torian, 617-223-4510.
Dec. 11, 9 a.m. to 5 p.m.	Holiday Inn Central, 3321 South 72d St., Empire D Room, Omaha, Nebr.	Department of Energy	June Heard, 816-374-2061.
Dec. 13, 9 a.m. to 5 p.m.	Gaillard Municipal Bldg., 77 Calhoun St., Mezzanine Meeting Rooms, Charleston, S.C.	Community Services Administration.	Jim Middleton, 803-723-9285.
Dec. 14, 9 a.m. to 5 p.m.	New Orleans Public Library, Loyola and Tulane Aves., Library Auditorium, New Orleans, La.	....do	Norman Riemer, 214-767-6177.
Dec. 15, 9 a.m to 5 p.m.	City of Memphis Board of Education Administration Bldg., 2597 Avery St., Auditorium, Memphis, Tenn.	....do	Foster Adams, 901-528-2900.

FOR FURTHER INFORMATION CONTACT:

Jerry Storey, Office of Interagency and External Affairs, Community Services Administration, 1200 19th Street NW., room 238, Washington, D.C. 20506, 202-632-8322.

SUPPLEMENTARY INFORMATION: The National Consumer Cooperative Bank Act was signed into law on August 20, 1978. The Bank is intended to improve the effectiveness of self-help cooperatives by providing them financing and technical assistance. The Bank will be established as a mixed ownership Government corporation administered by a 13-member Board of Directors, 7 from Federal agencies and 6 from the general public. Eventually, the Bank will be wholly owned by its member cooperatives and will operate independently of the Federal Government.

The Administration has established a Federal Interagency Task Force to expedite implementation of the Act. The Interagency Task Force, chaired by the Department of the Treasury, is made up of 11 member agencies. The Interagency Task Force will recommend policies and procedures to the Bank.

The Interagency Task Force has organized six working subcommittees, as follows:

I. *Internal Procedures,* chaired by the Department of Housing and Urban Development. This subcommittee deals with Board procedures, stockholders'; voting power, conflict of interest rules, setting up main and branch Bank offices and reports to Congress.

II. *Priorities and Allocation of Financial Assistance,* chaired by the White House Office of Consumer Affairs. This subcommittee deals with policy guidelines for defining eligible cooperatives, for apportioning loans, guarantees, interest subsidies, and technical assistance among eligible cooperatives.

III. *Finance and Lending Policies,* chaired by the Department of the Treasury. This subcommittee deals with the terms, conditions, and procedures for granting assistance, with the fees and interest rates to be charged, with Bank borrowing and with questions concerning stock that do not involve voting power.

IV. *Self-Help Development Fund,* chaired by ACTION. This subcommittee deals with questions concerning the Self-Help Development Fund.

V. *Technical Assistance,* chaired by the Department of Commerce. This subcommittee deals with questions concerning technical assistance, including standards and procedures for setting fees.

VI. *Public Participation,* chaired by the Community Services Administration and ACTION. This subcommittee is responsible for generating and coordinating public input to the work of the Interagency Task Force.

PUBLIC MEETINGS: The 13 public meetings on the Bank will be coordinated at the local level by a lead Federal agency, identified in the schedule of meetings above. Representatives of the Interagency Task Force subcommittees will attend these meetings to receive public comment on the issues and questions being considered by those subcommittees. Public input resulting from each meeting will be forwarded directly to the pertinent Interagency Task Force subcommittee(s).

A list of questions, which represent some of the major issues being addressed by the Interagency Task Force, follows below. These questions will form a basis of comment and discussion at the public meetings. Participants may comment on general matters about the Bank during the information portion of the public meeting. Participants may comment on specific subcommittee issue areas during that portion of the public meeting set aside for each subcommittee.

The public meetings are open to all interested parties. For scheduling purposes, any person who wishes to comment on a subcommittee issue at a public meeting is requested to contact the local lead Federal agency person identified above. It is the special aim of these public meetings to get as many comments, ideas and suggestions as possible from a broad representation of persons and groups interested or involved in consumer cooperative activity. The Interagency Task Force invites those who are either unable to participate in person at a public meeting or who wish to comment in more detail than public meeting time will permit to send their information and views to Jerry Storey, address above, by December 31, 1978.

A brief summary of major provisions of the Bank follows as an appendix to this notice. The Bank Act appears in full in the Congressional Record of July 17, 1978.

GRACIELA (GRACE) OLIVAREZ,
Director.

APPENDIX—SUMMARY OF THE NATIONAL CONSUMER COOPERATIVE BANK

Background

On August 20, 1978, the President signed into law the Consumer Cooperative Bank Act (Pub. L. 95-351), to create an independent national bank for cooperatives.

Purpose of the Bank

The purpose of the legislation is to provide financial and technical assistance to not-for-profit cooperatives. To accomplish this, the legislation: (1) Establishes a Bank to make loans at market interest rates to cooperatives in a variety of fields (Title I) and (2) creates a Self-Help Development Fund and Technical Assistance capability to assist low-income cooperatives or coops with special needs. (Title II).

Eligibility

To be eligible for assistance, a cooperative must: (1) Be operated on a nonprofit cooperative basis and must furnish goods, services, or facilities primarily for the benefit of its members or voting stockholders as consumers and (2) be a legally chartered entity entirely owned and controlled by such cooperatives. (Please see section 105 of the Act.)

Producer cooperatives are also eligible, but loans to producer cooperatives may not exceed 10 percent of the Bank's gross assets.

Beginning October 1, 1983, up to 30 percent of the Bank's gross assets may be loans for residential housing cooperatives. In addition, the Bank must make its best efforts to assure that 35 percent of all loans outstanding at the end of each fiscal year are made to low-income cooperatives or cooperatives primarily serving low-income persons.

The Bank's Budget

The Act authorizes the Government to purchase up to $300 million of Class A preferred stock over 5 years. In addition, borrowers will be required to own certain amounts of common stock. Any cooperative eligible to borrow may purchase additional common stock. The Bank may raise additional funds by borrowing up to ten times its capital.

TITLE I

The Bank Board

Initially, the Bank will be governed by a 13-member Board of Directors appointed by the President, for 3-year terms. Of the 13 members, 7 will be from agencies and departments of the Federal Government, and 6 will be from the general public. The public members must have extensive experience in the cooperative field.

Eventually, the Bank will be owned and governed by cooperatives which borrow or are eligible to borrow from the Bank. As cooperative ownership of Bank stock increases, Presidentially appointed directors will be replaced by directors elected by cooperative shareholders.

TITLE II

The Act establishes an office of Self-Help Development and Technical Assistance within the Bank whose Director is appointed by the President. Policies and procedures governing the operation of the Office are subject to review by the Board.

The Act creates a separate loan account called the Self-Help Development Fund and authorizes $75 million to the Fund over 3 years.

The Fund may be used for capital investment loans to eligible cooperatives provided that:

(1) The applicant (a) needs more capital than it can get form a bank loan or from other sources; or (b) the membership of th applicant is, or will be, composed substantially of low-income persons; or (c) the project or activity to be financed will serve low-income persons; and (2) the applicant (a) needs more capital than it can get from a bank loan or from other sources; and (b) shows it can repay the capital investment loan within 30 years.

Eligible cooperatives which cannot pay market rates of interest to the Bank or to another lender because they serve low-income persons may apply for interest supplement payments from the Fund.

The Office will charge interest on both capital investment advances and interest supplement payments. The Board of Directors may authorize rates of interest lower than those charged for loans under Title I.

Technical Assistance.

The Office will make available information and services concerning the organization, financing and management of cooperatives. It may contract with other private or public organizations to achieve its goals.

The Office will investigate new types of services and will provide financial analyses and market surveys for eligible cooperatives.

The Office will develop and implement programs to train members, directors, and staff of eligible cooperatives in the operation and use of cooperatives.

The Office will work with other Government agencies to insure that information concerning relevant programs is available to eligible cooperatives.

Congress has authorized an appropriation of $2 million for fiscal year 1979 for the adminstration of the Office of Self-Help Development and Technical Assistance program. It has authorized such sums as may be necessary for fiscal year 1980 and fiscal year 1981.

THE INTERAGENCY TASK FORCE

General

In September the administration established an Interagency Task Force consisting of representatives from 11 agencies or departments to expedite the implementation of the Bank. The Task Force is responsible to prepare recommendations for implementation to the Bank Board. The Board makes final decisions about operational and policy matters.

Structure of the Task Force

The Interagency Task Force is chaired by the Treasure Department. Six working subcommittees have been established, each chaired by an agency, office, or department. They are:

1. Internal Procedures—Department of Housing and Urban Development.
2. Eligibility and Priorities—Esther Peterson, Special Assistant to the President for Consumer Affairs.
3. Finance and Lending Policies—Department of Treasury.
4. Self-Help Development Fund—ACTION.
5. Technical Assistance—Department of Commerce.
6. Public Participation—The Community Services Administration and ACTION.

The Task Force hopes to have its recommendations for the Bank finalized by January 31, 1979.

Nominations

Nominations for public members of the Board of Directors are requested by November 30, 1978. Nominations are being solicited from cooperative organizations and other interested groups. The Adminstration hopes to have nominees selected, and ready for Senate hearings some time in January.

MAJOR ISSUES AND QUESTIONS OF THE INTERAGENCY TASK FORCE

SUBCOMMITTEE I—INTERNAL PROCEDURES

1. How can information about the Bank and the Office of Self Help best be provided to interested cooperatives and other groups?

Some examples:

a. Existing Federal agencies.
b. Private groups.
c. Field representative of the Bank and the Office of Self-Help.
d. A combination of the above.
e. Other:————.

2. What should be included in the annual report to Congress and in the annual report to shareholders?

The Act specifies that the annual report to the shareholders shall include a report on the Bank's financial condition. You may want to read section 106 on the annual report to shareholders and section 111 on the annual report to Congress before answering this question.

Some examples:

a. List of loans and grants made.
b. Upcoming appropriations and possible new bills.
c. Number of low income, elderly, rural, and inner city residents served.
d. Other:————.

3. What kind of information about the Bank and the Office should be made available in between or in addition to annual reports?

Some examples:

a. Summary of the Act.
b. Examples of different types of cooperatives.
c. Services offered by the Bank and the Office of Self-Help.
d. Other:————.

4. Rejected applicants may appeal decisions to the Board of Directors within 30 days. How can this best be handled? Please read section 113 before answering this question. Appeals are limited to decisions contrary to the stated policies of the Bank.

Some examples:

a. Subcommittee of the Board.
b. Board's staff.
c. Other:————.

5. How much weight should each vote cast by a shareholder be given in elections for the Bank's Board of Directors and at the annual meetings? Please read section 104(g) and section 106 before answering this question.

6. What should the relationship between the Fund and the Board be with respect to: 1) the Board reviewing policies of the Office (see section 201), and 2) operations such as initial evaluation of a loan? This question appears under subcommittee IV also.

SUBCOMMITTEE II—PRIORITIES

1. What steps should a primary cooperative be required to take in order to comply with the statutory requirements of "economic democracy" and maximum participation by members? You may want to look at section 105(a) No. 5.

Some examples:

a. Elected Board of Directors.
b. Referenda on policy issues.
c. Fair elections.
d. Requiring that a certain percentage of the people a cooperative serves be members.
e. Opportunity for the members to vote on major business and financial decisions of the cooperative.
f. All of the above.
g. Other: ————.

2. How should the term "not-for-profit basis" be defined?

3. What percentage per annum should be permitted to be paid as dividends on voting stock or membership capital? On what basis did you arrive at your conclusion?

Please look at section 105(a)2 on limiting dividends before answering this question.

4. How should we define "low income person"? Should we use different definitions for the Bank and for the Office of Self Help?

Some examples:

CSA guideline defines a family of four with an income of $6,200 as low income—about 25 million people. Bureau of Labor Statistics defines a family of four with an income of $10,000 as low income—about 75 million people. Title XX guideline—50 percent of State's median income—about 54 million people—$8,500 for a family of four.

5. How big a percentage of low income people—both members and patrons—must a cooperative serve to be considered a low income cooperative for the purpose of the Office of Self Help?

6. How can the Bank and the Office of Self Help best encourage the growth of cooperatives serving low income people, the elderly, and inner city, and rural residents?

Some examples:

Targeting resources.
Special technical assistance.
Low interest rates.

7. Section 105(b) of the Act allows primary producers to borrow from the Bank unless the dollar volume of loans made to such producers exceeds 10 percent of the gross assets of the Bank. What types of primary producer co-ops, if any, should be given priority

in the lending policies of the Bank? Should primary producer co-ops be eligible to apply for assistance from the Office of Self Help and Technical Assistance? Should the 10-percent limit also apply to assistance from the Office?

8. What factors should the Bank and the Office of Self Help take into account in establishing lending priorities?

SUBCOMMITTEE III—FINANCE AND LENDING POLICIES

1. For what purposes does your organization anticipate borrowing from the Co-op Bank?

a. Emergency working capital.
b. Seasonal working capital.
c. New capital equipment.
d. Used capital equipment.
e. Commercial real estate.
f. Residential real estate.
g. To pay for technical assistance, training, or management consulting help.
h. Refinancing.
i. Other: ————.

2. What dollar amount of loans and type would you be asking the Bank for?

In 1979?
In 1980?
Over the 5-year period, 1979-84?
Beyond 1984?

3. The law requires loans to be made at rates of interest generally prevailing in the area. Stock purchases can be included as part of this determination.

In this light, how much stock should a cooperative be required to purchase? Please read section 108(b) before answering this question.

4. To assist in conversion of the Bank to cooperative ownership, Congress has given the Bank the authority to require co-ops to purchase stock amounting to at least 1 percent and as much as 10 percent of the loan amount.

a. Should purchase of stock be uniform among all borrowers and types of loans? If not, explain.
b. When and at what level should stock purchases be made? Should they be made in advance; as interest is paid; in flat sums; or by some other method?
c. Should borrowers be required to continue to hold stock after all or part of their loans have been paid back? If so, how much?
d. Should the Bank attempt to maximize stock purchases as a means of building up its capital base? Or as a means of speeding the retirement of Government capital?

5. Should interest rates charged by the Bank be uniform to all borrowers or should they reflect the type of loan, risk involved and collateral offered?

6. How should the Bank determine the impact of the loan on existing small businesses?

7. To what extent would a potential borrower of the Bank be willing or able to pay for or have included in the cost of the loan such items as feasibility studies, financial audits, appraisals of property for loan security purposes, etc.?

8. Bank interest charges could be made at a fixed rate or one which varies with the cost of money to the Bank. As a cooperative Bank any earnings are refundable to the users of the Bank. Which method of interest rate policy would you prefer?

SUBCOMMITTEE IV—SELF HELP DEVELOPMENT FUND

1. What is an appropriate definition of a cooperative serving low-income members with respect to the Self Help Development Fund? This question is also asked in Subcommittee II on Priorities. How much of the Self Help Development Fund should go to coops serving low-income people?

2. How should we design a system of ongoing public participation for the fund?

Some examples:

a. Local advisory committees.
b. Staff liaisons with cooperatives.
c. Questionnaires.
d. Annual report.
e. Other:————.

3. What should the relationship between the Fund and the Board be with respect to: (1) The Board reviewing policies of the Office (see section 201), and (2) operations such as initial evaluation of a loan? This question also appears under Subcommittee I.

4. Please comment on the experience of taking out loan for your cooperative or community group, or making loans to such groups. What lessons could we learn for use in designing the loan delivery system?

5. For what purposes is your cooperative or community group likely to borrow from the Fund (or Bank)? What would be the likely size of your loan?

6. What kinds of technical assistance would be relevant for the specific purpose of repaying loans?

7. The Coop Bank Act requires that the Self Help Office receive a plan for repayment as part of every loan application. How would you project and document your coop's ability to generate the cash needed to make payments at regular intervals for principal, interest, and technical assistance received from the Fund?

SUBCOMMITTEE V—TECHNICAL ASSISTANCE

1. Through which means can technical assistance best be administered?

Some examples:

a. Cooperatives and federations of cooperatives.
b. Training centers.
c. Office of Self Help personnel.
d. Universities.
e. Other:————.

2. What type of technical assistance would your cooperative or group find most useful? (you may find Title II sections 204, 205, 206 and 207 useful.)

Some examples:

a. Feasibility studies.
b. Financial, market and operations analysis.
c. Staff training.
d. Outreach to low-income people.
e. Consumer information.
f. Membership recruitment.
g. Other:————.

3. How can the Bank and the Office help cooperatives leverage resources from other groups such as local banks, Federal agencies, local government, private foundations, and volunteers?

4. What type of new cooperative services should the technical assistance program explore and possibly support?

5. What kind of board of director training and membership education programs would your cooperative find useful? Would you still be interested in this kind of assistance if you had to pay for it?

[FR Doc. 78-32375 filed 11-16-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

TECHNICAL ADVISORY COMMITTEE ON POISON PREVENTION PACKAGING

Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an orientation meeting for new members of the Technical Advisory Committee on Poison Prevention Packaging on December 5, 1978, from 9 a.m. to 1 p.m. The meeting will be held at 5401 Westbard Avenue, Room 456, Bethesda, Md.

FOR FURTHER INFORMATION CONTACT:

Sadye E. Dunn, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, 202-634-7700.

SUPPLEMENT INFORMATION: The Technical Advisory Committee provides advice and recommendations on the types and kinds of products which require special packaging that will protect children from injury or illness resulting from handling or ingestion of household substances. The purpose of the meeting on December 5 is to provide orientation on the role and

work of the Technical Advisory Committee for new members of the Committee. The meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations to the Technical Advisory Committee should notify the Office of the Secretary (see address above) by November 28, 1978. The notification should list the name of the individual who will make the presentation, the person, company, group, or industry on whose behalf the presentation will be made, the subject matter and the approximate time requested. Time permitting, these presentations and other statements from the audience to the Committee may be allowed by the presiding officer.

Dated: November 14, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-32417 Filed 11-16-78; 8:45 am]

[1410-01-M]

COPYRIGHT ROYALTY TRIBUNAL

POLICY AS TO DISCLOSURE OF INFORMATION CONCERNING LOCATIONS OF CERTAIN PHONORECORD PLAYERS (JUKEBOXES)

AGENCY: Copyright Royalty Tribunal (Tribunal).

ACTION: Final statement of agency policy.

SUMMARY: This notice is published, under authority of 17 U.S.C. 116(c)(5), to establish the policy and practice of the Copyright Royalty Tribunal as to the disclosure of information concerning the location of certain jukeboxes, which data has been filed with the Tribunal as required by its regulations.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 202-653-5175.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal adopted a regulation, which became effective October 10, 1978, providing for the filing in the offices of the Tribunal of current listings of locations where licensed jukeboxes are placed and the number of jukeboxes at such locations. The regulation was published in the FEDERAL REGISTER of September 12, 1978 (43 FR 40498).

At a public meeting on November 9, 1978, the Tribunal considered and, after hearing the views of interested parties, determined its policy and practice as to the disclosure of the jukebox location lists.

The text of the Copyright Royalty Tribunal Policy statement is as follows:

SUBJECT: CRITERIA AND PROCEDURES FOR THE DISCLOSURE OF JUKEBOX LOCATION LISTS

Resolved, That the Copyright Royalty Tribunal should not disclose the actual location lists filed by jukebox operators pursuant to the Copyright Royalty Tribunal's regulations requiring licensed jukebox operators to file location lists with the Copyright Royalty Tribunal.

In the form that the Copyright Royalty Tribunal receives said information from the operators, the Copyright Royalty Tribunal shall not disclose to any person the name of any jukebox operator corresponding to any identifiable or particular location list.

Further resolved, That the Copyright Royalty Tribunal shall compile a catalog listing the number of jukeboxes by state, and if possible, by local governmental entities. Such a catalog shall be made available to persons who can reasonably be expected to have a claim.

Upon application by persons who can reasonably be expected to have a claim, the Copyright Royalty Tribunal shall make available a selected location identification, determined and compiled by the Copyright Royalty Tribunal from information received from jukebox operators.

Dated: November 9, 1978.

THOMAS C. BRENNAN,
Chairman.

[FR Doc. 78-32467 Filed 11-16-78; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

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 December 11, 1978, in Arlington, Va.

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 December 11, 1978, to discuss the conduct of the 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.

Dated: November 14, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives.

[FR Doc. 78-32466 Filed 11-16-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

FUEL ECONOMY OF MOTOR VEHICLES

Availability of 1979 Gas Mileage Guide

The Department of Energy (DOE) hereby gives notice of the availability of the 1979 Gas Mileage Guide. The Environmental Protection Agency (EPA) has issued regulations on fuel economy, testing, labeling and information disclosure procedures and requirements (40 CFR Part 600) which, among other things, contain requirements for dealers of 1978 and later model year automobiles and light trucks to have copies of a booklet, the Gas Mileage Guide, available and on display in their showrooms. In this booklet prospective purchasers will be able to find the fuel economies of the various models of those vehicles offered for sale in a given model year. DOE is required by section 506(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901, et seq.), as amended by section 301 of the Energy Policy and Conservation Act (89 Stat. 871 et seq.), to publish and distribute this booklet. Section 600.405-77 of the EPA regulations states that dealers will be expected to make these booklets available as soon as they are received by them, but in no case later than 15 working days after notification is given of booklet availability. The publication today of this notice constitutes such notification.

The 1979 Gas Mileage Guide is available for display and distribution by dealers in their showrooms. Any dealer who has not already received Guides from DOE or requires additional copies should request copies by writing to the following address, specifying the quantity desired of the 49-State and/or the California version:

Fuel Economy, Department of Energy, Office of Administration, Washington, D.C. 20545.

Issued in Washington, D.C., November 13, 1978.

OMI WALDEN,

Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 78-32330 Filed 11-16-78; 8:45 am]

[3128-01-M]

PEACEFUL USES OF ATOMIC ENERGY

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed subsequent arrangement under the Agreement for Cooperation between the Governments of the United States and Japan for Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States and the European Community for Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above named agreements involves the transfer of 46.139 kilograms of uranium enriched to 93.3 percent U-235 from Germany to Japan. This material will be used as fuel in the JMTR and JRR-2 reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security of the United States.

This subsequent arrangement will take effect no sooner than 15 days after publication of this notice.

For the Department of Energy.

Dated: November 14, 1978.

HAROLD D. BENGELSDORF,

Director for Nuclear Affairs, International Programs.

[FR Doc. 78-32331 Filed 11-16-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

REQUESTS FOR INTERPRETATION FILED WITH THE OFFICE OF GENERAL COUNSEL

Month of October 1978

Notice is hereby given that during the month of October 1978 the requests for interpretation listed in the appendix to this notice were filed pursuant to 10 CFR Part 205, Subpart F with the Office of General Counsel, Department of Energy (DOE). Notice of subsequently received requests will be published at the end of each calendar month. Copies of the requests for interpretation listed herein are on file in DOE's public reading room, Information Access Office, GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Interested parties may submit written comments on the listed interpretation requests on or before December 18, 1978. Comments should be identified on the outside envelope and on documents submitted with the file number of the interpretation request and all comments should be filed with the Office of General Counsel, Department of Energy, Room 5134, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, Attention: Diane Stubbs. Aggrieved parties, as defined in 10 CFR 205.2, will continue to receive actual notice of pending interpretation requests in accordance with the current practice of the Office of General Counsel.

For further information, contact Diane Stubbs, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5138, Washington, D.C. 20461, 202-566-9070.

EVERARD A. MARSEGLIA, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

NOVEMBER 9, 1978.

APPENDIX.—*List of Requests for Interpretation Received by the Office of General Counsel*

[Month of October 1978]

Date received	Name and location of requestor	File No.
Oct. 2, 1978	Shell Oil Co., William G. Riddoch, 1 Shell Plaza, P.O. Box 2463, Houston, Tex. 77001. Issue: Is Shell permitted to pay the onshore posted price plus transportation costs for offshore crude oil when the contract for the purchase of the offshore crude oil refers to a posting providing for onshore delivery (10 CFR 212.74(b)).	A-348
Oct. 4, 1978	Sinclair Oil Corp., William J. Mutryn, Casson, Calligaro & Mutryn, 1100 Watergate Office Bldg., 2600 Virginia Ave., NW., Washington, D.C. 20037. Issue: Does 10 CFR 210.62 prohibit the imposition of a finance charge on delinquent accounts provided that all other credit terms remain the same.	A-349
Oct. 11, 1978	National Association of Texaco Wholesalers, Inc., Fred B. Causey, P.O. Box 95265, Atlanta, Ga. 30347. Issue: In computing its maximum lawful selling price, must a wholesale purchaser-reseller, which was previously a consignee, follow the normal business practices of its supplier (10 CFR 212.93 and 210.62).	A-350
Oct. 18, 1978	Kern County Refinery, Inc., John E. Rosa, Smith, Hulsey, Schwalbe & Nichols, 500 Barnett Bank Bldg., Jacksonville, Fla. 32202. Issue: May a refiner impute a lawful base price pursuant to 10 CFR 212.111 without reference to a comparable transaction where the necessary information is difficult to obtain.	A-351
Oct. 19, 1978	Consolidated Gas Supply Corp., John E. Holtzinger, Jr., Morgan, Lewis & Bockius, 1800 M St. NW., Washington, D.C. 20036. Issue: Are sales made prior to Jan. 1, 1975, of NGL and NGL products extracted at gas processing plants owned and operated by a "public utility" exempt from mandatory price controls (10 CFR Part 212, Subparts E and K).	A-352
Oct. 20, 1978	Shell Oil Co., Kim Jensen Clifford, 1 Shell Plaza, P.O. Box 2463, Houston, Tex. 77001. Issue: 1. Does § 324(a) of the Clean Air Act Amendments have the effect of freeing marketing costs incurred and paid for the procurement and installation of vapor recovery equipment from the limitations of 10 CFR 212.83(c)(2)(E). 2. What effect does § 324(a) have on the equal application rule set forth in 10 CFR 212.83(h).	A-353
Oct. 23, 1978	Indiana Farm Bureau Cooperative Association, Inc., William F. Paddock, 120 East Market St., Indianapolis, Ind. 46204. Issue: Does a property retain its stripper well status if, subsequent to certification, the property is leased to a different operator (10 CFR 212.54).	A-354
Oct. 30, 1978	Aminoil U.S.A., Inc., A. H. Ness, P.O. Box 94193, Houston, Tex. 77018. Issue: May iso-butane be treated as a separate product from normal butane if it was historically priced and treated differently.	A-355
Do	John Gould, Jr., 103 Wall Towers West, Midland, Tex. 79701 ..... Issue: Does production from a reentered well on a unitized property qualify as new crude oil eligible for upper tier pricing (10 CFR 212.75 and 212.74).	A-356

[FR Doc. 78-32419 Filed 11-16-78; 8:45 am]

[6740-02-M]

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RI78-99]

ARKANSAS LOUISIANA GAS CO.

Petition for Declaratory Order

NOVEMBER 8, 1978.

Take notice that on September 28, 1978, Arkansas Louisiana Gas Co. (Arkla), P.O. Box 21734, Shreveport, La. 71151, filed a petition for a declaratory order pursuant to section 1.7(c) of the Commission's rules of practice and procedure requesting that the Commission end an existing controversy by declaring whether for sales of gas by producers to Arkla within the State of Texas the amount of tax adjustment provided in section 2.56a(b) of FERC regulations (and other similar applicable regulations) is to be calculated in accordance with the interpretation of the Texas tax statute by the Texas Comptroller of Public Accounts, Minerals Tax Division, as set forth in Texas natural gas tax rule .008 (7.5 percent) or whether the calculation should be done as a percentage of a taxable value of the gas that includes 100 percent of the production tax (8.1081 percent).

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 30, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32343 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RI79-4]

B. J. OIL CO.

Petition for Declaratory Order

NOVEMBER 8, 1978.

Take notice that on October 11, 1978, B. J. Oil Co. filed, in docket RI79-4, a petition pursuant to 1.7(c) of the Commisson's rules of practice and procedure requesting that the Commission confirm the authorization of B. J. Oil Co. to collect, effective as of April 25, 1978, 61 cents per Mcf for all gas sold by it to Columbia Gas Transmission Corp. (Columbia) for old gas stripper wells.[1]

Petitioner states that it is the beneficial owner of the following meter names: Walters Natural Resources Inc., G. W. Walters, agent; and G. W. Jean Walters, and that there is complete identity of ownership between B. J. Oil Co. and the above-cited meter names. Petitioner further claims that because of this identity of interest, it is entitled to the benefits of the Commission's order issued in docket No. RI79-4, on April 25, 1978, authorizing the collection of 61 cents per Mcf, plus an annual escalation of 1 cent per Mcf commencing on January 1, 1978.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 1, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirement of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32370 Filed 11-16-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RI79-5]

BARTH ENERGY CORP. (TEXAS)

Petition for Special Relief

NOVEMBER 9, 1978.

Take notice that on October 16, 1978, Barth Energy Corp. (Texas) ("Barth"), 1228 San Jacinto Building, Houston, Tex. 77002, filed a petition for special relief pursuant to § 2.76 of the Commission's General Policy and Interpretation. Barth seeks an increase in its rate from 30¢ per Mcf at 14.65 psia to 52.49125¢ per Mcf at 14.65 psia for the sale of gas from the West Bay City Field, Malagorda County, Tex. to Valley Gas Transmission Inc. Barth states that this rate would allow it to recover the cost of installing a two stage compressor and the additonal production tax charged thereto.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 30, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32368 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RI79-1]

BLAKE HAMMAN

Petition for Special Relief

NOVEMBER 8, 1978.

Take notice that on October 2, 1978, Blake Hamman (Petitioner), 706 Continental Life Building, Forth Worth, Tex. 76102, filed a petition for special relief in Docket No. RI79-1 pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76).

Petitioner requests authorization to charge $1.75 per Mcf for the sale of gas from the Walter A. Bennett A-1 Well, Parker and Wise Counties, Tex. Petitioner is entitled to 17.9022 per Mcf. Presently the sale is to the Natural Gas Pipeline Co. of America. Petitioner proposes to rework the A Zone of the well and install a compressor in order to materially increase the supplies from the well and to insure continued production.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 1, 1978. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties

[1] See the Commission's order accepting settlement agreement, granting special relief, and permitting intervention, which was issued Apr. 25, 1978, in docket No. RI77-26.

to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32369 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. EL79-2]

CENTRAL VERMONT PUBLIC SERVICE CORP. AND GREEN MOUNTAIN POWER CORP.

Application

NOVEMBER 9, 1978.

Take notice that on November 3, 1978, Central Vermont Public Service Corp. (Central Vermont) and Green Mountain Power Corp. (Green Mountain) filed a joint application seeking authority to acquire 6,000 additional shares of Vermont Electric Power Co.'s (VELCO) Class B shares of Common Stock. The Federal Power Commission in Docket No. E-7817, issued December 22, 1972 and in Docket No. E-9094, issued December 30, 1974, authorized Central Vermont and Green Mountain to acquire VELCO Common Stock.

Central Vermont is incorporated under the laws of the State of Vermont with its principal business office at Rutland, Vt., and is engaged in the purchase, production, transmission, distribution, and sale of electric energy in 174 towns in Vermont. Central Vermont is qualified as a foreign corporation in the States of New Hampshire and New York. Green Mountain is incorporated under the laws of the State of Vermont, with its principal business office at Burlington, Vt., and is engaged in the purchase, production, transmission, distribution, and sale of electric energy in the northern portion of Vermont. Green Mountain is qualified as a foreign corporation in the State of Maine.

VELCO is incorporated under the laws of the State of Vermont, with its principal business office at Rutland, Vt., and is engaged in the construction of a system for the transmission and distribution of St. Lawrence River Project and Niagara Project power purchased by the State of Vermont from the Power Authority of the State of New York for reallocation on an equitable basis to electric distribution facilities throughout Vermont.

VELCO is proposing to issue First Mortgage Bonds, Series G, in an aggregate principal amount of $9 million and 6,000 shares of Class B Common Stock $100 par value, for cash at par in order to finance its continuing construction program.

Central Vermont and Green Mountain propose to purchase all the additional Class B stock issued by VELCO, in sum 6,000 shares. It is intended that Central Vermont purchase 59.47 percent of the shares issued by VELCO (3,568 shares) and that Green Mountain purchase 40.53 percent (2,432 shares), which is proportionate to their distribution of kWh in Vermont.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, on or before December 1, 1978, petitions to intervene or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32371 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-46]

COLORADO INTERSTATE GAS CO.

Application

NOVEMBER 8, 1978.

Take notice that on October 30, 1978, Colorado Interstate Gas Co. (Applicant), P.O. Box 1087, Colorado Springs, Colo. 80944, filed in Docket No. CP79-46 an application pursuant to section 7 of the Natural Gas Act and § 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval of the abandonment during the 12-month period commencing January 1, 1979, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The state purpose of this budget-type application is to enable applicant to act with reasonable dispatch in maintaining production from its field gathering operations.

Applicant states that the estimated total cost of the proposed construction and abandonment under § 157.7(g) would not exceed $3,000,000 and no single project would exceed $500,000.

Applicant also states that the total cost of said facilities would be financed from current working funds on hand, funds from operations, short-term borrowing, or long-term financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32372 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-26]

CONSOLIDATED GAS SUPPLY CORP. AND EQUITABLE GAS CO.

Application

NOVEMBER 8, 1978.

Take notice that on October 17, 1978, Consolidated Gas Supply Corp. (Consolidated), 445 West Main Street, Clarksburg, W. Va. 26301, and Equita-

ble Gas Co. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pa. 15219 (jointly referred to as Applicants), jointly filed in Docket No. CP79-26 a joint application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the exchange of natural gas and construction and operation of certain facilities required therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that Equitable has available to it a quantity of gas in the vicinity of Doddridge County, W. Va., but is unable to attach such supplies to its system because the heavy hydrocarbons in such supplies would liquefy if injected into Equitable's system at certificated operating pressures of 850 psig. It is stated that Equitable does not have available facilities to remove such hydrocarbons from its gas, but that Consolidated, operates extraction facilities in the area and is willing to exchange gas with Equitable.

The application states that Equitable proposes to deliver up to 20,000 Mcf of gas per day to Consolidated at a point of interconnection to be constructed and operated by Equitable at its own expense near its West Union Station No. 53, in Doddridge County, W. Va. To accept such deliveries, it is stated that Consolidated would construct and operate approximately 1.83 miles of 8-inch Line TL-433 and related facilities to connect its existing Line TL-265 with the proposed exchange delivery point. Applicants state that the cost of these facilities to Equitable is estimated to be $1,000, to be financed from funds on hand and Consolidated's facilities are estimated to cost $263,162, to be financed from funds on hand or from funds to be obtained from its parent, Consolidated Natural Gas Co.

Applicants state that Consoldated would cause equivalent quantities of natural gas to be redelivered to equitable by Texas Eastern Transmission Corp., a pipeline supplier of both applicants, at existing points of connection in Greene and Westmoreland Counties, Pa.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB
Secretary.

[FR Doc. 78-32373 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. RP78-20, et al.]

COLUMBIA GAS TRANSMISSION CORP., ET AL.

Filing of Pipeline Refund Reports and Refund Plans

NOVEMBER 8, 1978.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 11, 1978. Copies of the respective filings are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Oct. 13, 1978	Columbia Gas Transmission Corp	RP78-20	Report.
Oct. 12, 1978	El Paso Natural Gas Co	RP67-9	Do.
Oct. 16, 1978	Southern Natural Gas Co	RP78-81	Do.
Do	Tennessee Gas Pipe Line Co	RP75-13, et al	Do.
Oct. 13, 1978	Transwestern Pipeline Co	AR70-1	Do.
Oct. 20, 1978	Mid-Lousiana Gas Co	AR61-2	Plan.
Do	Texas Eastern Transmission Corp	AR64-2, et al	Do.
Oct. 23, 1978	Panhandle Eastern Pipeline		
Do	Mid- Louisiana Gas Co.	RP77-6	Plan.
Oct. 26, 1978	Algonquin Gas Transmission Co	RP78-15	Do.

[FR Doc. 78-32341 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-44]

FLORIDA POWER & LIGHT CO.

Filing

NOVEMBER 7, 1978.

Take notice that Florida Power & Light Co. (FPL) on October 31, 1978, tendered for filing an amendment to an agreement executed by it, entitled "Amendment Number Two to Agreement To Provide Specified Transmission Service Between Florida Power & Light Co. and Tampa Electric Co." FPL states that under the Amendment, FPL will transmit power and energy for the Tampa Electric Co. (TECO) as is required by TECO in the implementation of its interchange agreement with the Fort Pierce Utilities Authority. FPL requests an effective date of no later than 30 days after the date of filing. According to FPL, a copy of this filing was served upon the Senior Vice President of TECO.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in de-

termining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32344 Filed 11-16-78; 8:45 am]

[6740-02—M]

[Docket No. RP78-76]

GAS RESEARCH INSTITUTE

Proposed Change in Gas Research Institute Charge

NOVEMBER 7, 1978.

Take notice that Great Lakes Gas Transmission Co. (Great Lakes), on October 16, 1978, tendered for filing Twenty-Ninth Revised Sheet No. 57, to its FPC Gas Tariff, First Revised Volume No. 1, proposed to be effective January 1, 1979.

Great Lakes states that the revised tariff sheet reflects the GRI adjustment related to the Gas Research Institute's 1979 Research and Development Program as approved by Commission Opinion No. 30 (RP78-76) issued September 21, 1978.

Great Lakes also states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin, and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20425, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32345 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-76]

GAS RESEARCH INSTITUTE

Proposed Changes in FERC Gas Tariff

NOVEMBER 7, 1978.

Take notice that Kansas-Nebraska Natural Gas Co., Inc. (Kansas-Nebraska) on October 16, 1978, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. Kansas-Nebraska states that such filing is in compliance with Opinion No. 30 issued September 21, 1978 in Docket No. RP78-76. This filing will increase Kansas-Nebraska's rates charged its jurisdictional customers pursuant to the Gas Research Institute Charge Adjustment provision (section 21) of its FERC Gas Tariff, Third Revised Volume No. 1 by the amount of 2.3 mills per Mcf. This filing is proposed to become effective January 1, 1978.

Copies of the filing have been served on the company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or make any protest with reference to this filing should, on or before November 20, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) under the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32346 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-41]

HARTFORD ELECTRIC LIGHT CO.

Filing

NOVEMBER 7, 1978.

Take notice that on October 30, 1978, the Hartford Electric Light Co. (HELCO) tendered for filing an exchange agreement (the "Agreement") between HELCO and Montaup Electric Co. (Montaup). The Agreement, dated as of March 20, 1978, provides for HELCO to exchange capacity and energy in South Meadow Unit Nos. 11, 12, 13, and 14 gas turbine generating units for capacity and energy from Montaup's system having the characteristics of two oil-fired base load type generating units located at Canal Station, according to HELCO.

The Agreement provides that the parties will determine prior to 12:01 a.m. on Monday of each week during the term of the Agreement whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, shall take place during that week, according to HELCO.

HELCO will pay capacity charges to Montaup in an amount equal to $0.003/kilowatthour times the kilowatthours delivered during each week; HELCO will pay energy charges to Montaup at a cost of $0.018/kilowatthour subject to adjustment to reflect changes in fuel price at Canal; Montaup will pay HELCO's incremental cost of providing any energy taken by Montaup pursuant to the Agreement according to HELCO.

HELCO requests an effective date of March 20, 1978 for the Agreement.

Montaup has filed a certificate of concurrence in this docket.

The Agreement has been executed by HELCO and by Montaup and copies have been mailed to each of them, according to HELCO.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions of protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB
Secretary.

[FR Doc. 78-32347 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-42]

HARTFORD ELECTRIC LIGHT CO.

Filing

NOVEMBER 7, 1978.

Take notice that on October 30, 1978, the Hartford Electric Light Co. (HELCO) tendered for filing an exchange agreement (the Agreement)

between HELCO and New Bedford Gas & Edison Light Co. (New Bedford). The Agreement, dated as of February 24, 1978, provides for HELCO to exchange capacity and energy in South Meadow Unit Nos. 11, 12, 13, and 14 gas turbine generating units for capacity and energy from New Bedford's system having the characteristics of two oil-fired base load type generating units located at Canal Station, according to HELCO.

The Agreement provides that the parties will determine prior to 12:01 a.m. on Monday of each week during the term of the Agreement whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, shall take place during that week, according to HELCO.

HELCO will pay capacity charges to New Bedford in an amount equal to $0.003/kilowatthour times the kilowatthours delivered during each week; HELCO will pay energy charges to New Bedford at a cost of $0.018/kilowatthour subject to adjustment to reflect changes in fuel price at Canal; New Bedford will pay HELCO's incremental cost of providing any energy pursuant to the Agreement, according to HELCO.

HELCO requests an effective date of February 27, 1978 for the Agreement.

New Bedford has filed a certificate of concurrence in this docket.

The Agreement has been executed by HELCO and by New Bedford and copies have been mailed to each of them, according to HELCO.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32348 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-39]

INTERSTATE POWER CO.

Filing

NOVEMBER 7, 1978.

Take notice that Interstate Power Co. (Company) on October 30, 1978, tendered for filing an electric service agreement dated September 5, 1978, with the city of Jackson, Minn. This Agreement proposes to supersede and cancel the electric service agreement dated October 20, 1959, F.E.R.C. Electric Service Rate Schedule, No. 38. According to the Company the proposed agreement will provide for transmission service of Western Area Power Administration power, and Missouri Basin Municipal Power Agency energy, through Company's facilities, to the community.

The Company requests waiver of the Commission's notice requirements to allow for an effective date of August 2, 1978.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32349 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-8]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Proposed Changes in FERC Gas Tariff

NOVEMBER 7, 1978.

Take notice that Kansas-Nebraska Natural Gas Co., Inc., on October 31, 1978 tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. Kansas-Nebraska states that the proposed change would increase revenues from jurisdictional sales and service by $8,618,706 based on the 12-month period ending June 30, 1978, as adjusted for known and reasonably measurable changes.

Kansas-Nebraska states that the jurisdictional rates filed herewith are designed to enable Kansas-Nebraska to recover increases in its jurisdictional cost of service resulting from: (1) additional facilities required to connect new sources of supply and to maintain deliverability from existing sources of supply; (2) gas exploration and development; (3) increased purchased gas and royalty costs; (4) increased operating costs including higher costs of labor, materials and supplies; (5) increased revenues needed to provide a return of 11.38 percent on its utility investment; and (6) increased income, payroll and property taxes.

Kansas-Nebraska states that copies of the filing were served upon the company's jurisdictional customers and interested public bodies.

Kansas-Nebraska requests that the tendered sheets be accepted for filing and be permitted to become effective after 30 days following the date of filing.

In addition, Kansas-Nebraska tendered for filing Substitute Sixth Revised Sheet No. 4 to Kansas-Nebraska's FERC Gas Tariff, Third Revised Volume No. 1, proposing to increase revenues from jurisdictional sales by approximately $5.3 million in the event the Commission suspends its general rate increase for 5 months. Kansas-Nebraska states that these proposed rates are designed to enable Kansas-Nebraska to recover its increased purchased gas and royalty costs resulting from the enactment of the Natural Gas Policy Act.

Any person desiring to be heard or make any protest with reference to this filing should, on or before November 20, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) under the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32350 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. CP77-1; CP76-297; CP76-274; CP76-121; CP75-271 and CP74-92; CP76-494; CP74-62; CP76-259; CP74-64; CI77-163; CI77-164]

McCULLOCH INTERSTATE GAS CO., ET AL.

Order Consolidating Proceedings, Granting Petition for Declaratory Order and Establishing Hearing Procedures

NOVEMBER 8, 1978.

The above captioned applications involve, are related to or will be affected by a proposal whereby Colorado Interstate Gas Co. (CIG) will acquire certain pipeline and other facilities currently owned and operated by McCulloch Interstate Gas Co. (McInterstate) in Converse and Campbell Counties, Wyo., and McInterstate will sell and transfer its remaining facilities in that area to its affiliates, McCulloch Gas Processing Co. (McProcessing) and McCulloch Gas Transmission Co. (McTransmission). If the proposed transactions are approved McInterstate will cease to be a natural gas company as defined by section 2(6) of the Natural Gas Act (15 U.S.C. 717a(6)), and its jurisdictional facilities will continue to be operated by CIG or as allegedly non-jurisdictional intrastate facilities by McProcessing and McTransmission. Due to the complex and related nature of these proceedings, a thorough review of the filings and submitted data and documentation is set forth herein.

McInterstate's application to abandon its interstate activities was filed approximately 6 years subsequent to the issuance of Commission authorization approving McInterstate's entrance into the interstate market.[1] By order issued June 19, 1970, (43 FPC 909), McInterstate was issued a certificate authorization, in Docket No. CP70-230, for the acquisition, construction and operation of gas transmission facilities extending 160 miles from the Recluse Field, Campbell County, Wyo., in a southerly direction through the Hilight Field, Campbell County, Wyo., to a point near Douglas, Wyo., where the facilites interconnected with CIG's transmission system. Simultaneously, CIG was authorized to construct and operate the interconnecting facilities at Douglas. The parties had alleged that the construction and operation of these facilites would make available residue gas at various processing plants in the Powder River Basin available to CIG as an additional source of supply to meet its 1971 gas supply requirements. The total estimated cost of the project at the time of certification exceeded $14 million.

Pursuant to that arrangement, McInterstate has purchased natural gas from producers in the Powder River Basin area in Wyoming, where McProcessing is the principal supplier. McProcessing purchases and processes casinghead gas produced in conjunction with oil in addition to selling residue gas to McInterstate in interstate commerce. The sales are made at the tailgate of the following processing plants: Ute, Gas Draw, Oedekoven, Jamison-Prong, Hilight, Gillette-Kitty, and Gillette-Recluse Plants pursuant to McProcessing's FPC Rate Schedule No. 3. McInterstate transports and sells the gas to McTransmission whose excess volumes are sold to CIG.

On October 1, 1976,[2] McInterstate filed, in Docket No. CP77-1, an application seeking authorization pursuant to Section 7(b) of the Natural Gas Act for the (a) abandonment and sale of all of its interstate facilities, (b) the abandonment of the sale for resale in interstate commerce to CIG and (c) the abandonment of transportation service provided CIG. McInterstate proposes to abandon its interstate facilities by sale to CIG and its two affiliates, McTransmission and McProcessing.

Pursuant to the proposed transaction, McInterstate proposes to sell to CIG the following facilities:

1. Approximately 71 miles of 16-inch transmission line extending from a point near the outlet of McProcessing's Hilight Plant, located in Campbell County, Wyo., to the point of interconnection with CIG's Powder River Lateral in Converse County, Wyo.;
2. An inert gas generation and compression facility located at the Hilight Plant;
3. Certain measurement facilities located in Converse County, Wyo., used in connection with the purchase of gas from the Superior Oil Co. (Superior) in the Bear Creek Field, Converse County, Wyo.; and
4. Approximately 3.5 miles of 4-inch pipeline and associated measurement facilites located in Converse County, Wyo., and used in connection with the purchase of gas from Clyde C. Lamar and William L. Pease (Lamar and Pease) in the Manning Field, Converse County, Wyo.

McInterstate proposes to sell to McTransmission the following facilities, all located in Campbell County, Wyo.:

1. 39.8 miles of 6-inch pipeline from the Recluse Processing Plant to Kitty Junction;
2. 9.6 miles of 4-inch[3] and 10 miles of 8-inch pipeline from Kitty Junction to the Kitty Processing Plant;
3. 38 miles of 12-inch pipeline from the Kitty Plant to the Hilight Plant;
4. The Oedekoven Lateral, 3.5 miles of 6-inch pipeline connecting with the 6-inch Recluse to Kitty Junction pipeline;
5. The Gas Draw Lateral, 7.5 miles of 4-inch pipeline connecting with the Recluse to Kitty Junction line;
6. The Jamison Prong Lateral, 2.1 miles of 4-inch pipeline connecting with the Kitty Junction to Kitty lines;
7. The Gas Draw Junction Compressor Station with 1,500 compressor horsepower;
8. 250 compressor horsepower located at the Jamison Prong Plant; and
9. Those facilities which have been installed subsequent to the aforementioned facilities certificated in Docket No. CP70-231.

Also, McInterstate proposes to abandon its 4,000 compressor horsepower located at the Hilight Plant.

Additionally, McInterstate seeks authorization to accomplish the following:

1. To abandon the sale for resale in interstate commerce which is made to CIG; [4]
2. To abandon the transportation service provided to CIG and; [5]
3. To assign to McProcessing the transportation service provided to Atlantic Richfield Company (ARCO) under that certain Transportation Agreement, Gillette Gas Plant, Campbell County, Wyo. by and between ARCO and McInterstate (successor to McTransmission) dated September 1, 1969; and to request from the Commission a continued disclaimer of jurisdiction over such transportation service as set forth in Docket No. CP70-231.[6]

The estimated net book values of facilities and other assets, including line pack and intangibles, to be sold to CIG, McTransmission and McProcessing are $3,407,913, $1,831,653, and $434,871 respectively, on December 31, 1976.

Should the proposed abandonment be granted, McInterstate would cease to be a "natural gas company" under the Natural Gas Act. The sale to CIG under Rate Schedule PL-1 will be supplanted by a new sale made to McProcessing pursuant to an application filed in Docket No. CI77-164 on December 20, 1976. As the facilities utilized by McInterstate to transport gas for CIG under Rate Schedule X-1 will be sold to CIG, the transportation service will, in effect be continued by CIG.

On August 23, 1976,[7] CIG filed, in Docket No. CP76-494, an application for authorization pursuant to section 7(c) to acquire and operate from McInterstate certain facilities previously described and perform several transportation services presently performed by McInterstate. CIG proposes to purchase the facilities for an amount equal to the greater of the net book

[1] The "Commission" when used in the context of an action taking place before October 1, 1977, refers to the Federal Power Commission; when used otherwise, the reference is to the Federal Energy Regulatory Commission.

[2] McInterstate filed a supplement to the initial application on May 23, 1976. Responses to requests for additional information were submitted on May 29, 1977, and on May 31, 1978.

[3] Although granted certificate authority in Docket No. CP70-231, McInterstate never acquired this pipeline segment.

[4] By order issued in Docket No. CP78-231 on June 19, 1970, such sales were authorized under McInterstate's Rate Schedule PL-1.

[5] By order issued in Docket No. CP74-92, on February 11, 1976, the Commission authorized such service under McInterstate's Rate Schedule X-1.

[6] The Commission deferred ruling on the original request. See order issued in same docket on June 19, 1970.

[7] CIG supplemented its applications in response to requests for additional information on May 19, 1977 and June 5, 1978.

value or fair market salvage value of such facilities at the time of closing. In addition, CIG will pay McInterstate for (1) any gas previously delivered McInterstate by but not yet paid for by CIG, (2) the line pack in McInterstate's 16-inch Line, and (3) the intangibles on McInterstate's books attributable to the assets to be sold and acquired. The total net book value of the facilities to be acquired plus payments for line pack and intangibles is estimated to be $3,374,206 on December 31, 1976.

McInterstate has also agreed to assign to CIG:

1. McInterstate's Gas Purchase Agreement dated July 21, 1972, with Superior for the purchase of gas produced by Superior from Bear Creek Field; and
2. McInterstate's Gas Purchase Agreement dated April 1, 1976, with Lamar and Pease and Champlin Petroleum for the purchase of gas from the Manning Field.

Furthermore, pursuant to the proposed Gas Sales Agreement, McProcessing agrees to sell and deliver to CIG the following:

1. Twenty-five percent of the residue gas from the Hilight Plant attributable to the Hilight Field, and
2. Approximately 50 percent of the residue gas from the Well Draw Gas Plant attributable to gas produced from the Well Draw field.

In addition to the above, McInterstate and its affiliated companies have granted CIG the "right to first refusal" to purchase gas or meet any bona fide offer to purchase gas which such companies may have from time to time for sale in interstate commerce from the Powder River Basin of Wyoming and Montana. Should any gas become available in the region north of the Hilight Plant, CIG states the construction of additional facilities may be necessary. Such construction would be necessary inasmuch as the facilities acquired by McTransmission north of Hilight are intended for solely intrastate operation.

CIG also proposes to transport certain gas volumes from the Spearhead Ranch and Bear Creek (Allemand) areas [8] for Mountain Fuel Supply Co. (Mountain Fuel). Such volumes, together with certain volumes for CIG, are presently being transported by McInterstate pursuant to its Rate Schedule X-1. Under this arrangement, CIG and Mountain Fuel will be required to submit the requisite tariff filings to provide for the delivery by Mountain Fuel of the Spearhead Ranch and Bear Creek (Allemand) volumes to, and the transportation by CIG. In addition, CIG proposes to transport for McProcessing up to a maximum of 1,500 Mcf of gas per day for ultimate delivery to certain intrastate customers of McTransmission.

The purpose of the proposed abandonment and transfer of the aforementioned facilities and services is to place CIG in a posture of being able to connect new supplies in the Powder River Basin more expeditiously without the necessity of making transportation arrangements with a third party. In its filings and submitted data, CIG has predicted that the dedication of additional reserves to plants north of Hilight is unlikely whereas there are indications of new reserves in the area surrounding the 71 miles of pipeline it proposes to acquire. During the first three years subsequent to the abandonment, CIG would be assured of receiving additional supplies due to the proposed assignment of 25 percent of the Hilight reserves and 50 percent of the Well Draw producer reserves in addition to Manning, Spearhead Ranch and Bear Creek reserves.

Perhaps most important, McInterstate wants to terminate its interstate gas transmission activities. McInterstate asserts that its gas supply is dwindling and it is now curtailing McTransmission's industrial interruptible customers north of Hilight. Producer and industrial sales are curtailed during the heating season.

Contrary to CIG's projections, McInterstate projects McTransmission will have greater access to new reserves and thereby eliminate its current level of curtailment subsequent to the grant of abandonment. McInterstate asserts that it is currently foreclosed from competing for these new supplies due to its limited budget authority. It argues that larger competitors have larger rate bases and consequently, greater budget authority so that they are able to immediately connect new sources of gas rather than seek certification from the Commission for new facilities.[9]

A significant element of this proposed transaction is McInterstate's request for a continued disclaimer of jurisdiction over transportation of ARCO gas to MDU. MDU purchases approximately 67 percent of the available interstate residue gas sold from the ARCO Gillette, Wyo., gas-processing plant. The Gillette gas-processing plant is an accounting unit made up of the Recluse gas-processing plant to the north and the Kitty gas-processing plant to the south. The Recluse gas-processing plant delivers interstate residue gas directly to both MDU and McInterstate. The Kitty gas processing plant delivers interstate residue gas directly to McInterstate on a jurisdictional interstate basis and to McTransmission on a nonjurisdictional basis.

The total average residue gas production from the Recluse and Kitty plants (Gillette Plant Unit) is approximately 216 MMcf/month, approximately 145 MMcf/month is purchased by MDU; 99 MMcf/month of such production is delivered directly to MDU without the utilization of any of McInterstate's jurisdictional pipeline system. The balance of this residue gas (145-99 = 46 MMcf/month) is now exchanged or transported by McInterstate through its jurisdictional pipeline facilities.

As proposed, McProcessing will assume McInterstate's obligation to provide transportation service for ARCO. McInterstate has requested "a continued disclaimer of jurisdiction" for McProcessing, referring to the Commission's order issued June 19, 1970 in Docket No. CP70-230, et al. In the above-referenced order, the Commission did not disclaim jurisdiction but it rather deferred ruling on the jurisdictional aspects of the transportation service stating "* * * McCullock Interstate alleges that these operations are non-jurisdictional; however, the authorization hereinafter granted should not be construed to imply Commission acquiescence in the alleged nonjurisdictional status of these operations" (43 FPC 911). McInterstate states that should its request for a disclaimer be denied, the remaining alternatives are the following: (a) to seek abandonment of service in interstate commerce and attempt to accomodate delivery of MDU's contract dedication from the Kitty plant on an intrastate basis at Billy Creek Storage through McTransmission, or (b) attempt to negotiate MDU's acquisition of the facilities required to provide the transportation service.

There is no evidence of MDU's willingness to consider either of these proposals. The contractual agreements executed by MDU and McInterstate expressly impose upon McInterstate the obligation to effectuate the exchange arrangement in order to avoid the necessity for duplication of facilities. Moreover, either proposal would necessitate the filing of applications to

[8] Although the Bear Creek (Allemand) Area and the Bear Creek Field are essentially in the same location, they represent to distinct supply sources, the former involving the purchase of gas by CIG from Colorado Oil and Gas Corp. and the latter involving the purchase of gases by McTransmission from Superior.

[9] In making these predictions, McInterstate is presuming that the Wyoming Public Service Commission will authorize McTransmission's purchase of these facilities which would substantially increase its rate base and expenses and thereby its distribution rates with indeterminate benefits flowing to existing users. McInterstate has admitted that the immediate effect of the abandonment will be a reduction of available supplies to McTransmission. Due to that Commission's concern over the potential effect on its customers, it has intervened in these proceedings.

abandon and transfer service which are not before us.

Upon review, it appears that the transportation service currently being performed is jurisdictional and would continue to be so if performed by McProcessing. As admitted by McInterstate, transportation of the residue gas to MDU is exchanged or transported through its jurisdictional facilities. It is well-established that such arrangements require certificate authority pursuant to section 7(c) of the Act.[10] We therefore direct McInterstate to file an application seeking such certification within thirty (30) days of the issuance of this order.

Another jurisdictional issue arises from this transaction due to the proposed transportation arrangements of gas for McProcessing to McTransmission's customers south of Hilight. Presently, McTransmission has commitments to deliver gas along McInterstate's transmission line to various residential, commercial and industrial customers within Wyoming which service McInterstate provides. Under the instant proposal, CIG would continue these deliveries to McTransmission, pursuant to the terms of an unexecuted transportation agreement between McProcessing and CIG. Although the initial rate is unspecified, the agreement provides that the charge for the transportation service will be based on CIG's cost of service, including a reasonable rate of return.[11]

McTransmission and McProcessing claim that neither need authorization for such transportation inasmuch as title to the gas remains with McProcessing until it is delivered to McTransmission by CIG and therefore no interstate sale takes place. The volumes delivered to McTransmission are for delivery to its customers for consumption within the state of Wyoming. The volumes which CIG intends to transport for McProcessing would be comingled with CIG's interstate supply which is destined for transportation outside the State of Wyoming in interstate commerce. In apparent conflict with McInterstate's position is its petition for a declaratory order filed in Docket No. CP76-121 on October 2, 1975, seeking a Commission ruling that its sales to McTransmission in Wyoming for intrastate consumption are subject to the Commission's jurisdiction.

As previously mentioned, in seeking certification in Docket No. 70-231, McInterstate intended to receive a portion of the gas supplies for its affiliate, McTransmission. Consistent therewith, it executed a contract with McTransmission in February, 1970 to provide volumes for McTransmission's commitment to Northern Utilities, Inc. Petrolane Wyoming Gas Service and *residential, commercial and industrial customers within Wyoming* (emphasis added).

Due to an order issued by the Wyoming Public Service Commission (WPSC) on August 5, 1975,[12] in which the WPSC asserted jurisdiction over McInterstate's sale to McTransmission, McInterstate filed the instant petition. McInterstate contends that the WPSC's assertion of jurisdiction over its sale of gas to McTransmission and facilities "used and useful", is duplicative of the Commission's jurisdiction and could materially affect its financial position. McInterstate admits that previously it had taken the position that its gas sales to McTransmission were not subject to the Commission's jurisdiction, however McInterstate has never taken the position that the WPSC had jurisdiction over the sale. McInterstate wants this Commission to assert jurisdiction to foreclose any further action by the WPSC. The question before us in both cases is whether the commingling of the producers' gas in the interstate pipeline facilities of McInterstate or its successor-in-interest, CIG, with natural gas transported out of the State of Wyoming renders the producer's sale of gas to the distributor, McTransmission, a jurisdictional "sale in interstate commerce of natural gas for resale for ultimate public consumption."[13]

The commingling of "intrastate" natural gas with an interstate gas stream which flows out of the State of production was recognized as imposing the Commission's jurisdiction over a local producer's sale in *California* v. *LoVaca Gathering Company*[14] and *FPC* v. *Amerada Petroleum Corporation.*[15] In the *LoVaca* case the Supreme Court held that "the sale of gas which crosses a state line at any state of its movement from wellhead to ultimate consumption [is] 'in interstate commerce' within the meaning of the Act".[16] The *LoVaca* doctrine is premised upon the fact that some part of the local production will in the commingled flow, be transported beyond the State of origin. Such a situation differs from those instances where the interstate pipeline terminates in the same State in which a sale of locally produced gas has been made thus precluding the possibility of its ever being transported beyond the State of origin.[17]

The facts in the *Amerada* case more closely approximate those in the instant case than do the facts in the *LoVaca* case. It concerns a producer sale to MDU, an interstate pipeline, which is resold by the distribution component of MDU to the ultimate consumer. In both instances the Supreme Court held that the commingling of the intrastate gas purchased from local producers, in spite of restrictive use provisions, made the whole transaction jurisdictional from the outset because some of this gas was transported in the interstate stream beyond the state of production.

Montana-Dakota Utilities Co. requests a hearing on this matter. It asserts that only through the mechanisms of a hearing can all the facts be developed as to the physical facilities involved, the ultimate jurisdictional conclusions, and the impact on MDU. It takes no position on whether the declaratory order should be granted. The issue involved in this proceeding is principally a legal and policy matter. As previously pointed out, the Commission believes that from both a policy and legal viewpoint, the request should be granted. MDU does not indicate how a hearing would enhance the Commission's ability to decide the instant petition. When there is no dispute as to the factual content of a situation, the application of administrative policy and legal principles does not require an adjudicatory hearing. *Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 146 U.S. App. D.C. 294, 450 F. 2d 1341 (1971), cert. denied, 405 U.S. 989 (1972); *Tennessee Gas Pipeline Company* v. *FPC*, 561 F. 2d 955 (D.C. Cir., 1977). We find no basis for the need for a formal evidentiary hearing on this issue. We find that the commingling of the producers, gas in the interstate pipeline facilities of McInterstate and its successor with natural gas to be transported out of the State of production, Wyoming, renders the producers' sale for resale jurisdictional. Accordingly, McInterstate's request for a declaratory order will be granted; however its request for disclaimer of jurisdiction over those volumes CIG

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[10] *Pacific Northwest Corporation et al.*, Docket No. G-8932 et al., 14 FPC 157, 163 (1955); *Shell Oil Company*, Docket No. G-5029 et al., 25 FPC 1316, 1317 (1961) *Natural Gas Pipeline of America*, Docket No. CP 64-50, 34 FPC 1258, 1263 (1965), *Oklahoma Natural Gas Company, et al.*, Docket No. G-19593, 23 FPC 921 (1960).

[11] In its response filed June 5, 1978, CIG estimated that the initial transportation rate would be 23 cents per Mcf.

[12] NPSC Docket No. 9643, No. 9601, Sub.-4; No. 9601, Sub.-5; and No. 9601, Sub.-6.

[13] 15 U.S.C. § 717(b)(1970).

[14] 379 U.S. 366 (1965).

[15] 379 U.S. 687 (1965) *Cf. Louisiana Power & Light Co.* v. *FPC*, 483 F. 2d 623 (5th Cir. 1973), cert. denied, sub nom., *Texasgulf Inc.* v. *FPC*, 416 U.S. 974 (1974); *Rosario Production Co., et al.*, Docket Nos. CI66-776, et al., Opinion No. 781, 55 FPC——(1976).

[16] 379 U.S. at 369. Even the flow of insignificant volumes beyond the state of origin can require the imposition of federal jurisdiction. See *Connecticut Light & Power Co.* v. *FPC*, 324 U.S. 515 (1945).

[17] Compare *Colorado Interstate Gas Co., et al.*, Docket Nos. CP75-323, et al., Opinion No. 777, 55 FPC—— (1976).

proposed to transport for McProcessing is denied.

OTHER RELATED DOCKETS

In Docket No. CP76-297 McInterstate was authorized to construct and operate certain facilities consisting primarily of 3.5 miles of 4-inch transmission line plus appurtenant facilities, and a compressor station, to transport gas purchased in the Manning Field Converse County, Wyo., to a point of interconnection with its 16-inch line. The compressor is on loan to McProessing; however, there is a question as to whether McInterstate will seek to transfer title to McProcessing.

In Docket No. CP76-274, McInterstate filed a complaint pursuant to § 1.6 of the Commission's rules of practice and procedure (18 CFR § 1.6) alleging that facilities proposed to be constructed and operated by Phillips Petroleum Co. and/or Panhandle Eastern Pipeline Co. in Converse County, Wyo. are uneconomical and wasteful, ultimately detrimental to the interstate consumers of gas, and, therefore, not required by the public convenience and necessity. McInterstate requested an order to show cause and that the matter be set for the hearing.

In Docket No. CP75-271, McInterstate was granted authority to transport certain gas volumes produced in the Bear Creek (Allemand) Area for CIG. This transportation service is performed with the facilities used to perform the service authorized in Docket No. CP74-92. If the abandonment authorization sought in Docket No. CP77-1 is granted, CIG will transport its own gas.

In Docket No. CP74-92, McInterstate was authorized to transport CIG gas volumes from the Spearhead Ranch Area approximately 35 miles to the interconneciton with CIG's facilities. These gas volumes are delivered to McInterstate by Mountain Fuel pursuant to authority granted in Docket No. CP74-64. Pending before the Commission are a petition to amend this certificate to authorize the transportation of gas from additional acreage in the Spearhead Ranch Area and McInterstate's proposed revised tariff sheets for Rate Schedule X-1. Temporary authorization was granted on November 26, 1976. This transportation will be performed by CIT if McInterstate's abandonment request is granted.

In Docket No. CP76-259, Mountain Fuel proposes to construct and operate approximately 35 miles of 10-inch pipeline and appurtenant facilities extending from the end of its 10-inch pipeline in the Spearhead Ranch Field to a point of interconnection with CIG's 16-inch pipeline in Converse County, Wyo. This line would parallel McInterstate's 16-inch line. Mountain Fuel states that it filed its application because it was unable to obtain McInterstate's consent to transport additional volumes on a reasonable basis and that, as a result, Mountain Fuel was hampered in its effects to contract for new supplies of gas in the Spearhead Ranch Area. Mountain Fuel further states that this application may be withdrawn on CIG's receipt of authorization.

In Docket No. CP74-62, CIG filed a petition to amend the certificate previously issued in that docket which authorized the transportation and exchange of gas with Mountain Fuel from dedicated acreage in the Spearhead Ranch Area, Converse County, Wyo., to add additional acreage to the dedicated area and to sell to McInterstate 40 percent of the 25 percent of the volumes which CIG will purchase from Mountain Fuel from the additional acreage. The sale to McInterstate will contine only until such time as CIG purchases the facilities from McInterstate as set forth in the application in Docket No. CP76-494. McInterstate will receive from Mountain Fuel and transport the new volumes with the volumes from the original dedicated acreage approximately 35 miles to the point of interconncection with CIG's facilities. Temporary authorization was issued on November 26, 1976.

In Docket No. CP74-64, Mountain Fuel filed a petition to amend the certificate to enlarge the dedicated area in the Spearhead Ranch Area to attach new wells as set forth above in the discussion of the petition to amend filed in Docket No. CP74-62. A temporary certificate authorizing the enlargement was issued on November 26, 1976.

Our resolution of the jurisdictional issues addressed herein must be viewed as placing some constraints upon our future disposition of the applications pending before us; however, McInterstate and CIG have indicated in their filings and responses to inquiries a recognition of these issues and a corresponding intent to make the changes and modifications if found to be necessary. Therefore in order to allow this consolidated proceeding to progress, we find it appropriate to allow the parties an opportunity to amend their applications and make the requisite filings consistent with the findings contained herein within 30 days from issuance of this order. Upon receipt of these filings, a hearing shall be convened in order to ascertain whether the proposed transportation, as modified, is in the public convenience and necessity. A prehearing conference will be convened for the purpose of setting forth the primary issues to be developed in an on-the-record proceeding inter alia, i.e., gas supply reserve projections, and potential impact upon the consumer. In setting this proceeding for hearing, all proceedings which are involved, related to or affected by this proposal will be considered and addressed.

After due notice by publication in the FEDERAL REGISTER on October 20, 1976 (41 FR 46477), petitions to intervene in the proceedings in Docket No. CP77-1 were filed by CIG and WPSC. After notice by the publication in the FEDERAL REGISTER on September 17, 1976 (41 FR 40228), petitions to intervene in the proceedings in Docket No. CP76-494 were filed by WPSC, the Public Service Company of Colorado, and Mountain Fuel Supply Company. After notice by publication of October 28, 1975 (40 FR 50147), petitions to intervene in the proceedings in Docket No. CP76-121 were filed by State of Louisiana, MDU, Arco, CIG, WPSC and Inexco Oil Company. No other petition to intervene, other notice of intevention or protest to the granting of the proceedings set forth above have been filed.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the matters involved and the issue presented in these proceedings.

(2) Due to the related nature of the applications and since there may be common questions of law or fact involved, it is appropriate to consolidate the proceedings in the above captioned dockets.

(3) The producer sales of natural gas to McInterstate and McTransmission for resale are and will continue to be in interstate commerce subject to the jurisdiction of the Commission, and such sales of natural gas are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(4) Participation by the aforementioned intervenors may be in the public interest. Good cause exists for accepting the late petitons to intervene and notices of intervention filed in this proceeding.

The Commission orders:

(A) These proceedings are hereby consolidated for purposes of hearing and disposition.

(B) Pursuant to the authority of the Natural Gas Act, particular sections 7 and 15 thereof, the Commission's

Rules of Practice and Procedure (18 CFR Part 1), and the Regulations under the Natural Gas Act (18 CFR Ch. I, subch. E), a prehearing conference shall be held on January 8, 1979, commencing at 10 a.m. in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, to discuss procedural issues and the clarification of issues.

(C) An Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority 18 CFR § 3.5 (d)), shall preside at the prehearing conference in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the sole exception of motions to consolidate and sever and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(D) McInterstate shall file an application pursuant to Section 7(c) of the Natural Gas Act for certificate authority to perform the transportation service for Arco described herein within thirty (30) days of issuance of this order.

(E) The petition for a declaratory order filed by McInterstate suggesting sales of gas to McTransmission to be found to be within the Commission's jurisdiction is hereby granted. Within thirty days of the issuance of this order, McInterstate or its successor shall file with the Commission an application according to the Commission's Regulations for authorization to continue sales of natural gas for resale in interstate commerce to McTransmission.

(F) The above-mentioned intervenors are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,* that the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and *Provided further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission. (Commissioner Sheldon, concurring in part and dissenting in part, filed a separate statement appended hereto.)

KENNETH F. PLUMB,
Secretary.

Sheldon, Commissioner, concurring in part and dissenting in part:

NOVEMBER 8, 1978

I concur in all of the actions taken by my colleagues in these dockets, with the exception of one. To the extent that they assert jurisdiction over the sale by McCulloch Gas Processing Co. to McCulloch Gas Transmission Co. of up to 1,500 Mcf per day of natural gas for resale to customers within the State of Wyoming, where the gas is produced, I must respectfully dissent.

My colleagues base their assertion of jurisdiction upon the fact that delivery of this gas will be accomplished through a portion of Colorado Interstate Gas Co.'s interstate pipeline system (albeit a portion entirely within the State), and thus will be commingled with gas destined ultimately to travel out-of-state for resale elsewhere. As with earlier pronouncements of a similar nature, the assertion is said to be predicated upon the Supreme Court's opinions in *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965), and *FPC* v. *Amerada Petrolem Corp.*, 379 U.S. 687 (1965).

Since this Commission's order of May 9, 1978, in *Columbia Gas Transmission Corp., et al.*, Docket No. CP77-363, to which I also dissented, I have consistently taken the position that the mere fact of commingling in an interstate pipeline, in and of itself, does not render a sale of natural gas subject to our jurisdiction. In the *Lo-Vaca* and *Amerada* cases, the gas in question was first sold into the interstate pipeline's undifferentiated system supply before being resold or otherwise disposed of. In this case, the interstate pipeline is involved only for the purpose of transporting a discrete volume of gas, on behalf of others, from one point in the state of another; its intervening role is in the nature of bailor in an intrastate transaction rather than purchaser with an opportunity to resell out-of-state.

In short, my position has been that such intrastate transactions are beyond the scope of our jurisdiction, and that attempts to reach them on the basis of commingling alone distort the teachings of *Lo-Vaca* and *Amerada*. I see no reason to deviate from the position in this instance.

GEORGIANA H. SHELDON,
Commissioner.

[FR Doc. 78-32374 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. G-11161, *et. al.*]

McCULLOCH OIL & GAS CORP. (SUCCESSOR TO McCULLOCH OIL CORP.

Redesignation

NOVEMBER 6, 1978.

By letter filed November 7, 1977, as amended by a letter filed April 10, 1978, McCulloch Oil & Gas Corp. (MOG) requests amendment of all of the certificates of McCulloch Oil Corp. (MCO) and redesignation of the related rate schedules so as to substitute the name of MOG for MCO. MOG indicates that as a result of a corporate reorganization, MOG (a wholly owned subsidiary of MCO) acquired all of MCO's oil and gas properties and assumed MCO's duties and obligations, to be effective February 28, 1977, all as more fully set forth in the Appendix hereto.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and pwtitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Purchaser	Location of sale (County and State)	MCO FERC GRS No. and docket No.	MOG FERC GRS No.	Assignment supplement No.
United Gas Pipe Line Co	Claiborne, La	2 (G-11161)	4	22
Panhandle Eastern Pipe Line Co	Ellis, Okla	19 (CI71-726)[1]	5	5
Northern Natural Gas Co	Dewey, Okla	20 (CI72-144)	6	4
Arkansas Louisiana Gas Co	do	21 (CI71-87)	7	4
Trunkline Gas Co	Vermilion, La	22 (CI73-102)[1]	8	11
El Paso Natural Gas Co	Lea, N. Mex	23 (CI73-227)	9	10
Northern Natural Gas Co	Ellis, Okla	24 (CI73-521)	10	2
Do	do	29 (CI75-559)	11	2
Montana Dakota Utilities Co	Custer, et al., Wyo	30 (CI75-604)	12	5
Panhandle Eastern Pipe Line Co	Ellis, Okla	32 (CI76-413)	13	3

[1]Temporary certificate only.

[FR Doc. 78-32351 Filed 4- -78; 8:45 am]

[6740-02-M]

[Docket No. RP74-97 (PGA78-1)]

MONTANA-DAKOTA UTILITIES CO.

Offer of Settlement

NOVEMBER 8, 1978.

Take notice that on October 31, 1978, Montana-Dakota Utilities Co. (MDU) submitted an offer of settlement in the above-captioned proceeding. On September 25, 1978, an Initial Decision was issued which, *inter alia*, denied MDU's request to include in its purchased gas adjustment (PGA) the cost of Powell II intrastate gas purchased from MDU's Sheridan intrastate system. Inclusion of these purchases would have spread the costs to MDU's interstate customers.

MDU states that if it is allowed to include the costs of the Powell II gas in its PGA adjustments, and if the provision of the Natural Gas Policy Act of 1978 concerning the unenforceability of intrastate utilization contracts is enacted into law, MDU agrees to use its best efforts to arrange for transfer to MDU's main line system of the volumes held in storage for its account by Northern Gas Co. and to use its best efforts to arrange for delivery to the main line system of any excess gas production available from the Powell II Unit, as well as any other production in excess to the requirements of the Sheridan System, which might become available to MDU within the State of Wyoming and which otherwise would not be available to the main line system. However, MDU is not willing to construct additional facilities to connect the Powell II production field to its interstate system.

Any person desiring to comment on said offer of settlement should do so with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 on or before November 20, 1978. Copies of this offer of settlement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32352 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER77-480, ER77-493, and ER77-494]

MONTAUP ELECTRIC CO.

Refunds

NOVEMBER 9, 1978.

Take notice that Montaup Electric Co. on September 29, 1978, tendered for filing on behalf of itself, Blackstone Valley Electric Co. and Brockton Edison Co., a report of refunds made on September 13, 1978 in accordance with the settlement agreement in the above-noted dockets, approved by letter order dated August 24, 1978.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 30, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32376 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-48]

MONTAUP ELECTRIC CO.

Cancellation

NOVEMBER 9, 1978.

Take notice that Montaup Electric Co. on November 2, 1978, tendered for filing a notice of cancellation opf Rate Schedule FERC No. 41, proposed to be effective January 31, 1977 and of Rate Schedule No. 42, proposed to be effective November 1, 1976. Montaup indicates that notice of the proposed cancellations has been served upon the Maine Public Service Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10. All such petitions or protest should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are filed with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32377 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-181]

NATURAL GAS PIPELINE CO. OF AMERICA

Petition To Amend

NOVEMBER 9, 1978.

Take notice that on October 19, 1978, Natural Gas Pipeline Co. of America (Petitioner), 122 South Michigan Avenue, Chicago, Ill. 60603, filed in Docket No. CP78-181 a petition to amend the order of April 25, 1978, issued in the instant docket (57 FPC——) pursuant to section 7(c) of the Natural Gas Act so as to authorize the continued transportation of natural gas for Trunkline Gas Co. (Trunkline), an increase in the authorized transportation quantity, an additional redelivery point and establishment and/or revision of transportation rates for gas received, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of April 25, 1978, Petitioner was authorized to transport up to 10,000 Mcf of natural gas per day for Trunkline from the existing points of interconnection between the facilities of Petitioner and Stingray Pipeline Co. and between Petitioner and U-T Offshore System (UTOS) both in Cameron Parish, La. It is indicated that Petitioner delivers on a best efforts basis equivalent volumes less 1 percent retained for fuel reimbursement to an existing point of interconnection between Trunkline and Petitioner in Montgomery County, Tex. It is indicated that the subject transportation would terminate upon completion and placing in service of the expansion of Trunkline's Lakeside Lateral, or on December 31, 1978, whichever occurs first.

Petitioner states that it and Trunkline are currently negotiating an amendment to their transportation agreement dated December 14, 1972, as amended, to provide for a long-term transportation thereunder of gas volumes that are presently available for delivery for Trunkline's account at the terminus of the UTOS pipeline system in Cameron Parish, La. It is indicated

that Trunkline has advised Petitioner that the continuation of the limited term transportation pending completion of said negotiations and authorization of the long-term transportation arrangement is necessary to permit Trunkline to receive quantities of gas available to it from the offshore Louisiana area. Consequently, Petitioner and Trunkline have amended their letter agreement dated January 10, 1978, by an amendatory agreement dated September 11, 1978, which amendatory agreement extends the term of the transportation service until the long-term arrangement is authorized but not later than December 31, 1979. Petitioner also states that pursuant to such amendatory agreement it would receive, on a best efforts basis, daily quantities of gas, up to a maximum of 140,000 Mcf per day, tendered for Trunkline's account at the UTOS Delivery Point, and that it would redeliver, on a thermal basis less fuel consumed on Petitioner's pipeline system, equivalent quantities of gas at either the existing emergency interconnection between Trunkline and Petitioner in Montgomery County, Tex. (Montgomery Redelivery Point) as previously authorized herein or at the proposed additional existing interconnection of Petitioner and Trunkline near Lakeside, Cameron Parish, La. (Cameron Redelivery Point). The quantities of gas to be delivered at the Montgomery Redelivery Point would be subject to Petitioner's discretion but would not be in excess of 100,000 Mcf per day unless by mutual consent of the parties, it is said.

Petitioner proposes to charge Trunkline a rate of 2.1 cents per Mcf for volumes redelivered at the Lakeside interconnection and 3.5 cents per Mcf for volumes delivered to the Montgomery County redelivery point. It is indicated that volumes of gas redelivered are to be reduced by 0.25 percent and 0.6 percent at the Lakeside and Montgomery points, respectively, for fuel consumed on Petitioner's pipeline system to accomplish the transportation.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 29, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32378 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-8]

NORTH PENN GAS CO.

Proposed Changes in FERC Gas Tariff

NOVEMBER 7, 1978.

Take notice that North Penn Gas Co. (North Penn) on October 31, 1978, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause for rates to be effective December 1, 1978.

Fifty-Ninth Revised Sheet No. PGA-1 reflects a decrease of 3.294 cents per Mcf from the rates as submitted to the Federal Energy Regulatory Commission (Commission) on October 30, 1978 in Second Substitute Fifty-Eighth Revised Sheet No. PGA-1.

The change in rates contained in this filing reflect a surcharge credit of 25.723 cents per Mcf which results from amounts accumulated in the unrecovered purchased gas cost account for the 6-month period March 1, 1978 through August 31, 1978; the jurisdictional portion of refunds received for the same 6-month period: and a carryover balance from the surcharge credit filed to be effective for the 6-month period December 1, 1977 through May 31, 1978.

North Penn requests a waiver of any of the Commission's Rules and Regulations as may be required to permit Fifty-Ninth Revised Sheet No. PGA-1 to become effective December 1, 1978 as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32353 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-291]

NORTHERN STATES POWER CO. (MINNESOTA)

Certification

NOVEMBER 8, 1978.

Take notice that Presiding Administrative Law Judge Michael Levant on October 19, 1978, certified to the Commission a proposed settlement agreement in the above-noted docket. Judge Levant indicates that agreement was filed by joint motion of Northern States and its Municipal Wholesale Customers on September 28, 1978, and provides that Northern States will file new rates, make appropriate refunds and refrain from increasing the revised rates prior to April 1, 1980.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20427, on or before November 27, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32354 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Project No. 2056]

NORTHERN STATES POWER CO.

Application for Use of Project Lands and Waters

NOVEMBER 8, 1978.

Take notice that an application was filed March 9, 1978, under the Federal Power Act, 16 U.S.C. §§ 791a-825r, by the Northern States Power Co. (correspondence to: Mr. G. V. Welk, Manager, Regulatory Activities, Northern States Power Co., Minneapolis, Minn. 55401) for authorization to reconstruct an existing non-project 115 kV overhead transmission line crossing the Mississippi River at the Applicant's Saint Anthony Falls Project No. 2056 in Minneapolis, Minn.

The Applicant states that the planned new line is necessary to solve reliability problems in the downtown area and would replace the existing single circuit line with a double circuit crossing. The existing line is not ade-

quate for 400 MVA and will not accommodate a double circuit. The planned line would cross project waters approximately 150 feet downstream of the existing line. The clearance between the line and the water surface at a normal pool elevation of 750 feet (msl) would be 90 feet. There would be no structures constructed on the project lands. Upon completion of the new crossing, the existing line would be removed.

The Applicant has received permits for the planned crossing from the U.S. Army Corps of Engineers, the Minnesota Department of Natural Resources, and the city of Minneapolis.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before December 11, 1978. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32355 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER77-5 and E-8152]

OTTER TAIL POWER CO.

Extension of Time

NOVEMBER 6, 1978.

On October 30, 1978, Otter Tail Power Co. filed a motion for extension of time for filing briefs opposing exceptions to the initial decision issued in this proceeding on September 15, 1978. The motion states that additional time is needed because of novel issues presented in this case and because of the length of the initial decision and briefs. The intervenor Cities filed a response stating that it does not object to the request as long as the extension is granted to all parties. The response filed by Commission Staff Counsel on November 1, 1978, objects to any extension beyond 1 week.

Upon consideration notice is hereby given that an extension of time is granted to and including November 16, 1978 for all parties to file briefs opposing exceptions.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32379 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. E-7777 (Phase II), E-7796]

PACIFIC GAS & ELECTRIC CO. AND PACIFIC POWER & LIGHT CO., ET AL.

Motion To Approve Proposed Settlement Agreement

NOVEMBER 3, 1978.

Take notice that on June 12, 1978, Anza Electric Cooperative, Inc., tendered for filing, as a party to the proceedings in the above-noted docket, a motion to approve proposed settlement agreement and for withdrawal as a party to Commission proceedings thereto. Anza indicates that the agreement is between it and its sole supplier, Southern California Edison Co. Anza states that the agreement, if approved by the Commission, will obviate the need for further participation in these proceedings by Anza, and at the same time will not affect the rights of any of the other parties to the proceedings.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street NE., Washinton, D.C. 20426, on or before November 15, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32380 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-43]

PACIFIC POWER & LIGHT CO.

Proposed Termination

NOVEMBER 8, 1978.

Take notice that Pacific Power & Light Co. (PP&L) on October 30, 1978, tendered for filing a notice of termination of Rate Schedule FPC No. 111.

PP&L indicates that the transmission service provisions of Schedule No. 111 were to terminate, by the terms of the contract, as of September 18, 1978, the date of commercial operation of the Wyodak Project.

PP&L indicates that a copy of this filing was sent to the Black Hills Power and Light Co., the customer under Schedule No. 111.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32356 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-46]

PACIFIC POWER & LIGHT CO.

Filing of Revised Exhibits

NOVEMBER 8, 1978.

Take notice that Pacific Power & Light Co. (Pacific), on November 1, 1978, tendered for filing, in accordance with § 35.13 of the Commission's Regulations, revised exhibits to Rate Schedule FPC No. 114, Supplement Nos. 3 and 4. These exhibits describe the changes to Points of Delivery and Emergency Points of Interconnection between Pacific and the United States of America, Department of Energy, Bonneville Power Administration (BPA).

Pacific requests waiver of the Commission's notice requirements to permit these revised exhibits to become effective June 30, 1976, which it claims is the date of commencement of service.

Copies of the filing were supplied to the Bonneville Power Administration.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file

with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32357 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-62]

PANHANDLE EASTERN PIPE LINE CO.

Proposed Changes

NOVEMBER 9, 1978.

Take notice that Panhandle Eastern Pipe Line Co. (Panhandle) on November 2, 1978, tendered for filing proposed changes in the following revised tariff sheets:

FERC GAS TARIFF, ORIGINAL VOLUME NO. 1

First Substitute Twenty-Fourth Revised Sheet No. 3-A.
First Substitute First Revised Sheet No. 3-B.
First Substitute Second Revised Sheet No. 43-1.
Third Substitute Fourth Revised Sheet No. 43-2.
First Substitute Fifth Revised Sheet No. 43-3.
First Substitute Sixth Revised Sheet No. 43-4.

FERC GAS TARIFF, ORIGINAL VOLUME NO. 2

Second Revised Sheet No. 93.
Second Revised Sheet No. 135.
Second Revised Sheet No. 211.
Third Revised Sheet No. 375.
First Revised Sheet No. 439.
First Revised Sheet No. 462.
First Revised Sheet No. 463.
First Revised Sheet No. 484.
First Revised Sheet No. 556.
First Revised Sheet No. 611.
First Revised Sheet No. 640.
First Revised Sheet No. 641.
Second Revised Sheet No. 694.
Second Revised Sheet No. 695.
First Revised Sheet No. 724.
First Revised Sheet No. 725.
Second Revised Sheet No. 784.
Second Revised Sheet No. 801.
First Revised Sheet No. 811.
First Revised Sheet No. 812.
First Revised Sheet No. 848.
First Revised Sheet No. 849.
Second Revised Sheet No. 875.
Second Revised Sheet No. 876.
First Revised Sheet No. 963.
First Revised Sheet No. 964.

An effective date of November 1, 1978 is proposed.

On May 1, 1978, Panhandle filed revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2. By order issued May 31, 1978, the Commission accepted for filing the tariff sheets listed in Appendix A to such order and suspended their use "until November 1, 1978, when it shall be permitted to become effective, subject to refund, upon motion filed by Panhandle in accordance with the provisions of the Natural Gas Act."

On September 15, 1978, Panhandle filed Substitute Tariff Sheet Nos. 3-A, 3-B, 43-1, 43-2, 43-3 and 43-4 to its FERC Gas Tariff, Original Volume No. 1 pursuant to the Commission's suspension order requesting that such substitute tariff sheets be made effective on November 1, 1978. by an order dated November 1, 1978, the Commission rejected the substitute tariff sheets "without prejudice" to Panhandle's right to refile the tariff sheets in accordance with either of two specified alternatives: (1) reflecting the suspended rates without any adjustment for revised gas costs or (2) reflecting suspended rates as adjusted to reflect all costs included in your latest approved PGA rate adjustment. Panhandle states that this filing is in accordance with alternative (2), above.

Copies of this filing were served on Panhandle's jurisdictional customers, interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 22, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32381 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CI79-105]

PHILLIPS PETROLEUM CO.

Limited-Term Certificate Application

NOVEMBER 7, 1978.

Take notice that on November 1, 1978, Phillips Petroleum Co. (Phillips), Bartlesville, Okla. 74004, filed in Docket No. CI79-105 an application for a limited-term certificate with pregranted abandonment of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and the Commission's Regulations thereunder.

Applicant seeks a limited-term certificate with pregranted abandonment to make a sale of gas to United Gas Pipe Line Co. (United) for a period commencing on the expiration of the 60-day emergency sale which was commenced on October 13, 1978, with said limited-term sale to expire on November 26, 1980.

Applicant and United have entered into a Limited-Term Gas Purchase Contract dated October 3, 1978, which expires on November 26, 1980, providing for delivery of emergency volumes that Applicant has available for delivery from its Kingfisher Plant, located in section 9, Township 15 North, Range 5 West, Kingfisher County, Okla., and/or its Cimarron Plant, located in section 27, Township 20 North, Range 17 West, Woodward County, Okla. Applicant's volume is estimated to be approximately 30,000 Mcfd. This limited-term agreement is to commence on the expiration of 60 days from the start of emergency deliveries that were commenced on October 13, 1978. Consideration for gas delivered under the contract during the limited term will be a base rate of 174.0 cents per MMBtu.

Any person desiring to be heard or to make any protest with reference to said application, on or before November 29, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32358 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-40]

PUGET SOUND POWER & LIGHT CO.

Filing

NOVEMBER 7, 1978.

Take notice that on October 30, 1978, Puget Sound Power & Light Co. (Puget) tendered for filing a Letter Agreement between Puget and the City of Seattle Department of Lighting (Seattle).

Puget indicates that the Agreement sets forth the Terms and Conditions under which Puget will make available

firm capacity to Seattle during the months of December 1978 and January 1979. This capacity is required by Seattle to supplement its resources in anticipation of possible cold weather induced deficiencies on its system, according to Puget.

A copy of the filing has been sent to the City of Seattle, according to Puget.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32359 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-7]

SOUTHERN NATURAL GAS CO.

Proposed Rate Increase

NOVEMBER 8, 1978.

Take notice that Southern Natural Gas Co. (Southern) on October 31, 1978, tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2. The proposed changes are based on the twelve-month period ending July 31, 1978 and, as adjusted, would increase jurisdictional revenues by $55,600,000.

Southern states that the principal reason for the proposed rate increase is to recover cost increases experienced in all levels of Southern's operations but primarily in the cost of the Company's gas supplies. Other cost increases include higher taxes and debt costs.

Copies of the filing have been served upon Southern's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32382 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-45]

SOUTHWESTERN ELECTRIC POWER CO.

Filing

NOVEMBER 8, 1978.

Take notice that the Southwestern Electric Power Co. (SWPC) on October 31, 1978, tendered for filing:

(1) Power Coordination, Interchange and Transmission Service Agreement between Arkansas Electric Cooperative Corp. (AECC) and SWPC dated March 18, 1977.

(2) Certificate of Concurrence dated August 31, 1978, signed by AECC in support of this filing.

(C) Notice of Cancellation of Contract between AECC and SWPC dated August 16, 1960, accepted for filing August 18, 1963, and identified as FPC No. 58.

SWPC indicates that service under this schedule commenced July 1, 1978, and it is respectfully requested that the Commission accept this as an application for waiver of prior notice requirements and provide for the filing to become effective July 1, 1978.

Any person desiring to be heard or to make any protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32360 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. R178-98]

SUN OIL CO.

Petition for Special Relief

NOVEMBER 8, 1978.

Take notice that on September 25, 1978, Sun Oil Co., Two North Park East, Box 20, Dallas, Tex. 75221, filed a petition for special relief in Docket No. R178-98 pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76).

Petitioner requests authorization to charge a base rate of 34.8028 per Mcf at 14.65 psia, subject to BTU adjustment from a base of 1000 BTU's, for the sale of gas to Panhandle Eastern Pipe Line Co. from the Stucker Unit, Well No. 1, North Bishop Field, Ellis County, Okla. Sun is currently collecting a base rate of 29.3398 per Mcf, plus 7.0268 tax reimbursement. The total rate, including excise, production and conservation tax, requested is 41.8346 cents per Mcf. Sun Oil Co. plans a FRAC treatment of the Stucker Unit which will result in estimated increase production to 900 per Mcf per day from 454 Mcf per day. The cost of the FRAC treatment is set at $25,292.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 1, 1978. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32383 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RI79-7]

SUN OIL CO.

Petition for Special Relief

NOVEMBER 8, 1978.

Take notice that on October 19, 1978, Sun Oil Co. (Petitioner), Two North Park East, Box 20, Dallas, Tex. 75221, filed a petition for special relief, in Docket No. RI79-7, pursuant to

§ 2.76 of the Commission's General Policy and Interpretations.

Petitioner requests authorization to charge a total rate of 48.9108 cents per Mcf at 15.025 psia for the sale of gas from the State Agency-Tract 4, Well No. 3, Belle Isle Field, St. Mary Parish, La., to United Gas Pipeline Co. Petitioner is currently collecting a total rate of 37.60084 cents per Mcf at 15.025 psia, subject to Btu adjustment, for the sale of the subject gas. Petitioner has replaced tubing in the said well in order to restore production. The cost of the replacement tubing was $94,500.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 1, 1978. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32384 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP76-501]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application to Amend

NOVEMBER 8, 1978.

Take notice that on October 30, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP76-501 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) to amend the order issued December 28, 1976, in said docket, as amended,[1] so as to:

(1) Continue a transportation service for Kohler Co. (Kohler) for an additional 2-year term;

(2) Transport gas from additional sources; and

(3) Increase the maximum transportation volume from 1,100 Mcf per day, to 1,600 dekatherms (dt) equivalent of gas per day, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection.

Applicant states that the order of December 28, 1976, as amended, authorized it to transport, on an interruptible basis, up to 1,100 Mcf of gas per day for the account of Kohler for use for high-priority purposes in Kohler's Spartansburg, S.C., plant.

Applicant further states that Kohler has amended its gas purchase contract with Glen A. Martin (Martin) to purchase contract gas from additional sources of supply in the South Longhorn and Greenbranch Fields, Duval and McMullen Counties, Tex. Gas from the additional sources of supply would be delivered to Applicant at mutually agreeable points on Applicant's system in Duval and McMullen Counties, Tex., it is indicated.

No additional facilities are required by Applicant to transport gas from the additional sources of supply, it is said.

Applicant states that Kohler has requested that Applicant convert the transportation agreement between Applicant and Kohler to a service agreement under Applicant's effective Rate Schedule T. Under Rate Schedule T, Applicant would charge an initial rate of 23.5 cents per dt for all quantities delivered hereunder and would retain, initially, 3.8 percent of the quantities received for transportation as make-up for compressor fuel and line loss.

Any person desiring to be heard or to make any protest with reference to said application to amend should on or before November 30, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-32361 Filed 11-16-78; 8:45 am]

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC.

[6740-02-M]

[Docket No. CP79-44]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

NOVEMBER 8, 1978.

Take notice that on October 30, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001 filed in Docket No. CP79-44 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 132 (dt) equivalent of natural gas per day, on an interruptible basis, for the account of Carolina Pipeline Co., Inc.; NCNG Exploration Corp., an affiliate of North Carolina Natural Gas Corp.; Philadelphia Electric Co.; Piedmont Exploration Co., Inc., an affiliate of Piedmont Natural Gas Co., Inc.; Tar Heel Energy Corp., an affiliate of Public Service Co. of North Carolina, Inc.; UCG Energy Corp., an affiliate of North Carolina Natural Gas Corp.; Philadelphia Electric Co.; Piedmont Exploration Co., Inc., an affiliate of Piedmont Natural Gas Co., Inc.; Tar Heel Energy Corp., an affiliate of Public Service Co. of North Carolina, Inc.; UCG Energy Corp., an affiliate of United Cities Gas Co., North and South Carolina Division; Rockingham Co., an affiliate of North Carolina Gas Service Division of Pennsylvania & Southern Gas Co.; and Burlington Industries, Inc., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that with the exception of Burlington Industries, Inc. these transportation customers are all distribution company customers of Applicant or affiliates of Applicant's distributors.

Applicant further states that the joint venture (Transmac Exploration and Development Program) of these transportation customers has discovered and developed a successful well in the West Raceland Field, Laufourche Parish, La.

Applicant requests authorization herein to transport for the account of the above transportation customers, on an interruptible basis, their interests in the West Raceland Field gas from the point of connection in the field to existing points of delivery on Applicant's system to such customers, or their affiliates.

Applicant states that transportation service into its Rate Zone 2 initially would be rendered at 23.5 cents per dt, and into Rate Zone 3 at 24 cents per dt. Transco would initially withhold 3.8 percent of the transportation volumes destined for delivery in Rate Zone 2 and 4.4 percent of the volumes

for delivery in Rate Zone 3 for compressor fuel and line loss make-up, it is assented.

Applicant states that the subject gas would be utilized by the ultimate recipients to moderate the impact of Applicant's curtailments or their high-priority end uses.

The transportation service would be rendered with existing capacity on an interruptible basis, and the revenues generated by the service would be credited to Applicant's cost-of-service in an appropriate rate proceeding, thus redounding to the benefit of the other services rendered by Applicant's system, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 30, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise adivsed, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32362 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. CP75-17 and CP75-277]

TRANSWESTERN PIPELINE CO.

Technical Conference

NOVEMBER 3, 1978.

Take notice that on December 5, 1978, there will be a conference to discuss the volumetric entitlements of Transwestern Gas Pipeline Co.'s right-of-way customers. The conference will convene at 10:00 a.m. in the Gawaine Room of the downtown Ramada Inn, Amarillo, Tex. All interested persons are invited to attend, however, attendance at the conference will not be deemed to constitute formal intervention in the above-captioned proceedings.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32385 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-50]

TRUNKLINE GAS CO.

Change in Tariff

NOVEMBER 7, 1978.

Take notice that Trunkline Gas Co. (Trunkline) on October 30, 1978, tendered for filing Second Revised Sheet No. 1-E and Original Sheet Nos. 1638 through 1681 to its FERC Gas Tariff, Original Volume No. 2.

Trunkline states that such changes are made to provide a Rate Schedule T-43 for the transportation of natural gas on behalf of Panhandle Eastern Pipe Line Co. (Panhandle). Trunkline proposes that these sheets become effective on September 18, 1978.

A copy of this filing has been served on Panhandle.

Any person desiring to be heard or to make any protest with reference to said applications, on or before November 24, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32363 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-337]

TRUNKLINE GAS CO.

Change in Tariff

NOVEMBER 7, 1978.

Take notice that Trunkline Gas Co. (Trunkline) on October 30, 1978, tendered for filing First Revised Sheet No. 1-E and Original Sheet Nos. 1598 through 1637 to its FERC Gas Tariff, Original Volume No. 2.

Trunkline states that such changes are made to provide a Rate Schedule T-42 for the transportation of natural gas on behalf of Panhandle Eastern Pipe Line Co. (Panhandle). Trunkline proposes that these sheets become effective on September 19, 1978.

A copy of this filing has been served on Panhandle.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32364 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-390]

TRUNKLINE GAS CO.

Change in Tariff

NOVEMBER 7, 1978.

Take notice that Trunkline Gas Co. (Trunkline) on October 30, 1978, tendered for filing Third Revised Sheet No. 1-E and Original Sheet Nos. 1682 through 1722 to its FERC Gas Tariff, Original Volume No. 2.

Trunkline states that such changes are made to provide Rate Schedules E-19 and E-20 for the exchange of natural gas with Natural Gas Pipeline Co. of America (Natural). Trunkline proposes that these sheets become effective on August 29, 1978.

A copy of this filing has been served on Natural.

Any person desiring to be heard or to make any protest with reference to said application, on or before Novem-

ber 24, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32365 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER77-313]

UNION LIGHT HEAT & POWER CO.

Filing

NOVEMBER 9, 1978.

Take notice that Union Light, Heat & Power Co. on October 26, 1978, tendered for filing, in accordance with the Commission's letter of October 12, 1978, accepting the tariff rate sheets attached to the Settlement Agreement dated May 12, 1978, billing and revenue data for the city of Williamstown, Ky., the only purchaser under the subject rates for the period of July 15, 1977 to September 15, 1978.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 30, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32386 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-6]

UNITED GAS PIPE LINE CO.

Filing of Revised Tariff Sheets

NOVEMBER 7, 1978.

Take notice that on October 26, 1978, United Gas Pipe Line Co. tendered for filing with the Federal Energy Regulatory Commission (Commission) the tariff sheets listed below to its FERC Gas Tariff, Original Volume No. 2:

Tariff Sheet and Proposed Effective Date

First Revised Sheet No. 1087, May 6, 1978.
First Revised Sheet No. 1153, August 1, 1978.
First Revised Sheet No. 1170, August 25, 1978.
First Revised Sheet No. 1193, September 15, 1978.

United states the purpose of this filing is to show increased volume for fuel and unaccounted for gas as provided in Article II of certain of United's transportation agreements.

United states that copies of these tariff sheets have been mailed to Transcontinental Gas Pipe Line Corp., Mississippi Valley Gas Co. and Michigan Wisconsin Pipe Line Co.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 15, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32366 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-29]

WESTERN GAS INTERSTATE CO.

Application

NOVEMBER 9, 1978.

Take notice that on October 16, 1978, Western Gas Interstate Co. (Western), 1800 First International Building, Dallas, Tex. 75270, filed in Docket No. CP79-29 an application pursuant to section 7(c) of the Natural Gas Act and section 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing with the date of the requested authorization, and operation of facilities to enable Western to take into its certificated main pipeline system natural gas which would be purchased or received from producers or other similar sellers, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Western's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Western.

It is stated that the total cost of the proposed facilities would not exceed $150,000 and that the cost of any single project would not exceed 25 percent of the total cost. It is indicated that these costs would be financed from funds on hand and, to the extent necessary, with short-term borrowings from Western's parent, Southern Union Co.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Western to

appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32387 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-31]

WESTERN GAS INTERSTATE CO.

Application

NOVEMBER 9, 1978.

Take notice that on October 16, 1978, Western Gas Interstate Co. (Applicant), 1800 First International Building, Dallas, Tex. 75270, filed in Docket No. CP79-31, an application pursuant to section 7 of the Natural Gas Act and § 157.7(g) of the Commission's regulations under the Natural Gas Act (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission for and approval of the abandonment, during the calendar year 1979, and operation of field gas compression and related metering and appurtenant facilities, as as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction, relocation, and operation and abandonment of facilities which will not result in changing Applicant's system saleable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment of facilities would not exceed $500,000 and that the cost of any single project would not exceed 25 percent of the total authorization. Applicant indicates that it would finance such cost from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32388 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. RP 72-41 (PGA 79-1)]

WESTERN TRANSMISSION CORP.

Proposed Changes

NOVEMBER 7, 1978.

Take notice that Western Transmission Corp. (Western), on November 1, 1978, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet:

Tenth Revised Sheet No. 3-A, superseding Ninth Revised Sheet No. 3-A.

The proposed changes would decrease the monthly charges for purchased gas to Colorado Interstate Gas Co., Western's sole jurisdictional customer, pursuant to the proposed provisions of section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

Because of the brief time available subsequent to the Commission's adoption of its new rules relating to Purchased Cost Adjustment Clauses, Western requests that the notice provision otherwise applicable be waived so as to permit the proposed rates to become effective December 1, 1978.

Copies of this filing have been served upon Colorado Interstate Gas Co.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 15, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32367 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Project No. 1984]

WISCONSIN RIVER POWER CO.

Place and Procedures for Public Session

NOVEMBER 8, 1978.

By notice granted this date, the Petenwell Lakes Property Owners Association ("PLPOA") and the Wisconsin Department of Natural Resources ("DNR") were permitted to intervene respecting Wisonsin River Power Co's. ("WRPC") application for approval of a revised Exhibit R (recreation plan) for the Castle Rock-Petenwell Project (FERC Project No. 1984).

The Exhibit R is a statement of the recreational developments that WRPC intends to provide at the Castle Rock and Petenwell flowages. WRPC filed with the Exhibit P a Land Use Plan and an Exhibit W (environmental report); WRPC has also subsequently amended the Exhibit R.

PLPOA and DNR raise numerous issued regarding the recreational plan. Central among these are:

1. Does the plan provide adequate protection for wetlands;

2. Does the plan provide adequate protection for certain wildlife species (such as osprey);

3. Does the plan adequately provide for the removal of stumps and trees from the Petenwell flowage (and did WRPC previously violate orders of the Commission and the Wisconsin Public Service Commission with regard to such a stump and tree removal);

4. Does the plan provide adequate access roads to the flowages;

5. Does the plan provide enough boat launching ramps, picnic tables, and related facilities;

6. Should certain shoreline areas, such as the Petenwell dikes, be open to public use; and

7. Should WRPC be allowed to remove certain lands from the project boundary?

Both PLPOA and DNR requested that a public meeting be held in the vi-

cinity of the project so that the public may express their views on the Exhibit R. WRPC recommended that any meeting held should be an informal proceeding conducted by staff.

It appears that a public session may be helpful. Accordingly, Commission staff counsel will convene two public sessions in the circuit courtroom of the Adams County courthouse, in Friendship, Wis., beginning at 9 a.m. and at 7 p.m. on Wednesday, November 29, 1978, and continuing thereafter until concluded so that the intervenors, members of the public, and any interested Federal, State or local agencies may state their views, orally or in writing, and have their positions and statements considered along with the pleadings and comments filed in this proceeding. All oral and written statements presented will be transcribed by a court reporter into a written record of the public session.

To avoid confusion and to insure that all persons wishing to present their positions can do so, the following procedures will be observed at the public session:

All those desiring to be heard, or wishing to submit written statements, should, before the convening of the sessions noted above, fill out cards with their names, addresses, and the organization they represent, if any, and give the cards to Commission staff counsel. Blank cards will be available at the entrance to the courtroom.

When a person's name is called, he should come forward and state his name, address, and the organization he represents, if any. If he wishes to make an oral statement, he should proceed to do so. If he wishes to submit a written statement and also make an oral statement, he should confine his oral remarks to a brief summary of the highlights of the written statement, since all written statements will be copied into the record as though read. the statements made at the public session do not constitute evidence, and the persons giving statements will not be subject to cross-examination.

If a peson wishes to make a statement for the record but is unable to be present at the time his name is called, he may leave a copy of his statement with the reporter, and it will be copied into the record as though read. If for any reason a person wishing to be heard is unable to attend the public session, he may submit a written statement by December 22, 1978, to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and it will be made a part of the record of the public session.

Copies of the Exhibit R (as amended), the Land Use Plan, and the Exhibit W are available for public inspection at the following locations:

Wisconsin River Power Co., Wisconsin Rapids, Wis., 715-422-3111.

McMillan Memorial Library, 490 East Grand Avenue, Wisconsin Rapids, Wis., 715-423-1040.

Mauston Public Library, 133 East State Street, Mauston, Wis., 608-847-4454.

Adams County Library, 101 South Main, Adams, Wis., 608-339-3211.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32389 Filed 11-16-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1008-2; PF-113]

PESTICIDE PROGRAMS

Filing of Pesticide Petition

Monsanto Agricultural Products Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166, has submitted a petition (PP 8F2128) to the Environmental Protection Agency (EPA) which proposes that 40 CFR 180.314 be amended by establishing a tolerance for the residues of the herbicide triallate (S-(2,3,3-trichloroallyl) diisopro pylthiocarbamate) in or on the raw agricultural commodities sugar beets, sugar beet tops, soybeans, soybean forage and hay all at 0.05 part per million (ppm). The proposed analytical method for determining residues is by gas liquid chromatography with electron capture detector. Notice of this submission is given pursuant to the provisions of section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the FEDERAL REGISTER Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Inquiries concerning this petition may be directed to Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at 202-755-7012. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice 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: November 7, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-32338 Filed 11-16-78; 8:45 am]

[6560-01-M]

[FRL 1008-4]

SCIENCE ADVISORY BOARD; TECHNOLOGY ASSESSMENT AND POLLUTION CONTROL COMMITTEE

Open Meeting

As required by Pub. L. 92-463, this is to give notice that a meeting of the Technology Assessment and Pollution Control Committee will be held beginning at 9 a.m., December 4 and 5, 1978, in room 1101, West Tower, EPA Headquarters, 401 M Street SW., Washington, D.C. The meeting is open to the public. Any member of the public wishing to attend or to have further information on the meeting should contact Lloyd Taylor or Rita Haggerty, 703-557-7720.

The committee will discuss the identification of pollution control technology research needs; incentives for development and utilization of pollution control technology; whether to review the scientific and technical basis of four proposed EPA regulations; and items of interest to the members.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

NOVEMBER 13, 1978.

[FR Doc. 78-32340 Filed 11-16-78; 8:45 am]

[6560-01-M]

[FRL 1007-6]

STATE OF SOUTH CAROLINA

Review by the U.S. Environmental Protection Agency, Region IV, Water Supply Branch of Exemptions Granted by the South Carolina Department of Environmental Regulation From June 24, 1977, to June 24, 1978

This public notice is issued under section 1416 of the Safe Drinking Water Act, Pub. L. 93-523, December 16, 1974 and 142.22(b) of the National Interim Primary Drinking Water Regulations, published in the FEDERAL REGISTER on January 20, 1976.

All information related to the granting of these exemptions is available for public inspection between the hours of 8:30 a.m. and 5 p.m., Monday through Friday at:

Division of Water Supply, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201.

All interested parties are invited to submit written comments on the ex-

emptions issued and on the need for continuing these exemptions. Comments must be submitted on or before December 18, 1978 and should be sent to:

Mr. Curtis F. Fehn, Chief, State Program Section, Water Supply Branch, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Ga. 30308, Telephone 404-881-3781.

Dated: November 3, 1978.

ASA B. FOSTER,
Acting Regional Administrator.

[FR Doc. 78-32339 Filed 11-16-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1008-3; OTS 140001]

TOXIC SUBSTANCES CONTROL

Security of Confidential Business Information

AGENCY: Environmental Protection Agency.

ACTION: Supplemental clarification.

SUMMARY: This notice clarifies the Agency's procedures for handling chemical substances whose identity has been treated as confidential for purposes of the Inventory of Chemical Substances under seciton 8(b) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.).

ADDRESS: Copies of the EPA business confidentiality regulations and TSCA Confidential Business Information Security Manual may be obtained by calling or writing John B. Ritch, Jr., Director, Industry Assistance Office (TS-793), 401 M Street SW., Washington, D.C. 20460, telephone 800-424-9065; in Washington, D.C., telephone 554-1404.

SUPPLEMENTARY INFORMATION: On September 8, 1978, EPA promulgated final amendments to its business confidentiality regulations, 40 CFR Part 2, 43 FR 39997. These amendments were effective October 10, 1978. On July 25, 1978, EPA announced the availability of its TSCA Confidential Business Information Security Manual, 43 FR 32186. These security procedures were effective immediately upon publication. If EPA makes major changes to these regulations or security manual, the Agency will provide an opportunity for public comment.

Section 2.306 of the business confidentially regulations establishes standards governing release of information obtained under TSCA. This section incorporates by reference the Agency's general rules on handling confidential information and establishes special rules for handling TSCA information consistent with the statute. In particular, these regulations provide notice to the affected business prior to public disclosure of information claimed as confidential. In addition, the regulations provide that although EPA does not believe that notice is required when the Agency furnishes the confidential informtion to another Federal agency, a contractor performing work under TSCA, a congressional committee, or to any other person pursuant to court order, EPA will give notice to an affected business in such instances as a matter of policy. In providing for notice to affected businesses prior to disclosure to other Federal agencies, a contractor, Congress, or pursuant to court order, EPA has reserved certain flexibility. The regulations provide that in these instances, EPA may give notice to the affected business by letter sent by certified mail return receipt requested, by telegram or by notice published in the FEDERAL REGISTER.

Questions have arisen concerning EPA's intended procedures for handling chemical substances whose identities will be treated as confidential for purposes of the inventory compiled under section 8(b) of TSCA. This notice is intended to clarify two points:

(1) EPA intends to physically segregate its data base on chemical substances whose identities will be treated as confidential for purposes of the Inventory; and

(2) EPA intends to provide notice to the affected business by letter or telegram before furnishing information on these chemical substances to another Federal agency, a contractor, Congress or pursuant to court order. EPA does not intend to give notice of such disclosure by the FEDERAL REGISTER.

Dated: November 9, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-32337 Filed 11-16-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-744; RM-2647]

CONNECTING AND CONCURRING CARRIERS TO JUSTIFY THEIR RATES AS DO THE ISSUING CARRIERS REQUIREMENTS

Memorandum Opinion and Order Denying Petition for Rulemaking

Adopted: October 19, 1978.

Released: November 2, 1978.

In the matter of amendment to § 61.38 of Commission's rules to require connecting and concurring carriers to justify their rates as do the issuing carriers, RM-2647.

1. We have before us a Petition for Rulemaking filed by the U.S. Department of Defense (DOD) on March 19, 1976 requesting that the Commission amend § 61.38 of its rules. DOD seeks an amendment of that section to require the filing of additional data and information by concurring and connecting carriers.[1] The petition for rulemaking was placed on public notice and in response comments were received from Central Telephone Co., Mid-Continent Telephone Corp., Continental Telephone Corp., GTE Service Corp., and its affiliated telephone companies, Rochester Telephone Corp. and American Telephone & Telegraph Co. (AT&T). DOD filed a reply.

2. Section 61.38 does not require that support data be filed by connecting and concurring carriers with regard to tariff changes initiated by the issuing carrier. The Final Report and Order in Docket No. 18703, 25 F.C.C. 2d 957, 968 (1970), which promulgated § 61.38, demonstrates that it was the Commission's intent that only issuing carriers (and connecting carriers who had requested changed or new matter be filed by the issuing carrier), would be required to file support data and information.

3. DOD contends here that enlarging the scope of the supporting data requirement to include concurring and connecting carriers is more in line with the broader intent of the Commission in creating § 61.38. Its position is that the § 61.38 cost material filed by the issuing carrier in support of its rates has no direct value in evaluating the lawfulness of the same rates charged by a concurring or connecting carrier and that the Commission's regulatory processes and the public interest would best be served if all carriers, including concurring and connecting carriers, were required to submit detailed economic and other data to justify rate changes. Finally, DOD states that its interests would be adequately served if the cost data are required only for rate changes for private line service and the terminal equipment used in connection with such services.

4. All of the connecting parties oppose the proposed rulemaking. They

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[1] A connecting carrier is, basically, an intrastate carrier which engages in interstate or foreign communication solely through physical connection with an unaffiliated interstate or foreign carrier. Sections 3(u) and 2(b) of the Communications Act. 47 U.S.C. 153(u) and 152(b).

A concurring carrier, as defined in § 61.14 of the Commission's rules, is "a carrier (other than a connecting carrier) subject to the act which concurs in and assents to schedules of charges and regulations filed on its behalf by an issuing carrier or carriers."

An issuing carrier is a carrier "subject to the act which publishes and files a tariff or tariffs with the Commission." Section 61.16 of the Commission's rules.

argue, variously, that the petition fails to comply with the requirements of § 1.401 of the Commission's rules for petitions for rulemaking; that requiring a connecting carrier to file supportive data would be contrary to the language of the Communications Act and would violate the intent of Congress; that the proposed amendment would impose a burden of unnecessary and useless paperwork upon carriers and the Commission staff; that DOD has made no effort to present any new evidence which might lead the Commission to depart from its decision as to the § 61.38 requirements; and that the present procedure already results in a valid comparison between revenues and costs by way of the cost data filed by the issuing carrier and by the distribution of revenues in the separations process. DOD's reply responds to these arguments without raising any new matters.

5. Although we consider the DOD petition as requesting that connecting and concurring carriers file support data only with regard to private line service, the same considerations and the same reasoning would apply to nonprivate line services. Our conclusion would accordingly be the same.[2] DOD's petition does not present facts or data in support of its proposed amendment which might indicate that costs and rates would differ significantly from those determined by the cost support data currently submitted by the issuing carriers, nor does it specify how the interests of the DOD would be affected, aside from general representations of alleged benefits to the public and to DOD as a consumer. First, we should note that AT&T, in support of a private line tariff filing, would submit not only its own cost support data for its Long Lines Department but that for all the associated Bell System Companies. Since the amount of facilities provided by the Bell System is generally so large in comparison to those provided by the independent (i.e. non-Bell) connecting or concurring carriers, its cost data dominates and, in effect, largely determines the rate schedules for private line services.[3] Secondly, the costs of these independent connecting carriers are included in the total Bell System costs (generally in the form of revenue requirements). Therefore, the data supporting any such rate schedule does include all costs, whether generated directly within the Bell System or not. This independent company cost data could presumably be broken out separately upon request of the Commission if such became necessary in any given case. However, the petitioner has not shown what public benefit would accrue from routinely requiring the submission of this cost data separately rather than in the aggregate as is now the case.

6. Although it is difficult to estimate the volume of additional paperwork which the proposed rule would generate, it clearly would be very substantial. For example, 55 telephone companies are concurring carriers to AT&T's 260 tariff for private line service, and virtually all of the other telephone companies in the United States, over 1,500 in all, are connecting carriers. The additional burdens the DOD rule would impose on each connecting and concurring carrier to assemble and directly submit the data and information in support of changes in this single tariff would be enormous, and out of all proportion to any perceptible benefit to the public. Indeed, the proposed rule might well make the regulatory process so unwieldly as to frustrate effective regulation, were it to be applied to the 260 Tariff, not to mention the numerous other tariffs on file with the Commission toward which the same rationale might be applied. Under these circumstances, we do not believe that the institution of a rulemaking proceeding on this matter would be in the public interest. This is not to say, however, that in any given case or in a specific rate investigation the Commission or a presiding judge may not require such separate information to be submitted if circumstances warrant it.

7. Accordingly, *It is ordered*, That the Petition for Rulemaking if denied.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32332 Filed 11-16-78; 8:45 am]

[2] Connecting carriers are already required to file appropriate support material for exception rates filed on their behalf as part of an issuing carrier's general tariff offering, and our decision and discussion is not intended to apply to such rates.

[3] The amount of private line facilities provided by the Bell System is perhaps 10 times or more of that provided by independents. This is illustrated by statistics which show that the Bell System's total private line revenues in 1976 were $1,638,910,624. This compares to non-Bell private line revenues, as reported by independent telephone companies with over 96 percent of total independent revenues, of $148,755,000 of which over $87 million was revenue of carriers reporting to the Commission. Source: Statistics of Communications Common Carriers, Year Ended December 31, 1976, p. 30, Table 16, lines 112, 128 and Independent Telephone Statistics 1977 Edition, p. 20.

[6712-01-M]

FM AND TV TRANSLATOR APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: November 6, 1978.

Released: November 9, 1978.

By the Chief Broadcast Facilities Division.

Notice is hereby given pursuant to § 1.572(c) and § 1.573(d) of the Commission's Rules, that on December 29, 1978, the TV and FM translator applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to section 1.227(b)(1) and § 1.519(b) of the Commission's Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 28, 1978, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on December 28, 1978. The attention of prospective applicants is directed to the fact that some contemplated proposals may not be eligible for consideration with an application appearing in the attached Appendix by reason of conflicts between the listed applications and applications appearing in previous notices published pursuant to § 1.573(d) of the Commission's Rules.

The attention of any party in interest desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

UHF TV TRANSLATOR APPLICATIONS

BMPTT-780726IL (K72DK), Elgin, La Grande, Union & Baker, Oreg., Blue Mt. Television, Association. Req: Change frequency to Channel 62, 758-764 MHz.

BPTT-780726IM (K74BX), Elgin, La Grande, Union & Baker, Oreg., Blue Mt. Television, Association. Req: Change frequency to Channel 64, 770-776 MHz.

BPTT-780726IN (K784BC), Elgin, La Grande, Union & Baker, Oreg., Blue Mt. Television, Association. Req: Change frequency to Channel 66, 782-788 MHz.

BPTT-780728IU (New), Lakeport, Calif., The Lake County Television Club. Req: Channel 62, 758-764 MHz, 100 watts. Primary: KVIE-TV, Sacramento, Calif.

BPTT-780728IV (K71BD), Lakeport & Clear Lake Basin, Calif., The Lake County Television Club. Req: Channel frequency to Channel 66, 782-788 MHz.

BPTT-780728IW (K73BQ), Lakeport, Calif., The Lake county Television Club. Req: Change frequency to Channel 64, 770-776 MHz, increase output power to 100 watts.

BPTT-780728IX (K77BS), Lakeport, Calif., The Lake County Television Club. Req: Change frequency to Channel 58, 734-740 MHz.

BPTT-780728IY (K80BG), Lakeport, Calif., The Lake County Television Club. Req:

Change frequency to Channel 56, 722-728 MHz.

BPTT-780811IB (new), Flagstaff, Ariz., Trinity Broadcasting of Arizona, Inc. Req: Channel 62, 758-764 MHz, 100 watts. Primary: KPAZ-TV, Phoenix, Ariz.

BPTT-780830ID (W65AH), Loundonville, Ohio, Ohio Educational Television Network Commission. Req: Change primary TV station to WOUC-TV, Channel 44, Cambridge, Ohio.

BPTT-780925IA (new), Brainerd, Minn., Channel 10, Inc. Req: Channel 57, 728-734 MHz, 100 watts. Primary: WDIO-TV, Duluth, Minn.

BPTT-780925IB (new), Aitkin, Minn., Channel 10, Inc. Req: Channel 66, 782-788 MHz, 100 watts. Primary: WDIO-TV, Duluth, Minn.

BPTT-781005IA (new), San Jose, Los Gatos, Santa Clara, Saratoga, Los Altos, Sunnyvale, Palo Alto and Mountain View, Calif., KNTV, Inc. Req: Channel 42, 638-644 MHz, 1000 watts. Primary: KNTV-TV, San Jose, Calif.

VHF TV TRANSLATOR APPLICATIONS

BPTTV-780711IE (new), Fredericksted, St. Croix (and surrounding area), U.S. Virgin Islands, Virgin Island Public Television System. Req: Channel 13, 210-216 MHz, 10 watts. Primary: WJTJ-TV, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

BPTTV-780713IE (new), Chambers, Lupton, Navajo, and Sanders, Ariz., Puerco Valley TV Association, Inc. Req: Channel 11, 198-204 MHz, 10 watts. Primary: KOAT-TV, Albuquerque, N. Mex.

BPTTV-780911IB (new), Rexburg and St. Anthony, Idaho, Futura Titanium Corp. d.b.a. Futura Communications. Req: Channel 12, 204-210 MHz, 10 watts. Primary: KPVI-TV, Pocatello, Idaho.

BPTTV-780926IB (new), Silver City, N. Mex. Regents of New Mexico State University. Req: Channel 12, 204-210 MHz, 100 watts. Primary: KRWG-TV, Las Cruces, N. Mex.

FM TRANSLATOR APPLICATIONS

BPFT-780801JD (new), Tri-Cities (Pasco, Kennewick, and Richland), Wash., Columbia Translator Council. Req: Channel 204, 88.7 MHz, 10 watts. Primary: KGTS-FM, Walla Walla, Wash.

BPFT-78081IV (new), Winter Park, Winter Garden, Orlando, and Popka, Fla., The Moody Bible Institute of Chicago. Req: Channel 228, 93.5 MHz, 1 watt. Primary: WKES-FM, St. Petersburg, Fla.

BPFT-780801IW (new), Gainesville, Fla., The Moody Bible Institute of Chicago. Req: Channel 252, 98.3 MHz, 1 watt. Primary: WKES—FM, St. Petersburg, Fla.

BPFT-780929IA (new), Prineville, Oreg., Juniper Broadcasting, Inc. Req: Channel 272, 102.3 MHz, 10 watts. Primary: KXIQ-FM, Bend, Oreg.

[FR Doc. 78-32334 Filed 11-16-78; 8:45 am]

[6712-01-M]

TV BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: November 7, 1978.

Released: November 13, 1978.

By the Acting Chief, Broadcast Facilities Division:

Notice is hereby given, pursuant to § 1.572(c) of the Commission's Rules, that on December 22, 1978, the TV broadcast applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.591(b) of the Commission's Rules, an application in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 21, 1978, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., by the close of business on December 21, 1978.

The attention of any party in interest desiring to file pleadings concerning any pending TV broadcast application, pursuant to § 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

BPCT-5184; new; North Pole, Alaska, Evangelistic Missionary Fellowship, Channel 4, ERP. Vis. 18.66 kW, HAAT: 1619 88 ft.

BPCT-780713IB; new; Indianapolis, Ind., Channel 59 of Indiana, Inc., Channel 59, ERP. Vis. 1472 kW, HAAT: 548.9 ft.

BPCT-780720IC; new; Marion, Ill., Dennis F. Doelitzsch, Channel 27, ERP. Vis. 152, kW, HAAT: 529 ft.

BPCT-780728IF; new; Valdosta, Ga., Peachtree Telecasting, Inc., Channel 44, ERP. Vis. 559 kW, HAAT: 839 ft.

BPCT-780814IC; new; Springfield, Ohio, Miami Valley Christian Broadcasting Association, Inc., Channel 26, ERP. Vis. 1219 kW, HAAT: 488 ft.

BPCT-780822IB; new; Prescott, Ariz., William H. Sauro, Channel 7, ERP. Vis. 2kW, HAAT: 1,550 ft.

BPCT-780824IA; new; Watertown, N.Y., R.B.G. Productions, Inc., Channel 50, ERP. Vis. 778 kW, HAAT: 633 ft.

BPCT-780828IF; new; Atlanta, Ga., Channel 69 of Georgia, Inc., Channel 69, ERP Vis. 1580 kW, HAAT: 960 ft.

BPCT-780831IA; new; Salisbury, Md., MDV Television Co., Inc., Channel 47, ERP. Vis. 2570 kW, HAAT: 1000 ft.

BPCT-780914KL; WAND; Decatur, Ill., WAND Television, Inc., Channel 17, Change ERP. Vis. 5000 kW, change HAAT: 1285.2 ft.

BPCT-780919KF; new; Lafayette, La., Charles Chatelain, Channel 15, ERP. Vis. 281 kW, HAAT: 208.65 ft.

BPET-600; WNJB(TV); New Brunswick, N.J., New Jersey Public Broadcasting Authority, Channel 58, ERP. Vis. 3040.9 kW, HAAT: 1410.3.

BPET-615; new; Greenwood, S.C., South Carolina Educational Television Commission, Channel 38, ERP. Vis. 893 kW, HAAT: 744 ft.

[FR Doc. 78-32333 Filed 11-16-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

MATSON TERMINALS, INC.

Agreements Filed; Correction

In FR Doc. 78-31273, appearing on page 51724 in the issue of Monday, November 6, 1978, appeared a summary of Agreement No. T-3737 between Matson Terminals, Inc., and Nippon Yusen Kaisha (NYK). The summary should have shown NYK as agent of Korea Marine Transport Co., Ltd.

Dated: November 14, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-32420 Filed 11-16-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 291]

BAKER, IRONS & DOCKSTADER, INC.

Order of Revocation

On October 16, 1978, Baker, Irons & Dockstader, Inc., 17 Battery Place, New York, N.Y. 10004, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 291 for revocation and requested that revocation be effective on October 21, 1978, the expiration date of its Independent Ocean Freight Forwarder surety bond.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (revised), section 5.01(c), dated August 8, 1977:

It is ordered, That Independent Ocean Freight Forwarder License No. 291, issued to Baker, Irons & Dockstader, Inc., be and is hereby revoked effective October 21, 1978 without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order by published in the FEDERAL REGISTER and served upon Baker, Irons & Dockstader, Inc.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-32408 Filed 11-16-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

MARJON BANCORPORATION, INC.

Formation of Bank Holding Company

Marjon Bancorporation, Inc., Colesburg, Iowa, has applied for the Board's approval under § 3(a)(1) of the Bank

Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers Savings Bank, Colesburg, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 4, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 9, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32336 Filed 11-16-78; 8:45 am]

[6210-01-M]

SOCIETY CORP.

Acquisition of Bank

Society Corp., Cleveland, Ohio, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of First National Bank of Clermont County, Bethel, Ohio. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 1, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 9, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32335 Filed 11-16-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

CATOOSA BANCSHARES, INC.

Formation of Bank Holding Company

Catoosa Bancshares, Inc., Catoosa, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent (less directors qualifying shares) of the voting shares of First Bank of Catoosa, Catoosa, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than December 7, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 13, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-32409 Filed 11-16-78; 8:45am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory reports Review Staff, GAO, on November 9, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before December 5, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart, of the Regulatory Reports Review Staff, 202-275-3532.

CIVIL AERONAUTICS BOARD

The CAB requests clearance of the new application, recordkeeping and reporting requirements contained in Part 291 (ER-1080) of the Board's Economic Regulations. These requirements are mandatory under the Federal Aviation Act of 1958, as amended, for air carriers holding all-cargo certificates from the Board to engage in domestic cargo transportation. CAB estimates respondents will number approximately 645 domestic air carriers and burden will average 8 hours per application; 30 minutes for the bodily injury and property damage insurance forms 291-D and 291-E; 1 hour for notifications dealing with acquisition or merger between an all-cargo carrier (providing domestic cargo service) and an air carrier holding authority to transport international cargo; and 24 hours for reporting on forms 291-A, Balance Sheet, 291-B, Statement of Operations, and 291-C, Summary of Traffic and Capacity Statistics which are filed semiannually.

The CAB requests clearance of the new reporting Schedule T-8, Report of section 418 Operations, to Form 41 of Part 241—Uniform System of Accounts and Reports for Certificated Air Carriers. CAB states that reporting on this schedule is mandatory under the Federal Aviation Act of 1958, as amended, by air carriers holding section 401 certificates that conduct all-cargo operations under certificates issued for Section 418 cargo operations. Schedule T-8 filing will be required semiannually on February 10 and August 10. The CAB estimates respondents will number approximately 11 certificated air carriers and report-

ing burden will average 16 hours per report.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-32443 Filed 11-16-78; 8:45 am]

[6820-38-M]

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 75]

MARYLAND PUBLIC SERVICE COMMISSION AND BALTIMORE GAS & ELECTRIC CO.

Case No. 7268

The Administrator of General Services seeks to intevene in a proceeding before the Maryland Public Service Commission involving an application of Baltimore Gas & Electric Co. for a revision in gas, electric, and steam rates. The Administrator of General Services represents the interests of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, telephone 202-566-0726, within 30 days of the publication of this notice in the FEDERAL REGISTER, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4).)

Dated: October 30, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-32397 Filed 11-16-78; 8:45 am]

[6820-34-M]

GENERAL SERVICES ADMINISTRATION

IMPROVING GOVERNMENT REGULATIONS

Agenda of Significant Regulatory Activity

AGENCY: General Services Administration.

ACTION: Semiannual agenda.

SUMMARY: This agenda announces the significant regulatory actions that GSA plans for the 6-month period from mid-November 1978 to mid-May 1979. This agenda was developed under the guidelines in Executive Order 12044, Improving Government Regulations (43 FR 12661, Mar. 24, 1978). GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the early stages of the rulemaking process.

FOR FURTHER INFORMATION CONTACT:

John T. Gilmartin, Director, Paperwork Management Division 202-566-0857.

SUPPLEMENTARY INFORMATION: On May 25, 1978, GSA published its proposed report on implementation plans for Executive Order 12044 at 43 FR 22616. As explained in the report, GSA will publish a semiannual agenda of significant regulatory activity during November and May of each year. The agenda lists, for each of GSA's services and staff offices, new significant regulations that are being considered, changes that are planned to existing significant regulations, and the significant regulations that will be reviewed during the upcoming 6-month period. GSA's next semiannual agenda will be published in the May 18, 1979, issue of the FEDERAL REGISTER.

Dated: November 13, 1978.

JAY SOLOMON,
Administrator of General Services.

FEDERAL PREPAREDNESS AGENCY

A. NEW REGULATIONS

No new significant regulations are being considered.

B. CHANGES TO EXISTING REGULATIONS

1. Stabilization Regulations for Prices, Rents, Wages, and Salaries (32A CFR Part 151); delete from CFR.

a. Need for change: This regulation is no longer required.

b. Legal basis: The Economic Stabilization Act of 1970 has expired.

c. Contact point: Dorinda Lowery, Director, Management Services Division, 202-566-1975.

d. Regulatory analysis: Will not be prepared.

C. REGULATIONS SCHEDULED FOR REVIEW

1. Dispersion and Protective Construction; Policy, Criteria, Responsibilities (32A CFR Part 101).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

2. Maintenance of the Mobilization Base (32A CFR Part 102).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Estimated completion date for review: November 30, 1978.

3. Emergency Action for Maintenance of the Mobilization Base (32A CFR Part 102a).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

4. Defense Production; Priorities and Allocations Authority (32A CFR Part 103).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

5. Guidance on Priority Use of Resources in Immediate Postattack Period (32A CFR Part 104).

a. Contact point: Leonard L. Reese, Director, Controlled Conflict Preparedness Division, 202-566-0773.

b. Expected completion date for review: November 30, 1978.

6. National Security Policy Governing Scientific and Engineering Manpower (32A CFR Part 105).

a. Contact point: William D. Baird, Director, General War Preparedness Division, 202-566-0394.

b. Expected completion date for review: November 30, 1978.

7. Health Manpower Occupations (32A CFR Part 106).

a. Contact point: Nina Winkler, Office of the Director, 202-566-1627.

b. Expected completion date for review: November 30, 1978.

8. Policy Guidance for a National Emergency Blood Program (32A CFR Part 107).

a. Contact point: Nina Winkler, Office of the Director, 202-566-1627.

b. Expected completion date for review: November 30, 1978.

9. Program for Expansion of Supplies of Materials Needed for Defense Purposes in the Event of a Major Disaster (32A CFR Part 108).

a. Contact point: Gaston L. Choiniere, Executive Director, 202-566-0550.

b. Expected completion date for review: November 30, 1978.

10. Provision of Materials Under Government Control as Needed to Supplement Supplies Commercially Available in the Event of a Major Disaster (32A CFR Part 109).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

11. Policy on Use of Government-Owned Industrial Plant Equipment by Private Industry (32A CFR Part 110).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for

Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

12. General Policies for Strategic and Critical Materials Stockpiling Policy (32A CFR Part 111).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

13. Use of Priorities and Allocation Authority for Federal Supply Classification (FSC) Common Use Items (32A CFR Part 112).

a. Contact point: Gaston L. Choiniere, Executive Director, 202-566-0550.

b. Expected completion date for review: November 30, 1978.

14. Policy Guidance and Delegation of Authorities for Use of Priorities and Allocations to Maximize Domestic Energy Supplies (32A CFR Part 113).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

NATIONAL ARCHIVES AND RECORDS SERVICE

A. NEW REGULATIONS

No new significant regulations are being considered.

B. CHANGES TO EXISTING REGULATIONS

1. Access to national security information (41 CFR 105-61.104) and public use of donated historical materials (41 CFR 105-61.2); revise procedures for handling mandatory review requests for classified information accessioned by the National Archives or donated to the Government and deposited in a Presidential library.

a. Need for change: Changes required by EO 12065, National Security Information.

b. Legal basis: 44 U.S.C. 2103, 2104, 2107, and 2107 note; and EO 12065.

c. Contact point: Adrienne Thomas, Planning and Analysis Division, 202-523-3214.

d. Regulatory analysis: Will not be prepared.

C. REGULATIONS SCHEDULED FOR REVIEW

No significant regulations are scheduled for review.

FEDERAL PROPERTY RESOURCES SERVICE

A. NEW REGULATIONS

No new significant regulations are being considered.

B. CHANGES TO EXISTING REGULATIONS.

1. Property for educational and public health purposes (41 CFR 101-47.308-4(i)-(k)); revise regulations to require perpetual use restriction on real property conveyed and to specify appropriate releases of restrictions.

a. Need for change: Result of review by GSA of the effectiveness of procedures related to the conveyance of surplus real property at a monetary discount for public purposes.

b. Legal basis: Section 203(k)(1) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(k)(1)).

c. Contact point: James Pitts, Special Programs Division, 202-566-0003.

d. Regulatory analysis: Will not be prepared.

2. Floodplain management and protection of wetlands (41 CFR 101-47.202-2(b)(6)); amend regulations to require the holding agency to submit to GSA, in the agency's excess report, a list of uses that are restricted under identified Federal, State, or local regulations.

a. Need for change: The requirements of Executive Orders 11988 and 11990 for referencing use restrictions on conveyance documents dictated a need for more information from holding agencies.

b. Legal basis: National Environmental Policy Act of 1969 and Executive Orders 11988 and 11990.

c. Contact point: Chester R. Julian, Environmental Staff Officer, 202-566-0505.

d. Regulatory analysis: Will not be prepared.

C. REGULATIONS SCHEDULED FOR REVIEW.

No significant regulations are scheduled for review.

AUTOMATED DATA AND TELECOMMUNICATIONS SERVICE

No significant regulatory actions are planned.

FEDERAL SUPPLY SERVICE

No significant regulatory actions are planned.

OFFICE OF CONTROLLER-ADMINISTRATION

No significant regulatory actions are planned.

OFFICE OF GENERAL COUNSEL

No significant regulatory actions are planned.

PUBLIC BUILDINGS SERVICE

No significant regulatory actions are planned.

[FR Doc. 78-32508 Filed 11-16-78; 8:45 am]

[4110-86-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Disease Control Center

PRACTICAL ASPECTS OF MEASLES ELIMINATION

Open Meeting

The following meeting will be convened by the Center for Disease Control and will be open to the public for observation and participation, limited only by the space available:

Date: December 7, 1978.
Time: 9:15 a.m.
Place: Room 207, Building 1, Center for Disease Control, 1600 Clifton Road NE., Atlanta, Ga. 30333.
Purpose: To discuss an appropriate scientific approach for implementing a program to eliminate measles from the United States.
Additional information may be obtained from: Dr. A. David Brandling-Bennett, Chief, Surveillance and Assessment Branch, Immunization Division, Bureau of State Services, Center for Disease Control, 1600 Clifton Road NE., Atlanta, Ga. 30333, telephones, FTS: 236-3745, Commercial: 404-329-3745.

Dated: November 9, 1978.

ELVIN HILYER,
Acting Director,
Center for Disease Control.

[FR Doc. 78-32311 Filed 11-16-78; 8:45 am]

[4110-03-M]

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. Clinical Chemistry Section of the Clinical Chemistry and Hematology Devices Panel.	Dec. 4 and 5, 9 a.m., Silver Room, Holiday Inn Motel, 8777 Georgia Ave., Silver Spring, Md.	Open public hearing, Dec. 4, 9 to 10 a.m.; open committee discussion, Dec. 4, 10 a.m. to 4 p.m., Dec. 5, 9 a.m. to 5 p.m.; Eugene W. Rice (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to the classification of clinical chemistry devices to the contact person. Submission of data relative to tentative classification findings is also invited. Persons desiring to make formal presentations should notify the contact person by November 17, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

Open committee discussion. The Clinical Chemistry Section of the Clinical Chemistry and Hematology Devices Panel will review and classify the following clinical chemistry in vitro diagnostic products: automated radioimmunoassay systems, tonometers, high density lipoprotein (HDL) cholesterol test systems, and angiotensin II test systems. The committee will also review and classify urine test kits sold "over-the-counter" for detection of early pregnancy.

Committee name	Date, time, and place	Type of meeting and contact person
2. Physical Medicine Devices Section of the Surgical and Rehabilitation Devices Panel.	Dec. 6, 9 a.m., Room 1813, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing, 9 to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; Johnsie W. Bailey (HFK-410), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to the discussion on the agenda in this notice to the contact person. Submission of data relative to tentative classification findings is also invited. Persons desiring to make formal presentations should notify the contact person by November 22, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

Open committee discussion. The Panel will discuss the Bureau's Product Development Protocol Guidelines and the arrangement of a premarket approval application. The Panel will also discuss voice controlled devices for the handicapped and classification of any additional devices.

Committee name	Date, time, and place	Type of meeting and contact person
3. Pathology Subcommittee of the Science Advisory Board.	Dec. 7, 1:30 p.m., Room GI-112A, University of Arkansas Medical Center, Education II Bldg., Little Rock, Ark.	Open public hearing/open committee discussion, 1:30 to 4 p.m.; Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ark. 72079.

General function of the Committee. The Committee advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing/open committee discussion. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

The Subcommittee will discuss the following pathology programs: Current status of staff; status of backlog in pathology; experiment No. 169—Comparison study with the National Cancer Institute to Examine Histopathological Findings from Three Sources; pathology assistants; and visiting scientists program.

Committee name	Date, time, and place	Type of meeting and contact person
4. Microbiology Section of the Immunology and Microbiology Devices Panel.	Dec. 7 and 8, 9 a.m., Versailles, Room 3, Holiday Inn, 8121 Wisconsin Ave., Bethesda, Md.	Open public hearing, Dec. 7, 9 a.m. to 5:30 p.m.; open committee discussion, Dec. 8, 9 a.m. to 4:30 p.m.; Thomas M. Tsakeris (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. In response to considerable interest regarding the performance acceptability of gonococcal antibody screening tests, the Bureau of Medical Devices has scheduled a meeting of the Microbiology Section, Immunology and Microbiology Devices Panel, to determine acceptable sensitivity and specificity limits for these tests. The Panel will receive testimony from industry representatives, epidemiological experts, and potential users of these products on the intrinsic value of these tests.

Interested persons are encouraged to present information pertinent to the safety and effectiveness of gonococcal antibody screening tests. Because these tests are purported to be most useful in low-risk population groups, the information presented should address specifically the question of acceptable sensitivity, specificity, and predictive value of these tests for these groups. Persons desiring to make formal presentations should notify the contact person by November 22, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

Open committee discussion. The Microbiology Devices Section will review and discuss the information presented with a view toward making a recommendation respecting acceptable limits of sensitivity and specificity for all gonococcal antibody screening tests.

Committee name	Date, time, and place	Type of meeting and contact person
5. Contraceptive and Other Vaginal Drug Products Panel.	Dec. 7, 8, and 9, 9 a.m., Conference Room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Dec. 7-8), Committee and Caucus Room, Ramada Inn, Rockville, Md. (Dec. 9).	Open public hearing, Dec. 7, 9 to 10 a.m.; open committee discussion, Dec. 7, 10 a.m. to 4:30 p.m.; Dec. 8 and 9, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Persons desiring to make presentations should notify the contact person before December 4, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentations.

Open Committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
6. Anti-Infective Drugs Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	Dec. 11 and 12, Conference Room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing, Dec. 11, 9 to 10 a.m.; open committee discussion, Dec. 11, 10 a.m. to 4:30 p.m., Dec. 12, 9 a.m. to 2:30 p.m.; Mary K. Bruch (HFD-140), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4310.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss the prophylactic use of systemic antimicrobials in surgical procedures; the following alternative antibiotic susceptibility discs: ticarcillin disc, minocycline disc, cephazolin disc, and cyclocillin disc; and FDA updates on the following actions: azoquinoline toxicity, neomycin publications, tetracycline-pediatric publications, and gentamicin intrathecal.

Committee name	Date, time, and place	Type of meeting and contact person
7. Gastrointestinal Drugs Advisory Committee	Dec. 12 and 13, 9 a.m., Conference Room G-H (Dec. 12), Conference Room F (Dec. 13), Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing, Dec. 12, 9 to 10 a.m.; open committee discussion, Dec. 12, 10 a.m. to 5 p.m., Dec. 13, 9 a.m. to 5 p.m.; Joan C. Standaert (HFD-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4730.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views orally or in writing, on issues pending before the Committee.

Open committee discussion. In connection with acetaminophen, the Committee will be discussing *N*-acetylcysteine for overdose; use in patients with pre-existing liver disease; incidence of liver damage at therapeutic doses; and possibility of increased risk in combination with hepatic enzyme inducers.

The Committee's discussion and conclusions regarding acetaminophen will be considered by the agency in its preparation of a tentative final monograph on OTC internal analgesic drugs. Such a monograph is being developed as part of the OTC Drug Review proceeding on OTC internal analgesic, antipyretic, and antirheumatic products. The proposed monograph for those products was published in the FEDERAL REGISTER of July 8, 1977 (42 FR 35346).

The Committee will also be discussing secretin (Kabi—pre-NDA); Chronulac as a laxative, NDA 17-884 (Merrell-National); and guidelines for Hepatotoxicity-Post-Fogarty Conference.

Committee name	Date, time, and place	Type of meeting and contact person
8. Blood and Blood Derivatives Panel	Dec. 15 and 16, 9 a.m., Room 719, Rock-wall Bldg., 11400 Rockville Pike, Rockville, Md.	Open public hearing, Dec. 15, 9 to 10 a.m.; open committee discussion, Dec. 15, 10 a.m. to 6:30 p.m., Dec. 16, 8:30 a.m. to 5 p.m.; Clay Sisk (HFB-5), 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-5455.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of biological products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Panel will discuss final editing of the Panel report and plasma fractionation products, blood grouping reagents, blood bank products and other products previously reviewed by the Panel.

Committee name	Date, time, and place	Type of meeting and contact person
9. Ophthalmic Panel	Dec. 15 and 16, Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Dec. 15), Georgia Room, Holiday Inn, Bethesda, Md. (Dec. 16).	Open public hearing, Dec. 15, 9 to 10 a.m.; open committee discussion, Dec. 15, 10 a.m. to 4:30 p.m., Dec. 16, 9 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Persons desiring to make presentations should notify the contact person before December 12, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentations.

Open committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
10. Drug Abuse Advisory Committee	Dec. 18, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing, 9 to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; Robert C. Nelson (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3800.

General function of the Committee. The Committee advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by the Department of Health, Education, and Welfare and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances and recommends actions to be taken by the Department of Health, Education, and Welfare with regard to marketing, investigation, and control of such drugs or other substances.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss a pending IND (investigational new drug) between the principal investigator and the Committee; Mazindol (Sandoz)—consideration of the sponsor's petition for removal from control; Temazepan (Sandoz)—evaluation of the abuse potential of this NDA (new drug application); and research protocol review.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this

notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, D.C., area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: November 9, 1978.

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

[FR Doc. 78-32197 Filed 11-16-78; 8:45 am]

[4110-03-M]

[Docket No. 78P-0177]

FRANK SCHOLZ X-RAY CORP.

Approval of Variance for General Operating Table Top Extension

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces the approval of a variance from the performance standard for diagnostic X-ray systems and their major components for Accessory System 1564, General Operating Table Top Extension for Image Intensification, manufactured by Frank Scholz X-Ray Corp., P.O. Box 223, Needham Heights, Mass. 02194. The manufacturer submitted a petition for the variance, and the Director of the Bureau of Radiological Health has determined that the tabletop extension can be designed to a maximum aluminum equivalent thickness of 1.5 millimeters (mm) rather than the 1.0-mm limit set by the standard and that suitable radiation protection will be provided.

DATES: The variance becomes effective December 18, 1978 and shall end December 18, 1981. Written objections and supporting information by December 18, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Joseph Wang, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Section 1020.30(n) of the performance standard for diagnostic X-ray systems and their major components (21 CFR 1020.30(n)) limits the amount of material allowable between the patient and the image receptor. For stationary tabletops, the limit, expressed as an aluminum equivalent thickness, is 1.0 millimeter. This provision in the standard assures that the maximum number of X-ray photons that have passed through the patient will be available for production of the diagnostic image.

Accessory System 1564, General Operating Table Top Extension for Image Intensificaiton, manufactured by Frank Scholz X-ray Corp., P.O. Box 223, Needham Heights, Mass. 02194, is an X-ray penetrable "diving board" type extension that permits the use of C-arm image intensifier on most operating and surgical tables. The tabletop extension is made from a sheet of ¾-inch plywood, laminated with 1/32-inch formica sheets on both surfaces. Because this tabletop extension is not movable after it has been clamped onto the host table, the manufacturer must comply with the requirements of § 1020.30(n) for a stationary tabletop.

The manufacturer's petition notes that to certify the product properly and take into account unavoidable measurement errors, the tabletop extension thickness design criterion must be somewhat less than 1.0-mm aluminum equivalence. This thickness can be achieved with a tabletop extension made from a sheet of ⅝-inch plywood, when the aluminum equivalence test is performed under a broad-beam geometry condition. However, this design leads to poorer structural stability and consequent difficulty in performing emergency procedures such as cardiac resuscitation. The petition claims that by allowing the ¾-inch plywood to be used with the product, thereby exceeding the 1.0-mm aluminum equivalence required, the manufacturer can produce a tabletop extension with sufficient safety factor for use during cardiac resuscitation. For this reason, the manufacturer has requested a variance from § 1020.30(n).

The Director agrees that the ⅝-inch plywood tabletop extension would meet the 1.0-mm aluminum equivalence required when the aluminum equivalence test is performed under a broad-beam geometry condition. However, when the aluminum equivalence measurements are properly performed under a narrow-beam geometry condition, both the ⅝-inch and ¾-inch plywood tabletop extensions would be greater than the 1.0-mm aluminum eqivalence requirement. The present 1.0-mm aluminum equivalence requirement for stationary tabletops assumes an ability to fasten the tabletop material to a rigid mechanical structure on the edges, e.g., metal side rails or posts. Because oblique fluorosocopy may require that the X-ray beam pass through the edge of the tabletop extension, the use of metal side rails on this tabletop extension would limit its clinical utility. Thus, structural and mechanical rigidity must be provided by the tabletop extension material alone. For emergency procedures such as cardiac resuscitation, a ¾-inch plywood tabletop extension is needed. An aluminum equivalence measurement for this tabletop extension under a narrow-beam geometry condition would require a maximum aluminum equivalence of 1.5 mm.

The Director has determined that even if the full 1.5-mm aluminum equivalence were used for this product, the increased radiation dose to the patient would be negligible. Less than 5 percent of an X-ray beam generated at 90 kilovolts peak or above and passed through material equivalent in thickness to the human chest is absorbed by 0.5-mm aluminum. Because the tabletop extension is designed for procedures in which it will be positioned between the patient and the image receptor only a small fraction of the time, the likely increase in patient radiation dose resulting from

the additional tabletop extension thickness requested would be minimal.

The Director agrees that the added structural stability that would be obtained is a necessary safety feature and that there should be little radiation dose increase from use of the product. In accordance with § 1010.4 (21 CFR 1010.4), the Director has concluded that the petitioner's tabletop extension is intended for a special purpose that cannot be performed or accomplished with equipment meeting all requirements of § 1020.30, but utilizes suitable means for providing radiation safety protection. Therefore, the Director has approved the requested variance from § 1020.30(n), provided general operating tabletop extensions manufactured under this variance shall have tabletop extensions whose thickness shall not exceed 1.5-mm aluminum equivalent. The variance is granted for the manufacture of a maximum of 50 product units per year.

The manufacturer has been directed to modify, in accordance with § 1010.4(d), the tags, labels, or other certification required by § 1010.2 (21 CFR 1010.2) and permanently affixed to or inscribed upon products that are marketed under this variance, to state the following:

This product complies with Variance No. 78004 effective on December 18, 1978.

The Commissioner of Food and Drugs has reviewed the potential environmental impact of this variance and has concluded that the action will not significantly affect the quality of the human environment and that an environmental impact statement is not required. A copy of the environmental impact analysis report is on file in the office of the Hearing Clerk, Food and Drug Administration.

Variance No. 78004 shall become effective on December 18, 1978, for the manufacture of 50 product units per year, and shall end December 18, 1981, unless written objections and supporting documentation, identified with Hearing Clerk Docket No. 78P-0177, are filed with the Hearing Clerk, Food and Drug Administration address above, on or before December 18, 1978, requesting that the variance be modified or not granted. Upon receipt of such objections and supporting documentation, the agency will stay the effective date of the variance until the Director, Bureau of Radiological Health, rules on them. Under § 1010.4(c)(3), the applicant shall be notified of the stay by certified mail, and a notice of the stay shall be published in the FEDERAL REGISTER. The ruling on the objections shall be made within 60 days, shall be published in the FEDERAL REGISTER, and shall constitute final agency action subject to judicial review under section 358(d) (42 U.S.C. 263f(d)) of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968.

The application for this variance and all related correspondence, except information covered by the confidentiality provisions of section 360A(e) of the act (42 U.S.C. 263i(e)), have been placed on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Dated: November 8, 1978.

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

[FR Doc. 78-32199 Filed 11-16-78; 8:45 am]

[4110-03-M]

PANEL ON REVIEW OF CONTRACEPTIVE AND OTHER VAGINAL DRUG PRODUCTS

Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Contraceptive and Other Vaginal Drug Products by the Secretary of Health, Education, and Welfare.

DATE: Authority for this committee will expire on December 31, 1978, unless the Secretary formally determines that continuance is in the public interest.

FOR FURTHER INFORMATION CONTACT:

Richard L. Schmidt, Committee Management Officer (HFA-27), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2765.

Dated: November 9, 1978.

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

[FR Doc. 78-32198 Filed 11-16-78; 8:45 am]

[4110-03-M]

[Docket Nos. 77N-0230, 77N-0231, 77N-0316, and 77N-0317]

PENICILLIN AND TETRACYCLINE IN ANIMAL FEEDS

Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document gives advance notice of a public hearing on the proposed withdrawal of approval of new animal drug applications for premixes containing penicillin and tetracycline.

FOR FURTHER INFORMATION CONTACT:

Richard T. Hunt, Compliance Regulations Policy Staff (HFC-10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 30, 1977 (42 FR 43772), the Director of the Bureau of Veterinary Medicine issued a notice of opportunity for hearing on a proposal to withdraw approval of certain new animal drug applications (NADA's) for penicillin-containing premixes intended for use in animal feed on the grounds that: (1) New evidence shows that the penicillin-containing products have not been shown to be safe for subtherapeutic use as required by section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)(1)(B)) and § 558.15 (21 CFR 558.15); (2) the applicants have failed to establish and maintain records and make reports as required by section 512(e)(2)(A) of the act (21 U.S.C. 360b(e)(2)(A)) and § 558.15; and (3) new evidence shows that there is a lack of substantial evidence that penicillin-containing premixes are effective for therapeutic uses under section 512(e)(1)(C) of the act (21 U.S.C. 360b(e)(1)(C)).

On October 21, 1977 (42 FR 56264), the Director issued a similar notice of opportunity for hearing on a proposal to withdraw approval of certain NADA's for tetracycline (chlortetracycline and oxytetracycline)-containing premixes intended for use in animal feed on the same grounds.

In response to these notices, approximately 20 drug firms, agricultural organizations, and individuals requested hearings.

The Commissioner of Food and Drugs announces, therefore, that there will be a formal evidentiary public hearing on these proposals. In accordance with § 12.35 (21 CFR 12.35), a notice of hearing will be published in the FEDERAL REGISTER as soon

as practicable. In the meantime, participants in the hearing are encouraged to begin preparation of the material required to be disclosed under § 12.85 (21 CFR 12.85).

The evidentiary hearing will be open to the public. If, however, the Commissioner finds that portions of the NADA's that serve as the basis for the hearing contain information entitled to protection as a trade secret, that part of the hearing involving those portions will not be public, unless the respondents so specify.

Dated: November 9, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-32045 Filed 11-9-78; 11:31 am]

[4110-83-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

AGENDA PLANNING SUBCOMMITTEE OF THE NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1978:

Name: Agenda Planning Subcommittee of the National Council on Health Planning and Development.

Date and time: December 5, 1978, 10:30 a.m. to 2 p.m.

Place: HEW North Building, Room 1137, 330 Independence Avenue SW., Washington, D.C. 20201.

Open for entire meeting.

Purpose: The objectives of the Agenda Planning Subcommittee are to: (1) Assist the chairperson in planning the order and timing of agenda topics for full Council consideration and action to assure that the Secretary will receive advice and/or recommendations on each of its three areas of functional responsibilities under section 1503(a) in an appropriate time and manner; (2) coordinate information about and among subcommittee activities and plans; and (3) provide preliminary review of proposed changes in Council operations.

Agenda: The subcommittee will assist the chairperson in planning the order and timing of agenda topics for full Council consideration for the January 12, 1979, meeting; coordinate information about and among subcommittee activities and plans; and provide preliminary review of the Council budget.

Anyone requiring information regarding the subject subcommittee should contact Mrs. S. Judy Silsbee, Executive Secretary, National Council on Health Planning and Development, Room 10-27, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7175.

Agenda items are subject to change as priorities dictate.

Dated: November 13, 1978.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-32304 Filed 11-16-78; 8:45 am]

[4110-83-M]

NATIONAL ADVISORY COUNCIL ON HEALTH PROFESSIONS EDUCATION

Filing of Annual Report

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the annual report for the following Health Resources Administration Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on Health Professions Education.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9 a.m. and 4:30 p.m., at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, telephone 202-245-6791. Copies may be obtained from Mr. Robert L. Belsley, Bureau of Health Manpower, Room 4-27, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-6564.

Dated: November 13, 1978.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-32303 Filed 11-16-78; 8:45 am]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF 4'-(CHLOROACETYL)-ACETANILIDE FOR POSSIBLE CARCINOGENICITY

Availability

4'-(Chloroacetyl)-acetanilide (CAS 140-49-8) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of 4'-(chloroacetyl)-acetanilide was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an intermediate in the manufacture of dyes and drugs. 4'-(Chloroacetyl)-acetanilide was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, 4'-(chloroacetyl)-acetanilide was not carcinogenic when administered in the diet to Fischer 344 rats or B6C3F1 mice of either sex.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 6, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-31766 Filed 11-16-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF 2,4-DIMETHOXYANILINE HYDROCHLORIDE FOR POSSIBLE CARCINOGENICITY

Availability

2,4-Dimethoxyaniline hydrochloride (CAS 54150-69-5) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of 2,4-dimethoxyaniline hydrochloride was conducted using Fischer 344 rats and B6C3F1 mice. 2,4-Dimethoxyaniline hydrochloride was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay there was no convincing evidence for the carcinogenicity of 2,4-dimethoxyaniline hydrochloride in Fischer 344 rats or B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 6, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-31767 Filed 11-16-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF N,N'-DIETHYLTHIOUREA FOR POSSIBLE CARCINOGENICITY

Availability

N,N'-Diethylthiourea (CAS 105-55-5) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of N,N'-diethylthiourea was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an anticorrosion agent. N,N'-Diethylthiourea was administered in the feed, at either of two concentrations, to groups of 50 males and 50 females of each species.

Under the conditions of this bioassay, N,N'-diethylthiourea was carcinogenic to Fischer 344 rats, causing follicular-cell carcinomas of the thyroid in males and follicular-cell neoplasms of the thyroid in females. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 6, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-31768 Filed 11-16-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-649; FDAA-3067-EM]

CALIFORNIA

Emergency Declaration and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential Declaration of an emergency for the State of California (FDAA-3067-EM), dated October 29, 1978, and related determinations.

DATED: October 29, 1978.

FOR FURTHER INFORMATION CONTACT:

A. C. Reid, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7325.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143), notice is hereby given that on October 29, 1978, the President declared an emergency as follows:

I have determined that the impact of brush fires on the State of California is of sufficient severity and magnitude to warrant a declaration of an emergency under Pub. L. 93-288. I therefore declare that such an emergency exists in the State of California.

Notice is hereby given that, pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert C. Stevens of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of California to have been adversely affected by this declared emergency:

The county of Los Angeles.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 78-32394 Filed 11-16-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. N-78-899]

NATIONAL MOBILE HOME ADVISORY COUNCIL

AGENCY: Assistant Secretary for NVACP, HUD.

ACTION: Notice of Appointment of Members of National Mobile Home Advisory Council and Announcement of National Mobile Home Advisory Council Meeting.

SUMMARY: This notice announces the appointment of 12 members of the National Mobile Home Advisory Council. Their terms are for 2 years, ending on August 21, 1980. The terms of the other 12 members on the Council will expire on August 21, 1979. It also announces a meeting of the Advisory Council.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Aubrey Edwards, Special Assistant to the Deputy Assistant Secretary for Regulatory Functions; Mobile Home Standards Division; Office of Neighborhoods, Voluntary Associations and Consumer Protection; Department of Housing and Urban Development; 451 7th Street SW., Washington, D.C. 20410, telephone 202-755-5597.

SUPPLEMENTARY INFORMATION: The National Mobile Home Construction and Safety Standards Act of 1974 (Title VI of the Housing and Community Development Act of 1974) authorizes the Secretary of the Department of Housing and Urban Development to establish Federal construction and safety standards for mobile homes. It provides for the appointment by the Secretary of a National Mobile Home Advisory Council composed of 24 members. The membership of the Council is selected equally from each of the following categories: (a) Consumer organizations, community organizations, and recognized consumer leaders; (b) the mobile home industry and related groups, including at least one representative of small business; and (c) government agencies including Federal, State, and local governments. The purpose of the National Mobile Home Advisory Council is to advise the Department to the extent feasible prior to the establishment, amendment or revocation of any mobile home construction and safety standard.

Sections 6 (a) and (b) of the Charter of the National Mobile Home Advisory Council enacted pursuant to section 9(c) of the Federal Advisory Committee Act stipulates that members are appointed to serve 2-year terms which expire on August 21 of the second year of the member's appointment.

Nominations for the expiring terms of August 21, 1977 were requested at 42 FR 36038 on July 13, 1977. In response to that request 366 persons were nominated. The August 21, 1978 nominees were also drawn from this list of 366 persons plus some other nominations we have recently re-

ceived. Qualifications were evaluated and the 12 appointments were made from these groups of nominees.

The following is a discussion of the major considerations that led to the Department's selections. The Department sought to achieve geographical balance according to the size of the mobile home industry and the number of homes in use in each region of the country. The Department also tried to appoint persons who would offer the Council a broad spectrum of views.

The following members were previously appointed and will continue to serve on the Council until August 21, 1979:

COMMUNITY AND CONSUMER REPRESENTATIVES

Patricia Kish, Vice Chairperson of Mobile Home Advisory Board, California.

Larry Landis, Associate Professor, Drake University, Iowa.

Manual Lujan, Mobile Home Owner, Clovis, Calif.

Position Open—a member will be appointed.

GOVERNMENT OFFICIALS

Daniel Baird, Mobile Home Plant Inspector, Office of the State Fire Marshal, Louisiana.

Orville Cummings, Deputy Chief, Bureau of Mobile Home Construction, Department of Highway Safety and Motor Vehicles, Florida.

Richard I. Hauck, Section Chief, Manufactured Structures Section, Minnesota Department of Administration.

E. R. Jones, Director, Division of Mobile and Manufactured Housing Standards, State of Arizona.

INDUSTRY REPRESENTATIVES

Louis M. Balius, Director of Consumer and Legal Affairs for Champion Home Builders Co., Michigan.

Donald A. Barrow, Vice President of Product Development, Skyline Corp., Elkhart, Ind.

James Dyer, President of the New Jersey Mobile Home Association, New Jersey.

Paul Kay, General Sales Manager, Wood Products, Weyerhaeuser Co., Washington.

Pursuant to the requirements of section 603 of Title VI of the Housing and Community Development Act of 1974 (Pub. L. 92-383) and the Federal Advisory Committee Act of 1972 (Pub. L. 92-463), the following persons are appointed to serve terms on the National Mobile Home Advisory Council, which will expire on August 21, 1980:

COMMUNITY AND CONSUMER REPRESENTATIVES

Timothy Carlyle, Chairman, Orange County Mobile Home Park Commission, Calif.

Suzanne Lindamood, Assistant Professor, Auburn University, Ala.

Carol B. Meeks, Assistant Professor, New York State College of Human Ecology, N.Y.

William White, Executive Director, Federation of Mobile Home Owners of Florida, Inc., Fla.

GOVERNMENT OFFICIALS

Fred Jolly, Director, Housing and Environmental Health, Nebr.

Robert Leggett, Sanitarian, State Health Department, Iowa.

Leah B. McCartney, Member Public Service Commission, Mo.

John Steele, Administrator, Mobile Home Division, Department of Labor and Standards, Tex.

INDUSTRY REPRESENTATIVES

Kenneth C. Coffing, Director, Quality Control, National Homes, Ind.

John F. DePledge, Product Manager, Prefinished Paneling, Champion Building Products, Conn.

Raymond F. Tucker, Director, Engineering Codes and Standards, Guerdon Industries, Ky.

Vincent J. Wanzek, Vice President, Research and Engineering, Fleetwood Enterprises, Inc., Calif.

In accordance with section 605 of Title VI of the Housing and Community Development Act of 1974 (Pub. L. 93-383) and section 10(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463) announcement is made of the following meetings:

The National Mobile Home Advisory Council will meet on December 4, 5, and 6, 1978. The meetings are open to the public and will convene at 9 a.m. on Monday, December 4, 1978 at the Nevada Room, 6th Floor, 215 Fremont Street, San Francisco, Calif. 94105.

Among the topics planned for discussion are the following:

A. Formaldehyde Vapor;

B. Wind Research;

C. Recommendations on Lighting and Associated Wiring;

D. Title III—Energy Conservation/Thermal Envelope Standards;

E. Energy Conservation—Heating and Cooling Systems;

F. Emergency Window and Egress Device Requirements;

G. Discussion of Interim Rules;

H. Proposals to Eliminate Problems Encountered Under Extreme Environmental Conditions;

I. Applicability of Reference Standards;

J. Fire Presentation;

K. Transportation Safety;

L. Transportation Durability;

M. Recommendation on Proposed Recreational Vehicle Regulation;

N. Private Agency Requirements for Mobile Homes; and

O. Proposed Rule on Copper Clad Aluminum Wiring.

The National Mobile Home Advisory Council will meet again in early May, 1979. The exact dates and the agenda for this meeting will be published 30 days before the scheduled meetings. The May meetings will be held in the Departmental Conference Room (Room 10233) located at the Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

(Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d) and section 605, National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5404.)

Issued at Washington, D.C., November 14, 1978.

GENO C. BARONI,
Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 78-32524 Filed 11-16-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M 42170]

MONTANA

Application

NOVEMBER 7, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C.), Continental Pipe Line Co. has applied for one 3-inch crude oil pipeline across the following land:

PRINCIPAL MERIDIAN, MONTANA

T. 8 N., R. 24 E.,
Sec. 1, Lots 4 and 5.

This pipeline will convey crude oil across 0.31 mile of public lands in Musselshell County, Mont.

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, Bank Electric Building, Drawer 1160, Lewistown, Mont. 59457.

ROLAND F. LEE,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32312 Filed 11-16-78; 8:45 am]

[4310-84-M]

[NM 35236]

NEW MEXICO

Application

NOVEMBER 6, 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 4-inch natural gas pipeline and related facilities right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 27 E.,
Sec. 32, S½NE¼ and N½SE¼.

This pipeline will convey natural gas across 0.40 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.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32313 Filed 11-16-78; 8:45 am]

[4310-84-M]

[U-32083]

COAL LEASE OFFERING BY SEALED BID

NOVEMBER 6, 1978.

U.S. Department of the Interior, Bureau of Land Management, Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111. Notice is hereby given that the lands hereinafter described in Carbon County, Utah, will be offered for coal lease by sealed bid of $25 per acre minimum bonus to the qualified bidder of the highest cash amount per acre or fraction thereof. The sale will be held at 2 p.m., m.s.t., December 5, 1978, in room 1408 of the University Club Building. Sealed bids may not be modified or withdrawn unless such modification or withdrawal is received before the date, time, and place set for the opening of such bids. The successful bidder is obligated to pay for the newspaper publications of this notice.

LAND OFFERED

The following-described lands are located in Carbon County, Utah approximately 24 miles east of the community of Price, Utah:

T. 14 S., R. 14 E., SLM, Utah
Sec. 6, lot 6, NE¼SW¼;
Sec. 8, SW¼, SW¼SE¼;
Sec. 17, N½NW¼, SW¼NW¼, N½SE¼.
Containing 476.41 acres.

PUBLIC COMMENTS

The public is invited to submit written comments on the fair market value of the coal to be leased. Approximately 2,617,500 tons of recoverable coal will be mined from the lands to be leased. These lands are expected to be underlain by two minable coal beds, which are the Upper and Lower Sunnyside Seams, with an average total thickness projected over the entire leasehold of about 12 feet; however, only the upper coal bed is considered recoverable at this time because the seams are too close together over much of the tract for profitable mining of both. New developments in mining techniques may allow recovery of lower seam coal sometime in the future. The coal in both seams averages about 4.2 percent moisture, 38.5 percent volatile matter, 52.0 percent fixed carbon, 5.3 percent ash, 1.3 percent sulfur and 13,000 Btu per pound heat content. Written comments on the fair market value will be received by the Bureau of Land Management, Utah State Office, University Club Building, 136 East South Temple, salt Lake City, Utah 84111. A copy of the written comments should also be submitted to the Office of the Conservation Manager, Geological Survey, Box 25046, Denver Federal Center, Denver, Colo. 80225. Written comments must be received by November 21, 1978 in order to be considered. All written comments submitted by the public on fair market value, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection.

RENTAL AND ROYALTY

A lease issued as a result of this offer will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States at the rate of 9.2 percent of the value of coal mined by underground methods; but not less than $3.22 per ton of 2,000 pounds shall be due on coal extracted by the lessee from the leased lands. The value of the coal shall be determined in accordance with 30 CFR 211.63.

DETAILED STATEMENT

A detailed statement of the terms and conditions of the lease offer, how and where to submit sealed bids, and the obligations of the high bidder to pay for publication of this notice may be obtained from the Bureau of Land Management, Utah State Office.

WILLIAM G. LEAVELL,
Associate State Director.

[FR Doc. 78-32315 Filed 11-16-78; 8:45 am]

[4310-84-M]

DISCUSSION OF THE BAKER RESOURCE AREA MANAGEMENT FRAMEWORK PLAN AND ROADLESS AREA INVENTORY

Public Meetings

Notice is hereby given that public meetings will be held at the locations and on the dates indicated below to discuss and receive information to: (1) Update the 1974 edition of the Baker Resource Area land use plan which covers the public lands located in Baker County, Oreg. and (2) Review and provide information pertaining to the districts preliminary roadless area inventory on the public lands within the entire Baker District.

1. January 9, 1979, in Halfway, Oreg., High School Library: 7 p.m.
2. January 10, 1979, in Huntington, Oreg., High School Cafeteria: 7 p.m.
3. January 11, 1979, in Baker, Oreg., Community Center: 7 p.m.
4. January 17, 1979, in Enterprise, Oreg., Clover Leaf Hall: 7 p.m.

The meetings at Halfway, Huntington and Baker will be divided into two parts. Roadless areas will be discussed at 7 p.m. and the land use plan update at 8 p.m. The meeting at Enterprise will be concerned with only the roadless area inventory but comments on the Baker Resource Area land use plan will be received.

Written comments concerning either the land use plan or roadless area inventory are welcome and should be sent to the Bureau of Land Management, Box 987, Baker, Oreg. 97814, by January 19, 1979.

The update of the Baker Resource Area land use plan preceeds the preparation of the Ironside Grazing Environmental Statement. The roadless area inventory is in preparation for the Bureau's wilderness study on lands within the Baker district.

GORDON R. STAKER,
District Manager.

NOVEMBER 9, 1978.

[FR Doc. 78-32314 Filed 11-16-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

MID-ATLANTIC OUTER CONTINENTAL SHELF

Proposed Oil and Gas Lease Sale No. 49

In connection with oil and gas leasing on the Outer Continental Shelf, the Secretary of the Interior has established a policy relating to sale notices to further and enhance consultation with the affected coastal states. That policy includes providing the affected states with the opportunity to review the sale notice in proposed form prior to its publication in final form in the FEDERAL REGISTER. The following is a proposed sale notice for planned Sale No. 49, on the Mid-Atlantic Outer Continental Shelf, which is being sent to the Governors of affected States for their review. This notice is hereby published as a matter of information to the public.

Dated: November 14, 1978.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

Approved:

CECIL D. ANDRUS,
Secretary of the Interior.

PROPOSED SALE NOTICE

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343), as amended, and the regulations issued thereunder (43 CFR Part 3300).

2. *Filing of bids.* Sealed bids will be received by the Manager, New York Outer Continental Shelf (OCS) Office, Bureau of Land Management, 26 Federal Plaza, Suite 32-120, New York, N.Y. 10007. Bids may be delivered, either by mail or in person, to the above address until 4:30 p.m., e.s.t., February —, 1979; or by personal delivery to (sale site in New York City to be announced) between the hours of 8:30 a.m., e.s.t., and 9:30 a.m., e.s.t., February —, 1979. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., e.s.t., February —, 1979. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 43 FR 49856, October 25, 1978.

3. *Method of bidding.* A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., e.s.t., February —, 1979," must be submitted for each tract. A suggested form appears in paragraph 17 of this notice. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, certified check, or money order payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 13 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3302. The suggested form for this statement to be used in joint bids appears in paragraph 18. Other documents may be required of bidders under 43 CFR 3302.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bonus bidding with a fixed sliding scale royalty.* Bids on tracts 49-1, 49-2, 49-3, 49-4, 49-5, 49-6, 49-7, 49-8, 49-9, 49-10, 49-11, 49-13, 49-15, 49-16, 49-17, 49-18, 49-38, 49-39, 49-43, 49-46, 49-84, 49-85, 49-86, 49-87, 49-88, 49-89, 49-90, 49-91, 49-92, 49-93, 49-94, 49-95, 49-96, 49-97, 49-98, 49-99, 49-101, 49-102, 49-104, 49-105, 49-106, 49-107, 49-108, 49-109, 49-110, 49-111, 49-112, 49-113, 49-114, 49-115, 49-116, 49-118, 49-119, 49-120, 49-123, 49-124, 49-125, and 49-126, must be submitted on a cash bonus bid basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the percent royalty due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64 and section 6(b) of the lease form.

The fixed sliding scale formula operates in the following way: When the quarterly value of production, adjusted for inflation, is less than $15.929026 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $15.929026 million, but less than or equal to $3423.822697 million, the royalty percent due on the unadjusted value or amount of production is given by

$$R_j = b[\mathrm{Ln}\ (V_j/S)]$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 9.0

Ln = natural logarithm

V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

When the adjusted quarterly value of production is greater than $3423.822697 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be rounded to five decimal places (for example, 18.59859 percent). This calculation will incorporate the adjusted quarterly value of production, V_j, in milions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 19.743026 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

[4310-84-C]

Figure 1
Form of the Sliding Royalty Schedule

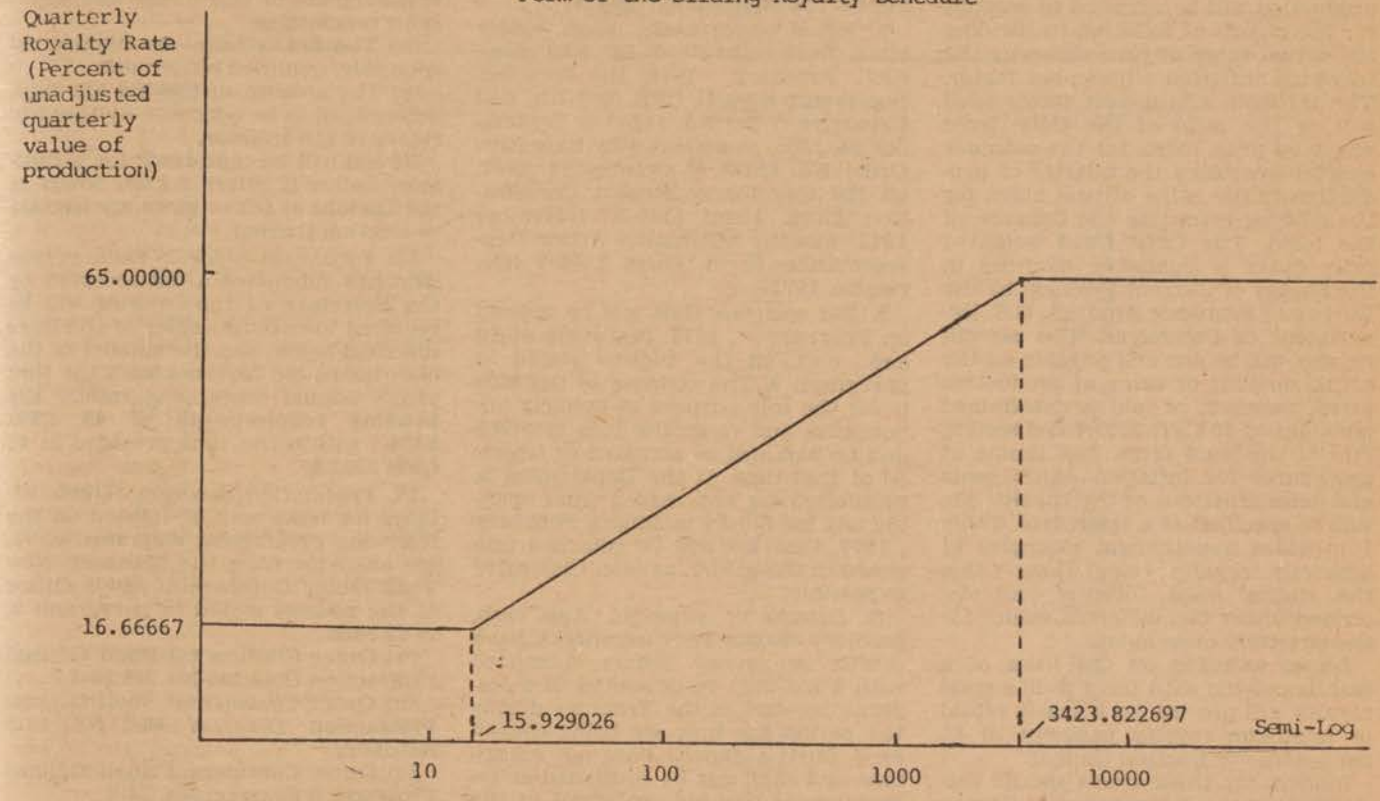


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(1) Actual Value of Quarterly Production (Millions of Dollars)	(2) GNP Fixed Weighted Price Index	(3) Inflation Factor[a]	(4) Adjusted Value of Quarterly Production[b] (V_j, Millions of $)	(5) Percent Royalty Rate (R_j)	(6) Royalty Payment[c] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	19.56141	5.868423
90.000000	200.0	4/3	67.500000	29.66253	26.696277
270.000000	200.0	4/3	202.500000	39.55004	106.785108
810.000000	200.0	4/3	607.500000	49.43755	400.444155
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	17.76673	5.330019
90.000000	250.0	5/3	54.000000	27.65424	24.888816
270.000000	250.0	5/3	162.000000	37.54175	101.362725
810.000000	250.0	5/3	486.000000	47.42926	384.177006

a Column (2) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

b Column (1) divided by Inflation Factor.

c Column (1) times Column (5).

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64 and section 6(b) of the lease form. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

Leases awarded on the basis of a cash bonus bid with fixed sliding scale royalty will provide for a yearly rental or minimum royalty payment of $8 per hectare or fraction thereof.

Bidders for these tracts should recognize that the Department of Energy is authorized, under section 302(b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

5. *Bonus bidding with a fixed constant royalty.* Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16⅔ percent. Leases which may be issued will provide for a yearly rental payment or minimum royalty payment of $8 per hectare or fraction thereof. A suggested cash bonus bid form is shown in paragraph 17.

6. *Equal opportunity.* Each bidder must have submitted by 9:30 a.m., e.s.t., February 1979, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

7. *Bid opening.* Bids will be opened on February , 1979, beginning at 10 a.m., e.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, February , 1979, that bid will be returned unopened to the bidder, as soon thereafter as possible.

8. *Deposit of payment.* Any cash, cashier's checks, certified checks, bank drafts, or money orders submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

9. *Withdrawal of tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

10. *Acceptance or rejection of bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is from the highest responsible, qualified bidder; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $62 or more per hectare or fraction thereof.

11. *Successful bidders.* Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR 3304.1 within the time provided in 43 CFR 3302.5.

12. *Protraction diagram.* Tracts offered for lease may be located on the following protraction diagrams which are available from the Manager, New York Outer Continental Shelf Office at the address stated in paragraph 2, at $2 each.

(a) Outer Continental Shelf Official Protraction Diagram No. NJ 18-3.

(b) Outer Continental Shelf Official Protraction Diagram No. NJ 18-5 Salisbury.

(c) Outer Continental Shelf Official Protraction Diagram No. 18-6.

(d) Outer Continental Shelf Official Protraction Diagram No. NJ 18-8 Chincoteague.

13. *Tract descriptions.* The tracts offered for bid are as follows:

NOTE.—There are gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement are not to be included in this notice.

[4310-84-C]

OCS OFFICIAL PROTRACTION DIAGRAM NO. NJ 18-3
(Approved October 31, 1974)

Tract	Block	Description	Hectares
49-1	163	All	2304
49-2	164	All	2304
49-3	206	All	2304
49-4	207	All	2304
49-5	208	All	2304
49-6	247	All	2304
49-7	248	All	2304
49-8	250	All	2304
49-9	251	All	2304
49-10	252	All	2304
49-11	289	All	2304
49-12	330	All	2304
49-13	333	All	2304
49-14	374	All	2304
49-15	376	All	2304
49-16	377	All	2304
49-17	378	All	2304
49-18	420	All	2304
49-19	639	All	2304
49-20	721	All	2304
49-21	722	All	2304
49-22	724	All	2304
49-23	726	All	2304
49-24	732	All	2304
49-25	765	All	2304
49-26	766	All	2304
49-27	767	All	2304
49-28	770	All	2304
49-29	773	All	2304
49-30	774	All	2304
49-33	809	All	2304
49-34	810	All	2304
49-35	811	All	2304
49-38	854	All	2304
49-39	856	All	2304
49-43	898	All	2304
49-46	943	All	2304
49-47	946	All	2304
49-51	989	All	2304

OCS OFFICIAL PROTRACTON DIAGRAM NO. NJ 18-5 SALISBURY
(Approved October 31, 1974)

Tract	Block	Description	Hectares
49-55	1009	All	2304

OCS OFFICIAL PROTRACTION DIAGRAM NO. NJ 18-6
(Approved October 31, 1974)

Tract	Block	Description	Hectares
49-56	20	All	2304
49-57	21	All	2304
49-58	63	All	2304
49-59	64	All	2304
49-61	98	All	2304
49-62	102	All	2304
49-63	103	All	2304
49-64	107	All	2304
49-66	140	All	2304
49-67	141	All	2304
49-68	146	All	2304
49-69	147	All	2304
49-70	149	All	2304
49-71	150	All	2304
49-72	151	All	2304
49-73	183	All	2304
49-74	186	All	2304
49-75	188	All	2304
49-76	191	All	2304
49-77	192	All	2304
49-78	193	All	2304
49-79	227	All	2304
49-80	233	All	2304
49-81	234	All	2304
49-82	270	All	2304
49-83	278	All	2304
49-84	402	All	2304
49-85	403	All	2304
49-86	404	All	2304
49-87	405	All	2304
49-88	449	All	2304
49-89	450	All	2304
49-90	451	All	2304

OCS OFFICIAL PROTRACTION DIAGRAM NO. NJ 18-6 (Cont'd.)
(Approved October 31, 1974)

Tract	Block	Description	Hectares
49-91	491	All	2304
49-92	493	All	2304
49-93	494	All	2304
49-94	495	All	2304
49-95	534	All	2304
49-96	535	All	2304
49-97	537	All	2304
49-98	538	All	2304
49-99	539	All	2304
49-101	581	All	2304
49-102	582	All	2304
49-104	623	All	2304
49-105	626	All	2304
49-106	665	All	2304
49-107	666	All	2304
49-108	667	All	2304
49-109	668	All	2304
49-110	709	All	2304
49-111	710	All	2304
49-112	711	All	2304
49-113	751	All	2304
49-114	752	All	2304
49-115	753	All	2304
49-116	754	All	2304
49-118	795	All	2304
49-119	796	All	2304
49-120	797	All	2304
49-123	837	All	2304
49-124	838	All	2304
49-125	839	All	2304
49-126	840	All	2304
49-132	969	All	2304

OCS OFFICIAL PROTRACTION DIAGRAM NO. NJ 18-8 CHINCOTEAGUE
(Approved December 2, 1976)

Tract	Block	Description	Hectares
49-133	40	All	2304
49-134	41	All	2304
49-135	84	All	2304
49-136	85	All	2304

14. *Lease terms and stipulations.* All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued will be on Form 3300-1 (September 1978), available from the Manager, New York Outer Continental Shelf Office, at the address stated in paragraph 2. Section 6 of the lease will be amended for tracts offered on a cash bonus basis with a fixed sliding scale royalty, listed in paragraph 4, as follows:

Sec. 6 *Royalty on production.* (a) To pay the lessor a royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than $15.929026 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $15.929026 million, but less then or equal to $3423.822697 million, the royalty percent due on the unadjusted value or amount of production is given by

$$R_j = b[\text{Ln}\ (V_j/S)]$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j
b = 9.0
Ln = natural logarithm
V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars
S = 2.5

When the adjusted quarterly value of production is greater than $3423.822697 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be rounded to five decimal places (for example, 18.59859 percent). This calculation will incorporate the adjusted quarterly value of production, V^j, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 19.743026 millions of dollars) * * *

Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations the term Supervisor refers to the Atlantic Area Oil and Gas Supervisor for Operations of the Geological Survey and the term Manager refers to the Manager of the New York OCS Office of the Bureau of Land Management.

STIPULATON NO. 1

If the Supervisor having reason to believe that a site, structure or object of historical or archeological significance hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource thay may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural anc cultural environmental data shall be examined by a qualified marine survey archeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archeologist shall be submitted by the lessee to the Supervisor and to the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) Locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archeological investigation conducted by a qualified marine survey archeologist or underwater archeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archeologist or underwater archeologist shall be submitted to the Supervisor and the Manager for their review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrent protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

STIPULATION NO. 2

At his discretion, the Supervisor may require the lessee to conduct environmental surveys, as approved by the Supervisor, to determine the extent and composition of biological populations or habitats which might require additional protective measures. The Supervisor shall provide written notice to the lessee of his decision to require such surveys. The areal extent of any surveys required will be determined by the Supervisor on a case-by-case basis.

Based upon results of required surveys, the Supervisor may require the lessee to (1) relocate the site of operations so as not to affect adversely the significant biological populations or habitats deserving protection; or (2) modify operations in such a way as not to affect adversely the significant biological populations or habitats deserving protection; or (3) establish to the satisfaction of the Supervisor that such operations will not adversely affect the significant biological populations or habitats, deserving protection.

The lessee shall submit all data obtained in the course of such surveys to the Supervisor, with the locational information for drilling or other activity. The lessee may take no action that might result in any effect on the biological populations or habitats until the Supervisor provides written directions to the lessee, with regard to permissible actions.

In the event that important biological populations or habitats are identified subsequent to commencement of operations, the lessee shall make every reasonable effort to preserve and protect all biological populations and habitats within the lease area, until the Supervisor provides written instructions to the lessee with regard to the biological populations or habitats identified.

STIPULATION NO. 3

Pipelines will be required, (1) if pipeline rights-of-way can be determined and obtained, (2) if laying such pipelines is technically feasible and environmentally preferable, and (3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the intergovernmental planning program for assessment and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local government and industry. Where feasible and environmentally preferable, all pipelines, including both flow lines and gathering lines for oil and gas, shall be buried to a depth suitable for adequate protection from water currents, sand waves, storm scouring, fisheries trawling gear, and other factors as determined on a case-by-case basis.

Following the completion of pipeline installation, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Supervisor. Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels pursuant to the Ports and Waterways Safety Act of 1972, as amended (42 U.S.C. 391a).

STIPULATION NO. 4

Drilling cutting and drilling muds shall be disposed of by shunting the material through a downpipe to a depth of 20-50 feet below the ocean surface or by transporting these materials to pre-selected disposal sites approved by the Supervisor, and the Environmental Protection Agency. Based on the composition of produced formation waters and the site-specific environmental condi-

tions, the Supervisor may require reinjection of such formation waters.

STIUPLATION No. 5

(To be included only in leases resulting from this sale for portions of tracts 49-22, NE¼SE¼; 49-28, SE¼; and 49-29, SE¼NW¼.)

Before operations may proceed on portions of these tracts, the lessee must demonstrate to the Supervisor's satisfaction that a particular hazardous accumulation of shallow gas does not exist, or that drilling plans can be designed to assure safe operations in the area.

STIPULATION No. 6

(To be included only in leases resulting from this sale for portions of tracts: 49-29, S½SE¼; 49-30, S½, NE¼, SE¼NW¼; 49-51, S½, NE¼, S½NW¼, NE¼NW¼; 49-56, SE¼, S½NE¼; 49-58, E½; 49-64, S½, NE¼, SE¼NW¼; 49-70, S½, S½NE¼; 49-71, S½, NE¼, S½NW¼; 49-76, S½, S½NE¼; 49-80, S½SE¼, NE¼SE¼; 49-81, S½, NE¼, S½NW¼, NE¼NW¼; 49-88, SE¼SW¼; 49-92, W½; 49-94, E½SE¼; 49-96, SE¼, SE¼NE¼; 49-97, W½; 49-98, SE¼SE¼; 49-99, S½, NE¼, SE¼NW¼; 49-101, S½, NW¼; 49-102, S½, NE¼, S½NW¼; 49-104, E½NE¼, E½W¼NE¼; 49-107, SE¼SE¼; 49-108, S½, S½NE¼, SE¼NW¼; 49-111, E½, SE¼SW¼; 49-113, E½; 49-115, E½SE¼, SE¼NE¼; 49-118, W½; 49-119, S½SE¼; 49-120, S½, NE¼; 49-124, E½; 49-125, S½, NW¼; 49-126, S½, NE¼, E½NW¼, SW¼NW¼; 49-132, E½SE¼; 49-135, SE¼SE¼; AND 49-136, S½, NE¼.)

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas will not be allowed within these areas unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, and wellheads can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate oil exploration for and development of oil or gas be performed from locations outside of the area of unstable sediments, either within or outside of the tract.

STIPULATION No. 7

(To be included only in leases resulting from this sale for tracts 49-24, 49-47, 49-57, 49-59, 49-72, 49-77, 49-78, 49-83, 49-105, 49-109, 49-112, and 49-116.)

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas will not be allowed within these areas unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing and wellheads can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate all exploration for and development of oil or gas be performed from locations off these tracts and oiutside of the area of unstable sediments.

STIPULATION No. 8

Preface: This stipulation applies to those tracts located in naval fleet operating areas. The tracts affected are listed with the appropriate naval geographical area coordinator.

Tracts 49-1, 49-2, 49-3, 49-4, 49-5, 49-6, 49-7, 49-8, 49-9, and 49-10: Narragansett Bay OPAREA. Contact Commander, Submarine Squadron Two, Naval Submarine Base, New London, Conn.

Tracts 49-20, 49-21, 49-22, 49-25, 49-26, 49-27, 49-33, 49-34, 49-35, 49-38, 49-39, 49-43, 49-46, 49-47, 49-51, 49-56, 49-57, 49-58, 49-59, 49-61, 49-62, 49-63, 49-64, 49-66, 49-67, 49-68, 49-69, 49-70, 49-71, 49-72, 49-73, 49-74, 49-75, 49-76, 49-77, 49-78, 49-79, 49-80, 49-81, 49-82, 49-83, 49-84, 49-85, 49-86, 49-87, 49-88, 49-89, 49-90, 49-91, 49-92, 49-93, 49-94, 49-96, 49-97, 49-98, 49-99, 49-101, 49-102, and 49-105: Atlantic City OPAREA. Contact Commanding Officer, Naval Air Engineering Center, Lakehurst, N.J.

Tracts 49-55, 49-123, 49-124, and 49-132: Patuxent River OPAREA. Contact Commander, Naval Air Test Center, Patuxent River, Md.

Tracts 49-133, 49-134, 49-135, and 49-136: Virginia Capes OPAREA. Contact Commanding Officer, Fleet Area Control and Surveillance Facility Naval Air Station, Oceana, Va.

(a) Whether or not compensation for such damage or injury might be due under a theory of strict liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by or on behalf of the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees being conducted as a part of, or in connection with, the programs and activities of the commander of the appropriate military installation, listed in the Preface. The lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees.

Notwithstanding any limitation of the lessee's liability in Sec, 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against, all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) The lessee, when operating or causing to be operated on its behalf boat or aircraft traffic into the individual designated warning areas, shall enter into an agreement with the commander of the appropriate onshore military installation, listed in the Preface, utilizing an individual designated warning area prior to commencing such traffic. Such agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

STIPULATION No. 9

(To be included only in leases resulting from this sale for tracts 49-55, 49-56, 49-57, 49-58, 49-59, 49-61, 49-62, 49-63, 49-64, 49-66, 49-67, 49-68, 49-69, 49-70, 49-71, 49-72, 49-73, 49-74, 49-75, 49-76, 49-77, 49-78, 49-79, 49-80, 49-81, 49-82, 49-83, 49-84, 49-85, 49-86, 49-87, 49-88, 49-89, 49-90, 49-91, 49-92, 49-93, 49-94, 49-95, 49-96, 49-97, 49-98, 49-99, 49-101, 49-102, 49-104, 49-105, 49-106, 49-107, 49-108, 49-109, 49-110, 49-111, 49-112, 49-113, 49-114, 49-115, 49-116, 49-118, 49-119, 49-120, 49-123, 49-124, 49-125, 49-126, 49-132, 49-133, 49-134, 49-135, and 49-136.)

(a) Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risk of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by or on behalf of the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, as a part of, or in connection with, the programs and activities of the National Aeronautics and Space Administration (NASA), Wallops Flight Center. The lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees.

Notwithstanding any limitation of the lessee's liability in Sec. 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors, or subcontractors, or any of their officers, agents or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against, all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors, or subcontractors doing business with the lessee in connection with the programs and activities of the NASA, Wallops Flight Center whether the same be caused in whole or in part by the negligence or fault of the United States,

its contractors, or subcontractors or any of their officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the leased area or surrounding area of the lease, including any part of the Outer Continental Shelf between the 35th and 39th parallels, shall enter into an agreement with the Director, Wallops Flight Center prior to commencing such traffic. Such agreement shall provide for positive control of boats, ships, and aircraft operating in the above designated areas and will provide for the avoidance of interference with the programs and activities of the NASA Wallops Flight Center.

(c) Upon recommendation by the Director, Wallops Flight Center when the activities of the NASA Wallops Flight Center may endanger personnel or property, the lessee agrees, upon receipt of the notice from the Supervisor, to evacuate all personnel from all structures on the lease and to shut-in and secure all wells and other equipment, including pipelines on the lease, within forty-eight (48) hours or within such longer period as may be specified by the Supervisor. The Supervisor shall not require evacation of personnel and shutting-in and securing of equipment for a period of time greater than seventy-two (72) hours; however, such period of time may be extended by subsequent notice from the Supervisor. Equipment and structures may remain in place on the lease during such time as the evacuation remains in effect.

(d) The lessee agrees to control his own electromagnetic emissions and those of these agents, employees, invitees, independent contractors, or subcontractors emanating from the leased area or surrounding area of the lease, including any part of the Outer Continental Shelf between the 35th and 39th parallels, in accordance with the requirements specified by the Director, Wallops Flight Center, to the degree necessary to prevent damage to, or unacceptable interference with, the programs and activities of the NASA, Wallops Flight Center.

Necessary monitoring, control and coordination with the lessee, his agents, employees, invitees, independent contractors, or subcontractors, will be effected by the Director, Wallops Flight Center; Provided, however, that control of such electromagnetic communication shall in no instance prohibit all manner of electromagnetic communications during any period of time between a lessee, its agents, employees, invitees, independent contractors, or subcontractors and onshore facilities.

STIPULATION No. 10

(To be included in any leases resulting from this sale for the sliding scale royalty tracts listed in paragraph 4 of this notice.)

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12 (e)). The Director, Geological Survey, may grant a reduction for only 1 year at a time. Reduction of royalty rates will not be approved unless production has been underway for 1 year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16⅔ percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in section 15(d) of this lease: The royalty on any portion of the production saved, removed or sold from the lease in excess of 16⅔ percent may only be taken in value of the production saved, removed or sold from the lease area.

15. *Information to lessees.* On September 18, 1978, the OCS Lands Act Amendments of 1978 were enacted. Some sections of current regulations applicable to OCS leasing operations are inconsistent with this new legislation, and the legislation requires the issuance of some new regulations. The inconsistencies will be corrected by rulemakings and the new regulations will be issued as soon as possible. Nevertheless, bidders are notified that provisions of the OCS Lands Act Amendments shall apply to all leases offered at this lease sale and shall supersede all inconsistent provisions in current regulations applicable to OCS leasing operations.

Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with the Outer Continental Shelf Lands Act, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with section 16 of each lease offered at this sale the lessor may require a lessee to operate under a unit, pooling or drilling agreement and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

In the enforcement of Stipulation 2, the Supervisor will receive recommendations from a committee composed of designated representatives of the Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Geological Survey, the National Marine Fisheries Service, the Environmental Protection Agency, and representatives of the affected States. It is intended that this committee will remain in existence throughout the operating life of the field. The Supervisor will consult with the committee in identifying areas or resources of biological importance on the conduct of the biological surveys by lessees, and on the appropriate course of action after the surveys have been conducted.

The committee has completed a preliminary review of the sale area and has determined that it will recommend to the Supervisor that no pre-exploration surveys be required on any of the tracts offered, with the possible exception of those noted below. The committee may recommend that surveys be required prior to development.

Exception: The BLM is currently funding a study of the canyon areas in the Mid and North Atlantic regions. This Canyon Assessment Study shall involve an analysis of historical data and of field surveys of ten of the seventeen canyon blocks. The analysis of historical data, available in April, 1979, may provide information on the faunal communities in Tracts 49-92, 49-96, 49-97, 49-101, 49-104, 49-113, 49-118, 49-124, 49-125, and 49-126. Preliminary interpretations of the field surveys, conducted in Tracts 49-113, 49-118, 19-124, 49-125, and 49-126, shall be available in July, 1979. Seven other blocks, although not included in the Canyon Assessment Study, may also be evaluated at that time because of their bathymetric characteristics. These tracts are 49-88, 49-108, 49-109, 49-111, 49-116, 49-120, and 49-132. Based on the analysis of the historical and field data, the committee may recommend to the Supervisor that pre-exploration surveys be required on any or all of the above mentioned tracts.

16. *OCS orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Mid-Atlantic Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

17. *Suggested bid form.* It is suggested that bidders submit their bids to the Manager, New York Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.	Total Amount Bid	Amount per Hectare	Amount of Cash Bonus Submitted with Bid

Proportionate Interest of Company(s) Submitting Bid

Company _____ Percent Interest _____

Address _____ N.Y. Misc. No. _____

Signature _____
(Please type signer's name under signature)

18. *Required joint bidders statement.* In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that _____(entity submitting bid) is eligible under 43 CFR 3302 to bid jointly with the other parties submitting this bid.

Signature _____
(Please type signer's name under signature)

Sworn to and subscribed before me this _____day of _____ 19___

NOTARY PUBLIC _____

State of _____

County of _____

[FR Doc. 78-32396 Filed 11-16-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-50]

CERTAIN SYNTHETIC GEMSTONES

Commission Determination, Order and Memorandum Opinion

This Determination and Order provides for the disposition of (1) Motion Docket No. 50-5, a motion for summary determination pursuant to § 210.50 of the Commission's Rules of Practice and Procedure (hereinafter "CRPP") (19 CFR 210.50), and (2) Motion Docket No. 50-8, a motion to make this investigation a "more complicated" investigation pursuant to CRPP § 210.15 (19 CFR 210.15). Motion Docket No. 50-5 was filed by Respondents on August 7, 1978, and was certified to the Commission for decision, together with all exhibits and responses, by the Presiding Officer in her Recommended Order September 6, 1978, issued pursuant to CRPP § 210.53 (19 CFR 210.53). Motion Docket No. 50-8 was filed with the Commission by Respondents on October 6, 1978.

DETERMINATIONS AND ORDER

Having reviewed and considered (1) Motion Docket No. 50-5, as certified to the Commission by the Presiding Officer on September 6, 1978, together with all exhibits and responses thereto, (2) the Presiding Officer's recommended order of September 6, 1978, granting Respondents' motion for summary determination, and (3) exceptions to the Presiding Officer's recommended order, filed by Respondents on September 19, 1978, in the context of the record in the instant investigation, the Commission, by action of November 13, 1978, determines that the standards for granting a motion for summary determination under CRPP § 210.50 have not been met, in that genuine issues of material fact do exist, and Respondents have not shown their entitlement to summary determination as a matter of law. Accordingly, Respondents' motion for summary determination (Motion Docket No. 50-5) is denied.

In addition, having reviewed and considered Motion Docket No. 50-8, filed by Respondents on October 6, 1978 to make the instant investigation "more complicated" within the meaning of CRPP § 210.15 (19 CFR 210.15) and section 337(b)(1) (19 U.S.C. 1337(b)(1)) in the context of the record in this investigation, the Commission, by action of November 13, 1978, determines that the record in this investigation does not support a designation of this investigation as a "more complicated" investigation. Accordingly, Respondents' motion to designate this investigation more complicated (Motion Docket No. 50-8) is denied.

In light of these determinations, the Commission, by action of November 13, 1978, *Orders*—

1. That this matter be remanded to the Presiding Officer for further proceedings consistent with this Opinion;

2. That the provisions of CRPP § 210.41(e)(1) (19 CFR 210.41(e)(1)) are waived with respect to the required completion date for the hearing required by CRPP § 210.41(a)(1) (19 CFR 210.41(a)(1));

3. That the Presiding Officer is directed to establish a new timetable for a Prehearing Conference, Prehearing Statements, and Hearing which provides for the completion of a hearing required by CRPP § 210.41(a)(1) (19

CFR 210.41(a)(1)) by no later than December 15, 1978;

4. That, notwithstanding the provisions of CRPP § 210.53(a) (19 CFR 210.53(a)), the Presiding Officer is directed to certify the record to the Commission and file her recommended determination with the Commission by no later than January 15, 1978.

PROCEDURAL HISTORY

On February 9, 1978, a complaint was filed with the Commission under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (hereinafter "section 337"), on behalf of Queensbury Opal Co., Ltd., of Beechwood, Ohio ("Complainant"), alleging that unfair methods of competition and unfair acts exist in the unlicensed importation of certain gems having light piping fibers with cores of high refractive index and clad layers of lower refractive index ("certain synthetic gemstones") into the United States, or in their sale, by reason of the coverage of certain synthetic gemstones by the claims of U.S. Letters Patent No. 3,742,731 (hereinafter "the '731 patent"). The '731 patent is held by Complainant by virtue of an assignment from patentees Michael R. Phillips and Jerome H. Ludwig. Complainant further alleged that the effect or tendency of such unlicensed importation is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of a domestic industry. Accordingly, Complainant seeks an exclusion order against the alleged unlicensed importation of certain synthetic gemstones into the United States.

On March 14, 1978, the Commission instituted an investigation under Section 337 with respect to these matters and published a notice of investigation in the FEDERAL REGISTER of March 17, 1978 (43 FR 11272-11273). A correction to the notice of investigation was issued by the Commission on March 27, 1978, and was published in the FEDERAL REGISTER of March 30, 1978. Copies of the complaint, amended complaint, and notice of investigation were served upon named respondents.

A notice of preliminary conference was issued by the Presiding Officer on April 17, 1978, served on parties of record, and published in the FEDERAL REGISTER of April 21, 1978 (43 FR 17063). A notice of resetting of preliminary conference was issued by the Presiding Officer on April 25, 1978, served on parties of record, and published in the FEDERAL REGISTER of April 28, 1978. On May 1, 1978, a preliminary conference with respect to this investigation was held before the Presiding Officer.

On May 31, 1978, the Presiding Officer recommended (1) that the complaint be amended by adding Cathay Corp. of Stamford, Conn., as a party respondent and (2) that Rudolf and Helmuth May, and Fritz Mohr, be terminated as foreign party respondents. By Commission Memorandum Opinion of June 22, 1978, the Commission accepted the Presiding Officer's recommendations.

On June 30, 1978, the Presiding Officer issued a notice of preliminary conference and hearing which was served upon parties of record and published in the FEDERAL REGISTER of July 7, 1978 (43 FR 29362). In that notice, the Presiding Officer established a timetable for (1) the completion of discovery, (2) the service of prehearing conference statements by the parties, (3) a prehearing conference, and (4) a hearing to be held in connection with the investigation. A prehearing conference was scheduled to have been held on September 26, 1978, and a hearing was scheduled to have been held on October 3, 1978. Neither a Prehearing Conference nor a Hearing have been held in connection with this investigation to date. Unless otherwise ordered by the Commission, the deadline for the completion of a hearing in this investigation is October 17, 1978, pursuant to CRPP §§ 210.41 (a)(1) and (e)(1) (19 CFR 210.41 (a)(1), (e)(1)).

On August 7, 1978, Respondents, acting pursuant to CRPP § 210.50 (19 CFR 210.50), filed a motion for summary determination (Motion Docket No. 50-5), together with a supporting brief and other materials, with the Secretary, which was served upon the parties or counsel of record, alleging that Complainant's '731 patent is invalid and unenforceable, and, therefore, is incapable of being infringed. Accordingly, Respondents urged the Commission to terminate the investigation. On August 21, 1978, Complainant filed, among other things, a brief in opposition to Respondents' motion for summary determination, and, on August 25, 1978, the Commission Investigative Attorney filed a response to Respondent's motion for summary determination, supporting Respondents' motion in part.

On September 6, 1978, the Presiding Officer, acting pursuant to CRPP § 210.53 (19 CFR 210.53), issued her recommended order granting Respondents' motion for summary determination under CRPP Section 210.50. The Presiding Officer postponed indefinitely the prehearing conference, prehearing statements, and hearing dates for the investigation. The Presiding Officer certified Respondents' motion for summary determination, together with all exhibits and responses thereto, to the Commission for disposition.

Exceptions to the Presiding Officer's recommended order were filed by Respondents on September 19, 1978 and by the Commission Investigative Attorney on September 19, 1978. Exceptions and alternative findings of fact and conclusions of law were filed by Complainant on September 25, 1978. In addition, Complainant filed a response to the exceptions of the Commission Investigative Attorney and Respondents on September 29, 1978.[1]

On October 6, 1978, Respondents filed a motion (Motion Docket No. 50-8) with the Commission pursuant to CRPP § 210.15 (19 CFR 210.15) requesting that the Commission designate this investigation "more complicated" within the meaning of the rule and section 337(b)(1) (19 U.S.C. 1337(b)(1)). On October 11, 1978, both Complainant and the Commission Investigative Attorney submitted responses to this motion.

On October 12, 1978, the Presiding Officer issued an Order certifying this motion to the Commission for disposition. Pending disposition of these matters by the Commission, all additional discovery in the investigation has been suspended by the Presiding Officer.

OPINION

The instant matters before the Commission are: (1) the Presiding Officer's recommended order of September 6, 1978, pursuant to CRPP Section 210.53 (19 CFR 210.53), which urges the Commission, among other things,[2] to

[1] Under CRPP provisions, the exeptions of the Commission Investigative attorney and the exceptions and alternative findings of fact and conclusions of law of the Complainant were not timely filed (CRPP § 210.54, 201.14 and 201.16(d), 19 CFR 210.54, 201.14, and 201.16(d)). With respect to Complainant's response to the exceptions of the Commission Investigative Attorney and Respondent, the CRPP makes no provision for the filing of such a document. If such document is construed as permissible under CRPP § 210.54, then it is not timely filed under that section and CRPP §§ 201.14 and 201.16(d) (19 CFR 210.54, 201.14, and 201.16(d)).

[2] The Presiding Officer recommended in full on September 6, 1978:

1. That the Commission find that there is no violation of section 337;

2. That the Commission dismiss respondent Incom Corporation on the grounds that it does not engage in the importation or sale of synthetic gemstones;

3. That the Commission grant respondents' motion for summary determination (Motion Docket No. 50-5) and terminate this investigation; and,

4. That the Commission return to respondents the physical exhibits and materials submitted on August 4, 1978 which were made conditionally available to the parties for inspection; there may be a need for these exhibits in pending proceedings in the U.S. District Court in Connecticut, *Queensbury Opal Co., Ltd.*, v. *Paul S. Rogell and Rogell Associates, Inc.*, Civil Action No. B-78-35.

This Opinion deals only with Recommendations Nos. 1 and 3. Recommendations 2 and 4 will be dealt with by the Commission

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grant Respondent's motion for summary determination of August 6, 1978, (Motion Docket No. 50-5), and terminate this investigation; and (2) Respondents' motion of October 6, 1978, pursuant to CRPP Section 210.15 (19 CFR 210.15), which urges the Commission to designate this investigation as a "more complicated" investigation. We shall treat each of these motions in turn in the following discussion.

I. MOTION DOCKET NO. 50-5

With respect to Respondents' motion for summary determination, the Presiding Officer, by her recommended order of September 6, 1978, is satisfied that the record shows that there is no genuine issue as to any material fact and that Respondents are entitled to summary determination as a matter of law. Upon examination of the record, we reject the Presiding Officer's recommendation that Respondents' motion for summary determination be granted and this investigation be terminated. The Presiding Officer's recommendation is erroneous for two primary reasons:

(1) The Presiding Officer erred as a matter of law in dismissing the dependent claims of the '731 patent solely on the basis of her finding of the invalidity of the independent claim of the patent.

(2) Genuine issues of material fact exist which warrant additional fact-finding proceedings and hearing before the Presiding Officer.

A. The Presiding Officer may not rely solely upon the invalidity of an independent claim to invalidate dependent claims. Before a motion for summary determination can be granted under CRPP § 210.50, the "pleadings and any depositions, admissions on file, and affidavits (must) show that there is no geniuine issue as to any material fact and that the moving party is entitled to summary determination as a matter of law" (19 CFR 210.50(b)). We are of the opinion and hold that the Presiding Officer's recommended order of September 6, 1978, contains legal error in two significant respects. First, the Presiding Officer's conclusions of law with respect to the alleged invalidity of Complainant's '731 patent are based upon an erroneous legal premise.

The Presiding Officer, in her conclusions of law, found Complainant's '731 patent to be invalid under 35 U.S.C. 102(a) and 102(b) for the purposes of the Commission's proceeding under section 337, and, accordingly, unenforceable under section 337 (Recommended Order of September 6, 1978, Conclusion of Law No. 2). Consequently, the Presiding Officer concluded that Respondents have not engaged in unfair methods of competition or unfair acts under Section 337, and there is no violation of Section 337 (Recommended Order of September 6, 1978, Conclusion of Law No. 3).

The Presiding Officer was of the view that if the independent claims of a patent are demonstrated to be invalid, then the remaining dependent claims of a patent are necessarily invalid (Recommended Order of September 6, 1978, page 8). Accordingly, the Presiding Officer, in demonstrating the alleged invalidity of Complainant's '731 patent, found the only independent claim of Complainant's '731 patent (Claim 1) to be invalid, and stated "consequently all of the remaining 10 claims (Claims 2-11 of Complainant's '731 patent) fall if claim 1 is invalid" (Recommended Order of September 6, 1978, page 8). This premise is erroneous as a matter of law.

United States patent laws provide that a patent is presumed to be valid (35 U.S.C. 282). Furthermore—

> Each claim of a patent (whether in independent or dependent form) shall be presumed valid independently of the validity of other claims; dependent claims shall be presumed valid even though dependent upon an invalid claim (35 U.S.C. 282).

With this statutory basis in mind, it is evident that the Presiding Officer erred as a matter of law with respect to the alleged invalidity of the ten dependent claims of Complainants' '73 patent (Claims 2-11) by not according each claim of the '731 patent, independent or dependent, the requisite statutory presumption of validity. Accordingly, we are unable to accept the Presiding Officer's conclusions of law that Complainant's '731 patent is invalid under 35 U.S.C. 102(a) and 102(b) for purposes of this litigation under section 337, and is unenforceable under section 337. The proceedings must therefore be remanded to the Presiding Officer for a determination of validity of claims 2-11.

B. Disputed Issues of Material Fact Remain.

1. The record does not support the Presiding Officer's finding that light piping is the sole means of producing a "catseye" effect in these gemstones.

The Presiding Officer, in reliance upon the affidavits of Vause, Hicks, the Vause tie-tac exhibit to the Rogell affidavit, and Exhibit 2 to the complaint in this matter, found that a synthetic gemstone as disclosed in Claim 1 of Complainant's '731 patent was produced, known, and in public use in 1970 (Recommended Order of September 6, 1978, finding of fact No. 7). This finding of fact is clearly material to the Presiding Officer's subsequent conclusion of law that Complainant's '731 patent is invalid under 35 U.S.C. 102(a) and 102(b) (Recommended Order of September 6, 1978, Conclusion of Law No. 2). However, analysis of the record upon which she bases her findings of fact demonstrates that finding of fact No. 7 is not supported by the facts of record.

In this respect, we refer to the Presiding Officer's treatment of the Hicks affidavit (Recommended Order of September 6, 1978, pages 7-9). Based on the Hicks affidavit, the Presiding Officer found each element of Claim 1 of Complainant's '731 patent to read on the Vause tie-tac, a certain synthetic gemstone within the scope of this investigation (Recommended Order of September 6, 1978, page 7). Complainant argued in its brief that the Hicks affidavit failed to meet each element of Claim 1 of the '731 patent in that Mr. Hicks did not specifically state that the fibers of the Vause tie-tac were arranged "for piping ambient light through the fiber cores" (Recommended Order of September 6, 1978, page 8). The Commission Investigative Attorney, in supporting Respondents' CRPP Section 210.50 motion, argued that the Hicks' affidavit does show that ambient light is piped through the fiber cores of the Vause tie-tac by observing transmission of an image along the direction of the fiber axis "as this image can be so transmitted in no other way but by light piping" (Recommended Order of September 6, 1978, page 8) (emphasis supplied). In response to this argument, the Presiding Officer found that "(t)he argument of the investigative attorney is persuasive. Mr. Hicks in effect has described all elements of claim 1 of the '731 patent" (Recommended Order of September 8, 1978 page 8).

In ruling on a motion for summary determination under CRPP § 210.50 (19 CFR 210.50), we cannot, as a matter of law, countenance the partial predication of a key finding of fact (finding of fact No. 7) upon the argument of a party where there is no record support for the factual finding. The record simply does not support the assertion that the image referred to above "can be so transmitted in no other way but by light piping" (Recommended Order of September 6, 1978, page 8). An inspection of the file wrapper respecting Complainant's '731 patent and prior art references reveals that there are at least several other possible ways whereby a chatoyant or "cateye" effect may be produced. (See U.S. Letters Patent No. 2,948,082, patented August 9, 1960, U.S. Letters Patent No. 3,581,522, patented June 1, 1971, and references thereto in the file history of Complainant's '731 patent.) Accordingly, there remains a dispute as to material fact on the issue whether light piping is the only means of producing a "catseye" effect.

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after the additional factfinding proceedings, hearing, and recommended determination ordered above.

2. Inconsistencies in sworn affidavits on public knowledge create a genuine issue of material fact.

In addition, there is a genuine issue of material fact respecting the alleged invalidity of Complainant's '731 patent which warrants additional factfinding proceedings and hearing before the Presiding Officer and makes summary determination inappropriate in this investigation.[3]

35 U.S.C. 102(a) and 102(b) provide that a person shall be entitled to a patent unless—

(a) The invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

Respondent, in moving for summary determination, has, among other things, asserted the invalidity of Complainant's '731 patent under 35 U.S.C. 102(a) and 102(b) and has explicitly relied upon statements in the Rogell affidavit respecting public knowledge, use, or sale of his invention. In opposing Respondents' motion, Complainant has relied upon (1) statements in the Rogell affidavit respecting public knowledge, use, or sale of Rogell's invention and (2) the affidavits and declarations of Respondent Rogell in Patent Office proceedings with respect to the same issues. (See, e.g., Complainant's Brief in Opposition to Respondents' Motion for Summary Determination, filed August 21, 1978, page 17.)

Upon examination of the record, it appears to us that sworn and unsworn statements of Respondent Rogell on several occasions in proceedings before the U.S. Patent Office in comparison to sworn statements before this Commission raise a genuine issue of material fact respecting the validity of Complainant's '731 patent under 35 U.S.C. 102(a) and 102(b). In recommending that Respondents' motion pursuant to CRPP § 210.50 be granted, the Presiding Officer has ruled that Complainant's '731 patent is invalid under 35 U.S.C. 102(a) and 102(b) for the purposes of the Commission's investigation under section 337, and is unenforceable under section 337 (Recommended Order of September 6, 1978, Conclusion of Law No. 2). Respondents, in supporting their motion for summary determination with "necessary supporting affidavits for summary determination in * * * (their) * * * favor" (CRPP § 210.50(a), 19 CFR 210.50(a)), submitted, and explicitly relied upon, among other things, an affidavit of Paul S. Rogell (Respondents' Motion Docket No. 50-5, page 3, Recommended Order of September 6, 1978, page 3) which is a part of the supporting materials certified to us by the Presiding Officer and which is a part of the adjudicative record in this investigation. Patent applications, and accompanying declarations and powers of attorney, of Respondent Rogell, filed with the Commission, are also a part of the record in this proceeding. With respect to the Rogell patent applications filed with the Commission in connection with this investigation, Respondent Rogell, on several occasions swore or stated that his invention was not publicly known or used or on sale within the meaning of 35 U.S.C. 102(a) and 102(b) (See, e.g., Rogell patent applications filed on or about May 5, 1970, December 8, 1970, and June 28, 1973). Moreover, in the affidavit of Paul S. Rogell, explicitly relied upon by Respondents in support of their motion for summary determination, Respondent Rogell states that "he had tried to sell his synthetic gemstone and that it was disclosed to others without any restriction as to confidentiality before 1971, the year in which (patentees of Complainant's '731 patent) * * * claim to have reduced their invention * * * to practice." (See, e.g., Recommended Order of September 6, 1973, page 3; Affidavit of Paul S. Rogell, pages 2-3, et seq.) One or the other of these statements is false. We see no basis, in the absence of uncontrovertible record evidence, to accept one over the other. There therefore is raised a genuine issue of material fact.

In ruling on Respondents' motion for summary determination, the Presiding Officer, although noting that "the principal affidavit relied upon by the Respondents in support of their motion is that of Paul S. Rogell" and that "Mr. Rogell's affidavit is the key that ties most of the other affidavits to specific gemstones" (Recommended Order of September 6, 1978, pages 3 and 5, respectively) chose to disregard the Rogell affidavit. The Presiding Officer's position was as follows: "(d)isregarding the Rogell affidavit, there are enough undisputed facts to support a finding that the (Complainants') '731 patent is invalid and unenforceable" (Recommended Order of September 6, 1978, page 5). The Presiding Officer took this position in response to questions raised by Complainants who had pointed to the inconsistencies of Rogell's affidavit with prior statements before the Patent Office. (See, e.g., Complainants' Brief in Opposition to Respondents' Motion for Summary Determination, pages 4-9, 16-24.) The Presiding Officer chose to treat Complainant's objections as merely raising a question of Respondent Rogell's credibility (Recommended Order of September 6, 1978, pages 3-4).

While we agree with the Presiding Officer that "(t)he issue here is not whether Mr. Rogell signed sworn misstatements of fact in connection with patent applications, but whether there are genuine issues of fact material to this motion for summary determination" (Recommended Order of September 6, 1978, page 4), we cannot agree with the Presiding Officer that Complainant has merely raised an issue of credibility.[4] In addition, in considering a motion for summary determination under CRPP § 210.50, we cannot support the selective reading of the adjudicatory record urged upon us by the Presiding Officer, whereby the principal affidavit relied upon by movant is disregarded.

In order to support movant's position on alleged invalidity of the '731 patent, certainly it is axiomatic under 35 U.S.C. 282 [5] that the burden of persuasion is on the party asserting the invalidity of a patent.[6] Clearly, if Respondent's position on invalidity cannot be upheld without disregarding the affidavit and evidentiary materials upon which they principally rely to support such position, Respondents have not shown absence of material fact issues entitling them to summary determination.

In ruling upon Respondents' motion for summary determination pursuant to CRPP § 210.50 in the instant investigation, we have viewed the evidence submitted and primarily relied upon by Respondents in the light most favorable to the party opposing the motion. Likewise, all reasonable inferences were drawn in favor of Complainant. We have found substantial controversy as to the alleged invalidity

[3] By stating that it appears to us that there is "at least a genuine issue of material fact" respecting the alleged invalidity of Complainant's '731 patent, we do not mean to imply that there is only one such issue. On the contrary, it appears to us that there may be more such issues. (See, e.g., Complainant's Brief in Opposition to Respondent's Motion for Summary Determination, filed August 21, 1978.) In considering a motion for summary determination pursuant to CRPP § 210.50 (19 CFR 210.50), however, it is only necessary that one genuine issue as to any material fact exist to render summary determination improper.

[4] Even if Respondent's credibility were the only issue of fact, it might preclude our granting summary determination. See, e.g., *Hackley* v. *Roudebush*, 520 F.2d 108, 159 (D.C. Cir. 1975); *Pfizer, Inc.* v. *International Rectifier Co.*, 538 F.2d 180, 185 (8th Cir. 1976).

[5] 35 U.S.C. 282 provides, in pertinent part, that "(t)he burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting it."

[6] Id., *Solder Removal Co., et al.* v. *United States International Trade Commission, et al.* Appeal No. 77-25, Memorandum Decision of August 24, 1978, at pages 9, 11 (CCPA 1978).

of Complaints' '731 patent and conflicting affidavits or sworn statements respecting public knowledge, use, or sale of Respondents' invention. We are, therefore, unable to hold, as a matter of law for the purpose of this proceeding under section 337, that Complainant's '731 patent is invalid under 35 U.S.C. 102(a) and 102(b). Rather, we must presume it to be valid under 35 U.S.C. 282 until Respondents carry their burden of persuasion on the issue of invalidity.

Accordingly, we have denied Respondents' motion for summary determination and have remanded this matter to the Presiding Officer for further factfinding proceedings and hearing consistent with this Memorandum Opinion.

II. MOTION DOCKET NO. 50-8

As is evident from our determination and order, we have decided not to designate the instant investigation "more complicated" under CRPP § 210.15 and section 337(b)(1). We therefore deny Respondents' motion of October 6, 1978. In reaching his conclusion, we have considered Respondents' motion in light of (A) the meaning and purpose of CRPP § 210.15 and (B) its application in Commission practive since the enactment of the Trade Act of 1974.

A. The meaning and purpose of CRPP § 210.15. CRPP § 210.15 provides a means whereby the 1 year time limitation for section 337 investigations may be extended, in "more complicated" cases, to 18 months. CRPP § 210.15 is based upon statutory requirement of section 337(b)(1) which provides, in pertinent part, that—

> The Commission shall conclude any such (Section 337) investigation, and make its determination under this section, at the earliest practicable time, but not later than 1 year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the FEDERAL REGISTER its reasons for designating any investigation as a more complicated investigation (19 U.S.C. 1337(b)(1)).

Section 337(b)(1) does not provide any criteria for designating an investigation as a more complicated one. However, the Senalt Committee on Finance, in explaining this section, provided criteria which the Commission should consider by stating that—

> The Committee intends for the term "more complicated investigation" to refer to investigations which are of an involved nature due to the subject matter, difficulty in obtaining information, or large number of parties involved (S. Rep. No. 1298, 93 Cong., 2d Sess. at p. 194 (1974)).

In CRPP § 210.15, we have explicitly adopted these criteria established by the Committee on Finance. In ruling upon the instant motion to make "more complicated," we have considered these criteria.

Respondents, in making their motion, have not seriously argued either that the subject matter of the investigation or the number of parties thereto would justify making this ivestigation "more complicated" under CRPP § 210.15. Rather, Respondents have argued that the complex procedural aspects of this investigation have made it an "investigation of an involved nature." (Respondents' Motion Pursuant to § 210.15 to Designate this Investigation as a "More Complicated" Investigation, October 6, 1978, page 4.) We agree with Respondents that the procedural aspects of the instant investigation have become involved to a certain degree and agree with the Commission Investigative Attorney that some accommodation must be made to provide the parties with additional time in which to complete a hearing if Motion Docket No. 50-5 is denied. (Response of Commission Investigative Attorney to Motion to Designate this Investigation More Complicated, October 11, 1978, page 1.) Considering the procedural history of this investigation and the time constraints under the CRPP, we believe that a workable accommodation to provide the parties with additional time for additional factfinding and hearing is provided by our determinations and order, supra. The main procedural problem confronting the parties was the time constraint of CRPP § 210.41(e), which we have waived in favor of establishing a new date for completion of hearing of "no later than December 15, 1978."[7]

B. The application of CRPP § 210.15 since 1974. We have granted CRPP § 210.15 motions on two occasions since the enactment of the Trade Act of 1974. In *Certain Color Television Receiving Sets* (Investigation No. 337-TA-23) (hereinafter "Color Televisions"), the involved nature of the subject matter at issue, difficulty in obtaining information, and the number of parties all justified designating the investigation "more complicated." Likewise, in *Doxycycline* (Investigation No. 337-TA-3) we granted a CRPP § 210.15 motion due to the voluminous discovery, difficulty in obtaining information, and complexity of issues raised.

We have denied CRPP § 210.15 motions on several occasions, including *Certain Monumental Wood Windows* (Investigation No. 337-TA-40) (hereinafter "Wood Windows"), and *Certain Apparatus for the Continuous Production of Copper Rod* (Investigation No. 337-TA-52) (herinafter "Copper Rod"). As the Commission Investigative Attorney has noted in opposing Respondents' motion to make "more complicated" in this investigation, "in cases much more complicated than the present one, similar motions were not granted (citing *Wood Windows* and *Copper Rod*)." The instant motion is like those denied in *Wood Windows* and *Copper Rod;* we could not seriously maintain that the record in this investigation has become "more complicated" and meets the Senate Finance Committee criteria referred at above as was the case in *Color Televisions* and, more recently, *Doxycycline.*

By Order of the Commission.

Issued: November 14, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-32468 Filed 11-16-78; 8:45 am]

[7] This does not address the question of whether procedural complications will ever justify declaring a case "more complicated." In this case, however, the investigation can be completed within 12 months notwithstanding the time taken by our consideration of the motion for summary determination.

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate, or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or fa-

cilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within 2 weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 14th day of November 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING NOVEMBER 9, 1978

Name of Applicant, and Location of Enterprise, and Principal Product or Activity

Huntington Industries, Huntington, Utah; extraction of fossil resins from coal.
Bluefield Motel Corp., Bluefield W.V.; motel.
Futura Color Corp., Ringgold, Ga.; manufacture of dyeing carpet yarn.
Hallmark Plastics, Inc., Acworth, Ga.; manufacture counter tops.
River City Hotel Joint Venture, Paducah, Ky.; hotel.
J. E. Messenger Co., Inc., Newport, Ark.; manufacture of electrical wire and cordage.
Miller Manufacturing Co., Stratton, Nebr.; manufacture farm equipment.

[FR Doc. 78-32054 Filed 11-16-78; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

[V-78-11]

FIRESTONE PLASTICS CO.

Application for variance

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for variance.

SUMMARY: This notice announces the application of Firestones Plastics Co. for a variance from the standard prescribed in 29 CFR 1910.1017 (g)(1) and (g)(4)(v) concerning the provision of respirators for employees exposed to vinyl chloride.

DATES: The last date for interested persons to submit comments is December 18, 1978. The last date for affected employers and employees to request a hearing on the application is December 18, 1978.

ADDRESS: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination at the above address, telephone 202-523-7121, or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, Willian J. Green Jr., Federal Building, 600 Arch Street, Room 4256, Philadelphia, Pa. 19106.

NOTICE OF APPLICATION

Notice is hereby given that Firestone Plastics Co., a division of the Firestone Tire & Rubber Co., Firestone Boulevard, Pottstown, Pa. 19464, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the requirements prescribed in 29 CFR 1910.1017(g)(4)(v) which specifies the types of respirators which are appropriate for use in atmospheric concentrations of vinyl chloride not exceeding 25 ppm.

Section 1910.1017(g)(1) requires the employer to provide and assure use of respirators which meet the requirement of the standard. Although not specifically requested in the application, a variance from this paragraph would also be required.

The address of the place of employment that will be affected by the application is:

Firestone Plastics Co., Division of Firestone Tire & Rubber Co., Firestone Boulevard, Pottstown, Pa. 19464.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

The applicant has requested a variance to allow it to provide and assure the use of a MESA/NIOSH approved half facepiece, breathing tube, canister combination respirator, all components of which shall be the product of one manufacturer, at atmospheric concentrations not exceeding 25 ppm VCM only under the following conditions:

A. Firestone shall initially and annually perform accepted quantitative respiratory fit tests on each employee who elects to use the above-described respirator.

B. Each employee shall be permitted to use and to continue to use said half facepiece, breathing tube, canister combination respirator for exposures not exceeding 25 ppm VCM only if the results of the quantitative respiratory fit tests, with respect to each employee, indicate a "Protection Factor" of 100 (the "Protection Factor" is defined as the ratio of the contaminant concentrations outside and inside the respirator);

C. If the results of the initial or annual quantitative respiratory fit tests indicate a "Protection Factor" of less than 100 for an employee, such employee shall be restricted to use a respiratory protective unit approved under § 1910.1017(g)(4);

D. Employees may elect, at their discretion, to wear full facepiece, gas mask style respirators or a respiratory protection unit approved under § 1910.1017(g)(4) in lieu of the above-referred to half facepiece respiratory unit for exposures not exceeding 25 ppm VCM;

E. Firestone's employees shall be instructed to notify Firestone of changed facial characteristics which occur, for example, as a result of the performance of extensive dental work or the growth of a beard and, in such event, Firestone, at regularly scheduled intervals, shall conduct quantitative respiratory fit tests to determine the employee's continued eligibility to use a half facepiece, breathing tube,

canister combination respirator unit for exposures not exceeding 25 ppm VCM;

F. The quantitative respiratory fit tests shall be performed in accordance with accepted quantitative respirator fit test procedures by persons trained in and competent to perform such tests;

G. The results of all quantitative tests performed by Firestone will be recorded and maintained on file and, upon reasonable request, will be produced for inspection by a compliance safety and health officer conducting an inspection at Firestone's facilities;

H. Proper maintenance, care and inspection of all respirators and proper training of respirator wearers will be systematically accomplished by means of a program conforming to the requirements of 29 CFR 1910.134.

Firestone contends that use of a MESA/NIOSH approved half facepiece respirator only under the conditions specified above will provide employment to its employees which is as safe and healthful as that which would prevail if it complied with 29 CFR 1910.1017(g)(4)(v), and thus, OSHA should grant Firestone a variance under section 6(d) of the Act.

The applicant states that on August 31, 1978, the alternative respirator system (half facepiece, breathing tube, canister) was submitted to NIOSH for testing. Until the test results are received, no further decision can be made on the merits of the application. Firestone also has not submitted a detailed procedure for a quantitative fit testing. This information is also required in order to make a decision on the merits of the application.

Signed at Washington, D.C., this 1st day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-32291 Filed 11-16-78; 8:45 am]

[4510-26-M]

[V-78-12]

GENERAL MOTORS CORP. AND CHRYSLER CORP.

Application for Variance and Grant of Interim Order

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: (1) Notice of applications for variances and interim orders; (2) Grant of interim orders.

SUMMARY: This notice announces the applications of General Motors Corp. and Chrysler Corp. for variances and interim orders pending a decision on the applications for variances from the standard prescribed in 29 CFR 1910.1018 concerning Inorganic Arsenic. It also announces the granting of interim orders until a decision is rendered on the applications for variances.

DATES: The effective date of the interim orders is November 17, 1978. The last date for interested persons to submit comments is December 18, 1978. The last date for affected employers and employees to request a hearing on the applications is December 18, 1978.

ADDRESS: Send comments or requests for a hearing to: Office of variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination at the above address, telephone: 202-523-7121.

or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, JFK Federal Building, Room 1804, Government Center, Boston, Mass. 02203.

U.S. Department of Labor, Occupational Safety and Health Administration, 400-2 Totten Pond Road, 2d Floor, Waltham, Mass. 02154.

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, N.Y. 10036.

U.S. Department of Labor, Occupational Safety and Health Administration, 200 Mamaroneck Avenue, Room 302, White Plains, N.Y. 10601.

U.S. Department of Labor, Occupational Safety and Health Administration, 2E Blackwell Street, Dover, N.J. 07801.

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 1110, Charles Center, 31 Hopkins Plaza, Baltimore, Md. 21201.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 3007, 844 King Street, Wilmington, Del. 19801.

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street NE., Suite 587, Atlanta, Ga. 30309.

U.S. Department of Labor, Occupational Safety and Health Administration, Building 10, Suite 33, La Vista Perimeter Office Park, Tucker, Ga. 30084.

U.S. Department of Labor, Occupational Safety and Health Administration, 32d Floor, Room 3263, 230 South Dearborn Street, Chicago, Ill. 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 344 Smoke Tree Business Park, North Aurora, Ill. 60542.

U.S. Department of Labor, Occupational Safety and Health Administration, 231 West Lafayette, Room 628, Detroit, Mich. 48226.

U.S. Department of Labor, Occupational Safety and Health Administration, Clark Building, Room 400, 633 West Wisconsin Avenue, Milwaukee, Wis. 53203.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 4028, 550 Main Street, Cincinnati, Ohio 45202.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 847, 1240 East Ninth Street, Cleveland, Ohio 44199.

U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building, Room 602, Dallas, Tex. 75202.

U.S. Department of Labor, Occupational Safety and Health Administration, 1425 West Pioneer Drive, Irving, Tex. 75061.

U.S. Department of Labor, Occupational Safety and Health Administration, 50 Penn Place, Suite 408, Oklahoma City, Okla. 73118.

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street, Room 3000, Kansas City, Mo. 64106.

U.S. Department of Labor, Occupational Safety and Health Administration, 210 North 12th Boulevard, Room 520, St. Louis, Mo. 63101.

U.S. Department of Labor, Occupational Safety and Health Administration, 1150 Grand Avenue, 6th Floor, 12 Grand Building, Kansas City, Mo. 64106.

U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue, P.O. Box 36017, San Francisco, Calif. 94102.

U.S. Department of Labor, Occupational Safety and Health Administration, 211 Main Street, San Francisco, Calif. 94105.

U.S. Department of Labor, Occupational Safety and Health Administration, 400 Oceangate, Suite 530, Long Beach, Calif. 90802.

NOTICE OF APPLICATION

Notice is hereby given that General Motors Corp., 3044 West Grand Boulevard, Detroit, Mich. 48202, and Chrysler Corp., P.O. Box 1919, Detroit, Mich. 48288, have made applications pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for variances, and interim orders pending a decision on the applications for variances, from the standards prescribed in various paragraphs of 29 CFR 1910.1018 concerning inorganic arsenic.

The addresses of the places of employment that will be affected by the applications are as follows:

GENERAL MOTORS CORP.

FISHER BODY DIVISION

Detroit Fleetwood, West Fort and West End, Detroit, Mich.

Flint Plant, 4300 South Saginaw Street, Flint, Mich.

Lansing, 401 Verlinden Avenue, Lansing, Mich.
Pontiac, 900 Baldwin Avenue, Pontiac, Mich.
Detroit Control Plant, 6051 Hastings Street, Detroit, Mich.

GENERAL MOTORS ASSEMBLY DIVISION PLANTS

Arlington, 2525 East Abram Street, Arlington, Tex.
Baltimore, 2122 Broening Highway, Baltimore, Md.
Doraville, 3900 Motors Industrial Way, Doraville, Ga.
Fairfax, 100 Kindelberger Road, Kansas City, Kans.
Framingham, Western Avenue, Framingham, Mass.
Fremont, 45500 Fremont Boulevard, Fremont, Calif.
Janesville, 1000 Industrial Drive, Janesville, Wis.
Lakewood, McDonough and Sawtell, Atlanta, Ga.
Leeds, 6817 Stadium Drive, Kansas City, Mo.
Linden 1016 West Edgar Road, Linden, N.J.
Lordstown, 1600 Hallock Young Road, Lordstown, Ohio.
Norwood, 4726 Smith Road, Norwood, Ohio.
Oklahoma City, 7447 Southeast 74th Street, Oklahoma City, Okla.
St. Louis, 3809 North Union Boulevard, St. Louis, Mo.
Southgate, 2700 Tweedy Boulevard, Southgate, Calif.
Tarrytown, Beekman Avenue, Tarrytown, N.Y.
Van Nuys, 8000 Van Nuys Boulevard, Van Nuys, Calif.
Willow Run, 2625 Tyler Road, Ypsilanti, Mich.
Wilmington, Boxwood Road, Wilmington, Del.

STAMPING AND ASSEMBLY DIVISION

Belvidere Assembly Plant, Chrysler Drive, Belvidere, Ill.
Hamtramck Assembly Plant, 7900 Jos. Campau Avenue, Hamtramck, Mich.
Jefferson Assembly Plant, 12200 East Jefferson Avenue, P.O. Box 1658, Detroit, Mich.
Lynch Road Assembly Plant, 6334 Lynch Road, P.O. Box 1518, Detroit, Mich.
Missouri Truck Assembly Plant, 1050 Dodge Drive, Fenton, Mo.
Newark Assembly Plant, 550 South College Street, P.O. Box 179, Newark, Del.
St. Louis Assembly Plant, 1001 North Highway Drive, Fenton, Mo.
Warren Recreational Vehicle Plant, 6600 East Nine Mile Road, Warren, Mich.
Warren Truck Assembly Plant, 21500 Mound Road, Detroit, Mich.
Warren Truck Special Equipment Center, 21900 Hoover Road, Warren, Mich.

In addition, the applicants have asked to have these variances apply to any future facilities which would have solder grinding booths which operate in the same manner.

The applicants certify that employees who would be affected by the variances have been notified of the applications by giving copies of them to their authorized employee representatives, and by posting copies at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the applications, the applicants contend the method they propose to use will provide a place of employment as safe as that required by § 1910.1018 which contains regulations concerning Inorganic Arsenic.

The applicants' facilities contain solder grinding booths where successive employees use successively finer abrasives to grind solder from car bodies as they pass through the booth. According to the material specifications, this solder contains up to 0.6 percent arsenic. High velocity particles of solder dust containing arsenic are thrown into the atmosphere of the booth by the grinding operation. The booths are operated under negative pressure with an in-draft of a minimum of 150 f/m at all openings.

Specifically, the applicants request variances from several paragraphs of the inorganic arsenic standards, as follows:

Section 1910.1018(e) contains requirements concerning exposure monitoring.

Section 1910.1018(e)(1)(ii) defines employee exposure to inorganic arsenic as the exposure which would occur if the employee were not wearing a respirator.

Section 1910.1018(e)(1)(iii) requires collection of full shift (at least 7 continuous hours) personal sampling including at least one sample for each shift for each job classification in each work area.

The applicants state that past monitoring has shown, with a confidence level of more than 99 percent, that the level of airborne inorganic arsenic in the booths does not exceed 20,000 $\mu g/M^3$. The operation of the booths is on a continuous assembly-line basis, with very little fluctuation in the dust levels within any of the shifts. For these reasons the applicants state that monitoring the levels in the booths and taking full-shift personal samples would serve no useful purpose. The employees in the booths are required to wear approved positive pressure air-supplied hoods which are listed in § 1910.1018(h)(2) table I for concentrations of inorganic arsenic not greater than 20,000 $\mu g/M^3$. The applicants state that there are no problems with fit, comfort or employee acceptance with these respirators, and that their proper use is strictly enforced. Therefore, they state that the only monitoring which is meaningful is inside the respirator in the breathing zone of the employee. The applicants also state that their blood lead monitoring program serves as an additional check on the proper functioning of the air-supplied hoods.

Section 1910.1018(g)(1) requires the institution of engineering and work practice controls to reduce exposures to or below the permissible exposure limits, except to the extent that the employer can establish that such controls are not feasible. Paragraph (g)(2) requires the establishment and implementation of a written program to reduce exposure. The applicants request variances from the requirement for using engineering and work practice controls to reduce employee exposure in the solder grinding booths and from the requirement to develop written compliance programs. The applicants state that the positive pressure air-supplied hoods and the respirator programs will protect their employees from exposure to inorganic arsenic while in the solder grinding booths, and that the negative pressure of the booths and the hygiene requirements will keep the airborne arsenic from being carried to other areas of the plants. Therefore, the applicants state that, without regard to the feasibility of engineering or work practive controls, they are providing a safe and healthful place of employment to their employees.

Section 1910.1018(h)(2) contains the requirements for respirator selection, including a table which lists the required respirator for various concentrations of air-borne inorganic arsenic. The applicants request variances from this section to permit supervisors to wear half facepiece filter-type respirators approved for toxic dust, with a high-efficiency filter if necessary. Although these respirators are accepted in Table I of the standard only for concentrations of inorganic arsenic not greater than 100 $\mu g/M^3$, the applicants state that the time the supervisors spend in the booth is minimal (1-3 minutes at a time, not exceeding 15 minutes per shift and 1 hour per week) and, therefore, the supervisors' exposure would be within the permitted 8 hour time-weighted average. The applicants also state that supervisors would be required to wear the positive pressure air-supplied hoods if they are in the booth for an extended period of time.

Section 1910.1018(m)(3)(i) requires that employers provide readily accessible lunchroom with temperature controlled, positive pressure, filtered air supply for employees working in regulated areas. The applicants state that the negative pressure in the booths keeps the airborne inorganic arsenic from spreading to other areas of the plant. Employees are forbidden to eat in the booths, and are required to blow dust from their clothing, remove hoods and gloves and wash prior to eating. The applicants argue that the negative pressure of the booths and the hygiene requirements make it safe for employees to eat in the existing lunchrooms throughout the plant. A separate lunchrooms with temperature controlled filtered air would pro-

vide no additional protection to the employees, according to the applicants.

Section 1910.1018(m)(5) requires that employers provide and assure the use of facilities for employees working in regulated areas where exposure (without the use of respirators) exceeds 100 $\mu g/M^3$ to vacuum their protective clothing and clean or change shoes before entering change rooms, lunchrooms or showers. The applicants propose instead to provide an air ring to blow the solder dust from the clothing before the employees leave the booth. The dust is contained within the atmosphere of the booth. The applicants state that vacuuming properly requires considerable time and effort to pass the nozzle over all parts of the clothing, while blowing the dust off the clothing with an air ring can be accomplished quickly and easily. Thus they state that the use of compressed air to blow the dust off is likely to be more effective than vacuuming.

Section 1910.1018(n) requires physical examinations of employees exposed above the action level without regard to the use of respirators, either annually or semi-annually, depending on length and level of exposure. These examinations must include, among other things, a chest X-ray. The applicants state that the use of positive pressure, air-supplied hoods provides such a level of protection that the employees' exposure is well below the action level. Chrysler Corporation states that there is, therefore, no need for medical examinations for these employees. General Motors Corp. states that there is no need for semi-annual medical examinations, but that they will provide annual medical examinations to include interval medical history, audiometric examination, pulmonary function test, 14×17 chest X-ray, blood hemoglobin determination, and blood hemocrit determination. Both companies argue that the needless use of chest X-rays provides greater risk to employees than does the very low level of inorganic arsenic to which employees protected by the hoods are exposed. Chrysler Corp. requests a variance from the requirement for chest X-rays. General Motors Corp. requests a variance from the requirement for semi-annual chest X-rays.

In addition to the above, the applicants state that they will comply with the training requirements of § 1910.1018(o) concerning inorganic arsenic and § 1910.134 concerning respirators, and with maintenance, inspection, fitting and storage requirements for the hoods as contained in § 1910.134. Employees in the solder grinding booths will receive blood-lead monitoring on a bimonthly basis. This will serve as a check on the efficacy of the hoods, since the solder also contains lead.

GRANT OF INTERIM ORDER

The applicants also requested interim orders to be effective until a decision is made on the applications for variances.

The solder which the applicants are using contains lead as well as arsenic. The new standard on lead has just been published in the FEDERAL REGISTER. Since the same subjects will be raised by the applicants in respect to the lead standard, it has been determined that an interim order is necessary to permit the employers to submit applications for variances from the lead standard and to consolidate the requests.

Therefore it is ordered, pursuant to the authority in section 6(d) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.11(c) and in Secretary of Labor's Order No. 8-76 (41 FR 25059) that General Motors Corp. and Chrysler Corp. be, and they are hereby, authorized to operate as follows for a limited period of time to permit the filing of applications for variances from the new lead standard:

1. Employees in the grinding booth shall be supplied with and required to wear individually issued air-supplied hoods approved to 20,000 μ/M^3 of inorganic arsenic;
2. Monitoring shall be done inside the hood in the breathing zone of the employee. Monitoring in the booth and full-shift sampling are not required at this time;
3. The development and implementation of a written program for using engineering and administrative controls to reduce exposure is not required at this time;
4. The supervisors shall be permitted to use half facepiece filter-type respirators approved for toxic dusts when they enter the grinding booths, so long as their exposure time remains minimal (1-3 minutes at a time, not exceeding 15 minutes per shift and 1 hour per week). If they are in the booth for an extended period of time they shall be required to wear positive pressure air-supplied hoods;
5. Employees shall be forbidden to eat in the grinding booths, and shall be required to blow dust from their clothing, remove hoods and gloves, and wash prior to eating. However, readily accessible temperature controled, positive pressure, filtered air lunchrooms are not required at this time;
6. Employees leaving the grinding booth shall be required to remove dust from their clothing by vacuuming or blowing with compressed air; and
7. Medical examinations of employees working in the solder grinding booths are not required at this time.

General Motors Corp. and Chrysler Corp. shall give notice of this interim order to employees affected thereby by the same means required to be used to inform them of the applications for a variance.

This interim order shall become effective upon publication and shall remain in effect, unless circumstances change, until January 8, 1979.

Signed at Washington, D.C. this 13th day of November, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-32292 Filed 11-16-78; 8:45 am]

[4510-26-M]

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

Appointment of Members

This is to announce the appointment of members to the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

The membership of the Committee and the categories represented are as follows:

EMPLOYEE

Joe A. Adam, Director, Department of Safety and Health, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, 901 Massachusetts Avenue NW., Washington, D.C. 20001.

Melvin J. Boyle, Assistant to the International Secretary, International Brotherhood of Electrical Workers, 1125 Fifteenth Street NW., Washington, D.C. 20005.

Robert E. P. Cooney, General Vice President, International Association of Bridge, Structural and Ornamental Iron Workers, 400 First Street NW., Washington, D.C. 20001.

Robert Farrell, Safety Director, International Union of Operating Engineers, 6200 Joliet Road, Countryside, Ill. 60525.

Roy Steinfurth, Administrator, Health Hazard Programs, International Association of Heat and Frost Insulators and Asbestos Workers, 1300 Connecticut Avenue NW., Room 505, Washington, D.C. 20036.

EMPLOYER

Harry Carr, President, Chief Executive, H. Carr & Sons, Inc., 85 Aldrich Street, Providence, R.I. 02905.

Steven Cooper, Director, Safety and Health, Stanley Structures, Inc., 5801 Pecos Street, Denver, Colo. 80221.

Charles H. Hart, Associate Director of Services, Codes and Standards, National Electrical Contractors Association, 7315 Wisconsin Avenue, Washington, D.C. 20014.

Carl Melin, Vice President, Industrial Relations, Chicago Bridge & Iron Co., 800 Jorie Boulevard, Oakbrook, Ill. 60521.

James Packenham, Safety Manager, Ebasco Services, Inc., 2 Rector Street, New York, N.Y. 10006.

STATE

E. I. "Bud" Malone, Commissioner, Department of Labor and Industry, State of Minnesota, Space Center Building, 5th Floor, 444 Lafayette Road, St. Paul, Minn. 55101.

Fred L. Ottoboni, Coordinating Engineer, State of California, Department of Health, 2151 Berkeley Way, Berkeley, Calif. 94704.

FEDERAL

Bruce A. Hollett, Senior Industrial Hygienist, National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

PUBLIC

Gene Canham, General Industry Training Officer, Industrial Commission of Arizona, 18 Vah Ki Road, Valley Farms, Ariz. 85291.

William J. Foy, Manager, Loss Control Services, National Loss Control Service Corp., 8316 Arlington Boulevard, Fairfax, Va. 22030.

Messrs. Adam, Canham, Carr, Cooper, Foy, Hart, Melin, Packenham and Steinfurth are new members; all others are reappointments.

The members were selected on the basis of their experience and competence in the field of construction safety and health and will serve until June 30, 1980. Mr. E. I. Malone will serve as Committee Chairman.

Signed at Washington, D.C. this 8th day of November 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-32293 Filed 11-16-78; 8:45 am]

[4510-26-M]

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on Tuesday, December 5 and Wednesday, December 6, 1978 in Room C-5515, Seminar Room No. 6. The meeting is open to the public and will begin at 9 a.m.

The agenda for this meeting will include the swearing in of committee members, a review of OSHA activities as they relate to the construction industry, discussion of the development of standards and general compliance activities as they relate to the safety and health of construction workers.

Written data, views, or arguments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the Chairman, depending on the extent to which time permits. Communications may be mailed to:

Ken Hunt, Office of Public and Consumer Affairs, U.S. Department of Labor-OSHA, Third Street and Constitution Avenue NW., Room N-3635, Washington, D.C. 20210, phone: 202-523-8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C., this 9th day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-32294 Filed 11-16-78; 8:45 am]

[4510-28-M]

Office of the Secretary

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKERS ADJUSTMENT ASSISTANCE

Correction

In the Appendix to FR Doc. 78-29672 published in FEDERAL REGISTER of October 20, 1978, on pages 79060 and 79061 is corrected by changing the location of the Niffty Creations, Inc. (workers), appearing on line 1 of the schedule on page 79061 from Lindenhurst, N.J., to Lindenhurst, N.Y.

Signed at Washington, D.C., this 7th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-32459 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4085 through 4104, 4209 through 4212]

Sugar Corp. of Puerto Rico

CERTIFICATION REGARDING ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

	Facility
TA-W-4085	Finca Matos Palmas
TA-W-4086	Finca Catalana-Huguerito
TA-W-4087	Finca La Luisa
TA-W-4088	Finca Ciclon
TA-W-4089	Finca Ceiba
TA-W-4090	Finca Cibuco
TA-W-4091	Finca San Cristobal
TA-W-4092	Finca Paraiso
TA-W-4093	Finca Monserrate
TA-W-4094	Finca Vapor
TA-W-4095	Loiza Admin. Office
TA-W-4096	Finca Rio Grande
TA-W-4097	Finca Palmarejo
TA-W-4097-a	Finca Merines
TA-W-4098	Finca Buena Vista
TA-W-4098-a	Finca San Luis
TA-W-4099	Finca Virginia
TA-W-4099-a	Finca Santa Catalina
TA-W-4100	Finca Mini-Mini
TA-W-4100-a	Finca Delores
TA-W-4101	Taller Reunion
TA-W-4102	Taller Deseada
TA-W-4103	Taller Isidora
TA-W-4104	Taller Destino
TA-W-4209	Taller Las Claras
TA-W-4210	Taller Central
TA-W-4211	Toa-San Vicente Admin. Office
TA-W-4212	Taller Delores

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4085 through 4104 and 4209 through 4212: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on August 22, 1978 in response to worker petitions received on August 21, 1978 which were filed by the Sugar Corp. of Puerto Rico on behalf of workers and former workers producing sugarcane at several farms, tractor shops and administrative offices in Puerto Rico.[1]

The Notices of Investigation for TA-W-4085 through 4104 were published in the FEDERAL REGISTER on September 15, 1978 (43 FR 39458). The Notices of Investigation for TA-W-4209 through 4212 were published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Sugar Corp. of Puerto Rico, the U.S. Department of Commerce, the U.S. Department of Agriculture, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The investigation has revealed that all of the requirements have been met.

U.S. imports of cane and beet sugar in 1975 totaled 3.9 million short tons and increased in 1976 to 4.7 million short tons and to 6.1 million short tons in 1977. The ratio of imports to domestic production increased from 59 percent in 1975, to 66 percent in 1976 and 96 percent in 1977.

Prior to 1974, imports of sugar were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar entering the United States has not been subject to

[1] Petitions TA-W-4209-4212 were received on September 25, 1978 and investigations were initiated on September 26, 1978.

quota restrictions. As a result, domestic prices of sugar have tended to approach world sugar prices.

Sugar prices have dropped from 1974 levels of 57.3 cents per pound, to the January 1976 price of 11.5 cents per pound and 11.0 cents per pound in 1977. Domestic sugar growers have been selling their products at prices below the cost of production. Although price supports were instituted in 1977 raising the price paid to domestic producers, that price is still below the Sugar Corp. of Puerto Rico's cost of production. This disparity in cost of production and price of sugar has caused the company to substantially contract its sugar production operations.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with sugar cane produced at the Sugar Corp. of Puerto Rico locations listed in the appendix contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers at the Sugar Corp. of Puerto Rico listed in the appendix engaged in employment related to the production of sugar cane who became totally or partially separated from employment on or after the respective impact dates and before the respective termination dates are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers totally or partially separated after the respective termination dates are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

	Facility	Impact date	Termination date
TA-W:			
4085	Finca Matos Palmas	Aug. 17, 1977	Aug. 31, 1978.
4086	Finca Catalana-Huguerito	do	Do.
4087	Finca La Luisa	do	Do.
4088	Finca Ciclon	do	Do.
4089	Finca Ceiba	do	July 31, 1978.
4090	Finca Cibuco	do	Aug. 31, 1978.
4091	Finca San Cristobal	do	Jan. 31, 1978.
4092	Finca Paraiso	do	Do.
4093	Finca Monserrate	do	Do.
4094	Finca Vapor	do	Do.
4095	Loiza Administrative Office	do	Aug. 31, 1978.
4096	Finca Rio Grande	do	Do.
4097	Finca Palmarejo	do	Do.
4097-a	Finca Merines	do	Do.
4098	Finca Buena Vista	do	Do.
4098-a	Finca San Luis	do	Do.
4099	Finca Virginia	do	Do.
4099-a	Finca Santa Catalina	do	Do.
4100	Finca Mini-Mini	do	Do.
4100-a	Finca Delores	do	Do.
4101	Taller Reunion	do	None.
4102	Taller Deseada	do	Do.
4103	Taller Isidora	do	Do.
4104	Taller Destino	do	Do.
4209	Taller Las Claras	Sept. 3, 1978	Do.
4210	Taller Central	do	Do.
4211	Toa-San Vicente Administration Office	Aug. 1, 1978	Do.
4212	Taller Delores	Sept. 21, 1977	Do.

[FR Doc. 78-32461 Filed 11-16-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Brody, Inc. of DeKalb (ILGWU)	DeKalb, Ill	Nov. 1, 1978	Oct. 30, 1978	TA-W-4,329	Women's fall and spring coats.
Genesco, Inc., General Shoe Co. Div., Danville (company).	Danville, Ky	Nov. 2, 1978	do	TA-W-4,330	Manufacturing of shoes.
Genesco, Inc., General Shoe Co., Div., Fulton (company).	Fulton, Miss	do	do	TA-W-4,331	Do.
Genesco, Inc., General Shoe Co., Div., Iuka (company).	Iuka, Miss	do	do	TA-W-4,332	Do.
Genesco, Inc., General Shoe Co., Div., Ripley (company).	Ripley, Miss	do	do	TA-W-4,333	Do.
Genesco, Inc., General Shoe Co., Div., 56th Ave. Rubber Mill (company).	Nashville, Tenn	do	do	TA-W-4,334	Shoe components.
Genesco, Inc., General Shoe Co., Div., Chapel Hill Sole Cutting (company).	Chapel Hill, Tenn	do	do	TA-W-4,335	Do.
Genesco, Inc., General Shoe Co., Div., General Adhesives and Chemical Co. (company).	Nashville, Tenn	do	do	TA-W-4,336	Do.
Genesco, Inc., General Shoe Co., Div., Southern Sole (company).	do	do	do	TA-W-4,337	Do.
Genesco, Inc., General Shoe Co., Div., Tullahoma Capitol Products (company).	Tullahoma, Tenn	do	do	TA-W-4,338	Do.
Genesco, Inc., General Shoe Co., Div., Dominion Shoe Co. (warehouse) (company).	Charlotte, N.C	do	do	TA-W-4,339	Distribution and warehousing of footwear.
Genesco, Inc., General Shoe Co., Div., Fulton (warehouse) (company).	Fulton, Miss	do	do	TA-W-4,340	Do.
Genesco, Inc., General Shoe Co., Div., Genstar (warehouse) (company).	Nashville, Tenn	do	do	TA-W-4,341	Do.
Genesco, Inc., General Shoe Co., Div., Huntsville (warehouse) (company).	Huntsville, Ala	do	do	TA-W-4,342	Do.
Genesco, Inc., General Shoe Co., Div., J & M (warehouse) (company).	Nashville, Tenn	do	do	TA-W-4,343	Do.
Genesco, Inc., General Shoe Co., Div., Customer Service (warehouse) (company).	do	do	do	TA-W-4,344	Do.
Genesco, Inc., General Shoe Co., Div., Fayetteville (warehouse) (company).	Fayetteville, Tenn	do	do	TA-W-4,345	Do.
Genesco, Inc., General Shoe Co., Div., 63d Ave. (warehouse) (company).	Nashville, Tenn	do	do	TA-W-4,346	Do.
Genesco, Inc., General Shoe Co., Div., Main Street General Maintenance (company).	do	do	do	TA-W-4,347	General maintenance for equipment.
Na-Lor Manufacturing Co. (Knit Goods Union ILGWU).	Philadelphia, Pa	do	do	TA-W-4,348	Men's sweaters from man-made and natural yarns.
Pembroke, Inc. (company)	Egg Harbor City, N.J.	do	Oct. 31, 1978	TA-W-4,349	Tailored top coats for the military.
Rockwell International Admiral Group (workers).	Rosemont, Ill	Nov. 3, 1978	Oct. 20, 1978	TA-W-4,350	Sales office, warehouse (or distribution) and electronic service center.
D. Seidmann's Sons, Inc. (Knit Good Union, ILGWU).	Philadelphia, Pa	Nov. 2, 1978	Oct. 31, 1978	TA-W-4,351	Knit scarves and knit headwear.

[FR Doc. 78-32460 Filed 11-16-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (the Act) and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separtion of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 7th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
GTE Sylvania (IUE)	Batavia, N.Y	Nov. 3, 1978	Nov. 2, 1978	TA-W-4,352	Parts for television sets.
Northampton Steel Corp. (workers)	Easton, Pa	do	Nov. 19, 1978	TA-W-4,353	Fabricated structural steel.
Teledyne Wah Chang, Albany Division of Teledyne, Inc. (USWA).	Albany, Oreg	do	Nov. 2, 1978	TA-W-4,354	Separation, reduction, and fabrication of zirconium, hafnium, columbium, titanium, and other rare metals.
Tennessee Leather Products, Inc. (workers).	LaFollette, Tenn	Nov. 6, 1978	Nov. 3, 1978	TA-W-4,355	Leather and rawhide coats.
Voyager Sportswear, Inc. (company)	New Bedford, Mass	do	Nov. 2, 1978	TA-W-4,356	Children's sportswear.
Washington Porcelain (workers)	Washington, N.J	do	Nov. 1, 1978	TA-W-4,357	Switch plates, castings, pouring cups, light fixtures, known as industrial porcelain.
Willoform Manufacturing Co., Inc. (Undergarment & Negligee Workers Union, ILGWU).	New York, N.Y	do	Nov. 2, 1978	TA-W-4,358	Brassieres and girdles.

[FR Doc. 78-32462 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4037]

ARROW CO., DIVISION OF CLUETT, PEABODY & CO., INC., TROY, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4037: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 7, 1978, in response to a worker petition received on July 17, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's dress shirts at the Troy, N.Y., plant of the Arrow Co., Division of Cluett, Peabody & Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38635). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the Arrow Co., its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys woven dress and business shirts increased from 30,800,000 units in 1975 to 64,283,000 units in 1976, and to 64,446,000 units in 1977. U.S. imports increased to 34,127,000 units during the first 6 months of 1978 compared to 32,443,000 units for the same period in 1977.

The imports to domestic production ratio for men's and boys woven business and dress shirts increased from 36.2 percent in 1975 to 70.4 percent in 1976 and to 72.6 percent in 1977.

The Arrow Co. imported increasing quantities of both men's dress and men's sport shirts during 1976 and 1977. Company imports of men's sport shirts increased in the first 6 months of 1978 compared to the same period of 1977.

A survey of retail customers of the Arrow Co. revealed that several of these customers had reduced their purchases from the subject firm in 1977 compared to 1976 while increasing imports of men's dress and sport shirts from abroad. A number of these customers also reduced their purchases from the Arrow Co. in the first 6 months of 1978 compared to the first 6 months of 1977 while increasing direct imports or domestic purchases of shirts produced offshore.

On June 28, 1976, the Department of Labor certified workers at the Troy, N.Y., plant of the Arrow Co. as eligible to apply for trade adjustment assistance (TA-W-790). That certification remained in effect until June 28, 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's dress shirts produced at the Troy, N.Y., plant of the Arrow Co., Division of Cluett, Peabody & Co., Inc., contributed importantly to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Troy, N.Y., plant of the Arrow Co., Division of Cluett, Peabody & Co., Inc., who became totally or partially separated from employment on or after June 28, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32444 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4079 and TA-W-4080]

ARROW CO., DIVISION OF CLUETT, PEABODY & CO., INC., EVELETH AND VIRGINIA, MINN.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4079 and 4080: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on August 18, 1978, in response to a worker petition received on August 18, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's dress shirts at the Eveleth I and Virginia, Minn., plants of the Arrow Co., Division of Cluett, Peabody & Co., Inc.

The Notices of Investigation were published in the FEDERAL REGISTER on September 1, 1978 (43 FR 39193-94). No public hearing was requested and none was held.

The information upon which the determinations were made was obtained principally from officials of the Arrow Co, its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act

must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or appropriate subdivision have decreased absolutely.

Production, in quantity of shirt cuttings, at the Arrow Co.'s Eveleth I plant increased from 1976 to 1977 and continued to increase in the January-August period of 1978 compared to the same period of 1977.

Production, in quantity of stitched shirts, at the Arrow Co.'s Eveleth I and Virginia, Minn., plants increased from 1976 to 1977 and continued to increase in the first 8 months of 1978 compared to the same period of 1977.

Production, in quantity of finished shirts, at the Arrow Co.'s Virginia, Minn., plant increased from 1976 to 1977 and continued to increase in the January-August period of 1978 compared to the same period of 1977.

Separate sales data for the Eveleth I and Virginia, Minn., plants are not available since finished shirts from the plants are sent directly to the company's distribution center in Atlanta, Ga., and then sold to retailers with no record kept with respect to where they were produced. Only a small inventory is maintained. Because of this arrangement, production and sales for the Eveleth I and Virginia, Minn., plants are roughly equivalent.

CONCLUSION

After careful review, I determine that all workers at the Eveleth I (Eveleth, Minn.) and Virginia, Minn., plants of the Arrow Co., Division of Cluett, Peabody & Co., Inc., are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32445 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4079a]

ARROW CO. DIVISION OF CLUETT, PEABODY & CO., INC., EVELETH, MINN.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4079a: Expansion of investigation TA-W-4079 regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 18, 1978, in response to a worker petition received on August 18, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producting men's dress shirts at the Eveleth I plant of the Arrow Co. Division of Cluett, Peabody & Co., Inc. This investigation was expanded to include workers engaged in employment related to the stitching and packaging of men's woven underwear at the Arrow Co.'s No. 2 plant in Eveleth, Minn. These workers were engaged in the same manufacturing operations at the Company's Eveleth I plant until October 31, 1977, when they were transferred to Eveleth II. A separate case number (TA-W-4079a) was established to distinguish this group of workers from other company employees producing men's dress shirts at the Eveleth I facility.

The Notice of Investigation was published in the FEDERAL REGISTER on September 1, 1978 (43 FR 39193-94). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Arrow Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The ratio of U.S. imports of men's and boys' nonknit underwear to domestic production did not exceed 1 percent during the 1973-77 period.

A survey of retail customers of the Arrow Co. revealed that in 1977 compared to 1976, and in the first 8 months of 1978 compared to the same period of 1977, none of the responding customers had decreased purchases of men's woven underwear from the subject firm while increasing imports of like articles. All purchasers of men's woven underwear from the Arrow Co. who responded to the Department's survey indicated that they had not imported this product during the first 8 months of 1978.

CONCLUSION

After careful review, I determine that all workers at the Eveleth II plant, located in Eveleth, Minn. of the Arrow Co. Division of Cluett, Peabody & Co., Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32446 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4023]

ASARCO, INC., TACOMA, WASH.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4023: Investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 2, 1978, in response to a worker petition received on July 27, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers smelting and refining copper at the Tacoma, Wash., plant of ASARCO, Inc.

The notice of investigation was published in the FEDERAL REGISTER on August 11, 1978 (43 FR 35759). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of ASARCO, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of the Interior, the American Metals Market, Metal Bulletin, Metals Week, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of refined copper increased from 147 thousand short tons in 1975 to 384 thousand short tons in 1976 and to 391 thousand short tons in 1977. Imports increased from 164 thousand short tons in the first half of 1977 to 327 thousand short tons in the first half of 1978. The imports to domestic production ratio increased from 8.6 percent in 1975 to 21 percent in 1976 and to 22.2 percent in 1977. The imports to domestic production ratio increased from 15 percent in the first half of 1977 to 35.9 percent for the same period in 1978.

Imports of copper are affected by the differential between the domestic producers price of copper and the price established by the LME (London Metal Exchange). When the LME price drops more than the estimated transportation cost of 5 cents per pound below the domestic producers price, the demand for imported copper increases. During the last 9 months of 1977 and the first 6 months of 1978, the average LME price was almost 8 cents per pound below the average domestic producers price. At the same time, the abundant supply of copper stocks in the foreseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. Consequently, imports of refined copper increased in 1977 when compared to 1976 and doubled in the first half of 1978 when compared to the same period in 1977, when many domestic producers curtailed production because of the depressed market price of copper.

Price pressure from imported copper has reduced ASARCO's ability to profitably mine domestic ore and convert it to copper concentrate and then to refined copper. The domestic producers price of copper has been approximately equal to or below the cost of production of refined copper at ASARCO's Tacoma, Wash., plant. Consequently, ASARCO has been either breaking even or incurring losses by operating the Tacoma facility.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the smelted and refined copper produced at the Tacoma, Wash., plant of ASARCO, Inc., contributed importantly to the decline in sales and production and to the total or partial separation of workers at the facility. In accordance with the provisions of the Act, I make the following certification:

All workers at ASARCO, Inc., Tacoma, Wash., who became totally or partially separated from employment on or after January 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32447 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3398]

BOUND BROOK TOGS CO., INC., BOUND BROOK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3398: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978, in response to a worker petition received on February 13, 1978, which was filed by the Amalgamated Clothing & Textile Workers' Union on behalf of workers formerly producing ladies' blouses, pants, skirts, sweat suits and shirts at Bound Brook Togs Co., Inc., Bound Brook, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775-14776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bound Brook Togs Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Bound Brook Togs Co. produced women's sportswear only for the period from October 1975 through December 1977. During each quarter of 1977, production was greater than in the respective quarter of 1976.

The Department conducted a survey of manufacturers who contracted with Bound Brook Togs. Consistent with the production statistics, the survey revealed that manufacturers increased their contract work with Bound Brook. The manufacturers which provided Bound Brook with the major part of its contract work did not purchase imports or utilize foreign contractors. Imports were purchased by only one manufacturer, and those represented a negligible proportion of that manufacturer's total sales.

CONCLUSION

After careful review, I determine that all workers of Bound Brook Togs Co., Inc., Bound Brook, N.J. are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32121 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3674]

C & C FASHIONS, INC., WEEHAWKEN, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3674: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and raincoats at C & C Fashions Weehawken, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 28, 1978 (43 FR 22793). No public hearing was requested and none was held. The Notice of Investigation stated that the name of C & C Fashions, Inc. was C & C Styles.

The information upon which the determination was made was obtained principally from officials of C & C Fashions, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

U.S. imports of women's, misses', and children's raincoats decreased

from 261 thousand dozen in 1976 to 242 thousand dozen in 1977. Imports increased from 84 thousand dozen in the first quarter of 1977 to 129 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production decreased from 45.0 percent in 1976 to 40.3 percent in 1977.

The Department conducted a survey of the principal manufacturers for which C & C Fashions, Inc. worked in 1976 and 1977. The sole manufacturer for which C & C worked in 1976 reduced purchases from C & C Fashions, Inc. and increased purchases of imported ladies' coats and raincoats in 1977 compared to 1976. A manufacturer that accounted for a majority of sales in the first quarter of 1977 discontinued purchases from C & C Fashions, Inc. and increased purchases of imported ladies' coats and raincoats in the first quarter of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats and raincoats produced at C & C Fashions, Inc., Weehawken, N.J. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of C & C Fashions, Inc., Weehawken, N.J. who became totally or partially separated from employment on or after June 24, 1977, and before April 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers of C & C Fashions, Inc. who became totally or partially separated from employment on or after April 1, 1978, are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32448 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3553; TA-W-3554]

COATS & CLARK, INC., ZIPPER DIVISION, JAMESVILLE, N.C., NEWPORT NEWS, VA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3553 and 3554: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 27, 1978, in response to worker petitions received on April 14, 1978, which were filed on behalf of workers and former workers producing zippers at the Jamesville, N.C. plant (TA-W-3553) and the Newport News, Va., plant (TA-W-3554) of the Zipper Division of Coats & Clark, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21069). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Coats & Clark, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

The Zipper Division of Coats & Clark, Inc. is engaged in the production and sales of consumer and industrial zippers. The Jamesville, N.C. plant is part of an integrated production process as it performs the initial stages of zipper production for the Zipper Division. The Newport News, Va., plant is a Zipper Division facility involved in the final stages of production of zippers.

The U.S. imports of zippers declined from 83 million units in 1976 to 60 million units in 1977. Imports increased from 20.9 million units in the first 5 months of 1977 to 30.0 million units in the first 5 months of 1978.

A U.S. Labor Department survey indicated that customers of Coats & Clark's Zipper Division were increasing purchases of imports in 1977 and in 1978 while decreasing purchases from Coats & Clark, Inc.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with zippers producted at the Jamesville, N.C., plant and the Newport News, Va., plant of the Zipper Division of Coats & Clark, Inc. contributed importantly to the decline in sales or production and to the total or partial separations of workers at those plants. In accordance with the provisions of the Act, I make the following certification:

All workers of the Jamesville, N.C. plant of the Zipper Division of Coats & Clark, Inc. who became totally or partially separated from employment on or after February 5, 1978; and all workers at the Newport News, Va. plant of the Zipper Division of Coats & Clark, Inc. who became totally or partially separated from employment on or after November 20, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32122 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3507]

D & M UNIFORM CO., INC., SALEM, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3507: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 13, 1978 in response to a worker petition received on April 3, 1978 which was filed on behalf of workers and former workers producing women's blouses and shirts at D & M Uniform Co., Inc., Salem, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17552). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of D & M Uniform Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. In the first quarter of 1978, imports of blouses increased to 10,186 thousand dozen compared to 8,280 thousand dozen in the first quarter of 1977. The ratio of imports to domestic production remained relatively constant from 1975 to 1976 at 70.3 percent and declined slightly to 69.7 percent in 1977.

D & M Uniform Co. was a contractor working exclusively from 1970 to September of 1977 for a Boston blouse manufacturing firm. From 1976 to 1977, this manufacturer experienced a substantial drop in its unit sales and by September of 1977 could no longer

provide work to D & M Uniform. After losing these contracts, D & M Uniform could not find steady work from other blouse manufacturers. The Boston manufacturer who had supplied work to D & M Uniform attempted to make up for the reduction in blouse sales by going into other items such as pants, skirts, and blazers; but D & M Uniform was not equipped to make these garments.

Surveys, conducted by the U.S. Department of Labor, with manufacturers in the blouse industry and their customers have shown that manufacturers have been losing sales since 1975 as customers turn to lower-priced, imported blouses. Department surveys have been confirmed by industry import data which show that over the past 5 years, U.S. imports of women's blouses and shirts have nearly doubled and the ratio of imports to domestic production has risen from 50 percent in 1973 to 70 percent in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's blouses and shirts produced at D & M Uniform Co., Inc., Salem, Mass. contributed importantly to the decline in sales and production and to the total or partial separation of workers at the firm. In accordance with the provisions of the Act, I make the following certification:

All workers of D & M Uniform Co., Inc., Salem, Mass. who became totally or partially separated from employment on or after December 16, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32123 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3567]

FMC CORP., FREDERICKSBURG, VA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3567: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 3, 1978 in response to a worker petition received on April 19, 1978 which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers formerly producing cellophane film at the Fredericksburg, Va. plant of FMC Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21068). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of FMC Corp., its customers, U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

FMC Corp.'s Film Division had two plants producing cellophane: Marcus Hook, Pa. and Fredericksburg, Va. FMC closed its Marcus Hook plant in January 1977, and closed its Fredericksburg, Va. plant in March 1978. Subsequent to the closure of the Fredericksburg, Va. plant, FMC has ceased producing cellophane and is selling off its inventory.

The overriding factor in the closure of FMC's cellophane plants, as well as plants operated by other domestic cellophane manufacturers is the increasing substitution of less costly plastic films for cellophane in the packaging industry. Consumption of cellophane by the meat, bakery, and tobacco industries fell sharply in the period from 1960 to 1977. Cellophane was replaced by PVC film, polyethelene and oriented polypropylene. These films, produced from petrochemicals, are manufactured at a lower cost than cellophane, but are able to meet market place requirements for package performance. Declining demand for cellophane contributed to excess capacity in the industry, which further escalated plant closings by major cellophane producers.

Aggregate data reflects the subsitution of transparent plastic films for cellophane. U.S. production and consumption of cellophane dropped 12 percent and 10 percent respectively from 1976 to 1977. U.S. production of polypropylene and polyethelene increased by 14 percent and 12 percent, respectively, during the same period.

The customer survey conducted by the Department of Labor, revealed that major purchasers of cellophane were forced to switch to foreign sources after FMC and other domestic producers closed their plants. In 1977, when the Fredericksburg plant was still in operation, increased import purchases by customers who decreased purchases from FMC, constituted an insignificant percentage of the decline in FMC sales in that period.

Customers stated that the major import influence had occurred during the second quarter of 1978 subsequent to the closure of the Fredericksburg plant.

FMC imported cellophane for a short period in 1977 only. These imports were of a type of colored cellophane unavailable domestically, and were insignificant in relation to both company sales and production at the Fredericksburg plant.

CONCLUSION

After careful review, I determine that all workers of the Fredericksburg, Va. plant of FMC Corp. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32124 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3686]

FORMFLEX FOUNDATIONS, INC., SADDLE BROOKE, N.J.

Revised Determination on Reconsideration

On October 12, 1978 (43 FR 49066) the Department of Labor granted administrative reconsideration of the original negative determination which it made pursuant to section 223 of the Trade Act of 1974 for all workers at the Saddle Brooke, N.J., plant of Formflex Foundations, Inc., regarding eligibility to apply for worker adjustment assistance.

Counsel for one of the former workers claimed that the Department erred in denying the petition by focusing its investigation on the entire Saddle Brooke plant instead of on the sewing department of that plant. Counsel for the worker claimed that the sewing department should have been the appropriate subdivision and that the ceasing of production with the resultant separations of all the sewers from that department on April 1, 1978, fulfills all the requirements of section 222 of the Trade Act of 1974. Counsel for the worker further states that the sewing department is an appropriate subdivision of the firm by virtue of the fact that it is distinguishable from

other subdivisions of the firm mainly by fuction, skill, and pay scale.

In its reconsideration, the Department reviewed the investigative file and performed additional investigative functions and determined that production and employment of sewers in the sewing department ceased on April 1, 1978. The investigation further revealed that since only sewers were employed in the sewing department, the sewing department is, therefore, distinguishable by function from other departments at the Saddle Brooke plant and may be considered an appropriate subdivision.

While there may be an element of domestic transfer of sewing jobs from the Saddle Brooke plant to other Formflex Foundation plants in Puerto Rico, employment of sewers in Puerto Rico decreased in the third and fourth quarters of 1977 compared to their immediately preceding quarters and 31 percent in the first 5 months of 1978 compared to the same period in 1977.

A review of the case file indicates that company imports of finished sewn brassieres and girdles from Haiti increased 65 percent in 1977 compared to 1976 and 49 percent in the first 4 months of 1978 compared to the same period in 1977.

U.S. imports of brassieres, bralettes, and bandeaux increased absolutely from 8.8 million dozen in 1976 to 9.5 million dozen in 1977 and further increased 2.2 million dozen in the first quarter of 1977 to 2.4 million for the same period in 1978. The imports to domestic production ratio was 51.6 percent in 1976 and it has increased in every year since 1973.

U.S. imports of corsets and girdles increased absolutely from 231,000 in 1976 to 269,000 dozen in 1977 and further increased from 53,000 dozen in the first quarter of 1977 to 72,000 dozen for the same period in 1978. The imports to domestic production ratio was 6 percent in 1976 and it has increased in every year since 1973.

CONCLUSION

Based on additional evidence, a review of the entire record and in accordance with the provisions of the Act, I make the following revised determination:

All workers in the sewing department of the Saddle Brooke, N.J., plant of Formflex Foundations, Inc., who became totally or partially separated from employment on or after April 25, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32449 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3325]

FORTUNE SPORTSWEAR, JERSEY CITY, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3325: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the Amalgamated Clothing & Textile Workers' Union on behalf of workers and former workers producing men's and women's leather and suede coats and jackets at Fortune Sportswear, Jersey City, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fortune Sportswear, its manufacturer, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

United States imports of men's, boys', women's, misses', juniors' and children's leather coats and jackets increased from $115.5 million in 1975, to $177.8 million in 1976 and increased in 1977 to $186.4 million. The import to domestic production ratio was 59.5 percent in 1975 increased to 96.3 percent in 1976 and decreased to 85.3 percent in 1977.

Fortune Sportswear produces under contract for a manufacturer whose sales decreased in 1976 compared to 1975 and in 1977 compared to 1976. A survey of this manufacturer's largest customers indicated that customers decreased purchases from this manufacturer in 1977 while increasing purchases of imported leather coats and jackets.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with men's and women's leather and suede coats and jackets produced by Fortune Sportswear, Jersey City, N.J., contributed importantly to the decline in sales and production and to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Fortune Sportswear, Jersey City, N.J. who became totally or partially separated from employment on or after February 10, 1977, and before March 3, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32125 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3788]

HERCULES TROUSER CO., INC., COLUMBUS, OHIO

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 31, 1978, in respoonse to a worker petition received on May 28, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers engaged in shipping men's dress pants and leisure suits at the Columbus, Ohio plant of Hercules Trouser Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26497). No public hearing was requested and none was held.

In a letter dated November 3, 1978 the petitioner, the Amalgamated Clothing & Textile Workers' Union withdrew the petition for Hercules Trouser Co., Columbus, Ohio. (TA-W-3788). Therefore, continuing the present investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington D.C. this 8th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc 78-32450 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3147]

JERROLD ELECTRONICS CORP., CHICOPEE, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3147: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 16, 1978, in response to a worker petition received on January 30, 1978, which was filed by the International Brotherhood of Electrical workers on behalf of workers and former workers producing cable systems of equipment and master antenna systems at General Instrument Corp., Jerrold Electronics Division, Chicopee, Mass. The investigation revealed that Jerrold Electronics is a wholly owned subsidiary of General Instrument Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8862). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Jerrold Electronics Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligiblity requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of C.A.T.V. equipment increased both absolutely and relative to domestic shipment during 1977 compared to 1976 and during the first half of 1978 compared to the first half of 1977.

The Chicopee, Mass. plant is the only domestic production facility of Jerrold Electronics Corp. A production facility in Nogales, Mexico was opened by the company in 1970. As a result of a corporate decision by Jerrold, certain production lines of CATV equipment were transferred from the Chicopee facility to the Nogales plant. A transfer of printed circuit board production from Chicopee to Nogales occurred during October 1977, and a transfer of production of amplifiers from Chicopee to Nagales began in January 1978; the amplifier production line at Nogales was fully operational by May 1, 1978. Imports by Jerrold from the Nogales facility increased relative to the value of production at Chicopee in fiscal (March to February) 1978, compared to fiscal 1977 and continued to increase in the first 4 months of fiscal 1979.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with cable systems of equipment and master antenna systems (CATV) produced at Jerrold Electronics Corp., Chicopee, Mass., contributed importantly to the decline in production and to the total or partial separation of workers of that facility. In accordance with the provisions of the Act, I make the following certification:

All workers of the Chicopee, Mass., plant of Jerrod Electronics Corp., who become totally or partially separated from employment on or after January 26, 1977, are certified eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-32126 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4049]

LAWRENCE MAID FOOTWEAR, INC., LAWRENCE, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4049: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 8, 1978, in response to a worker petition received on August 4, 1978, which was filed on behalf of workers and former workers producing women's dress shoes and casual shoes at Lawrence Maid Footwear, Inc., Lawrence, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 3634). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lawrence Maid Footwear, Inc., its customers, the American Footwear Industries Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

On September 16, 1976, the Department of Labor issued a certification of eligibility to apply for adjustment assistance for employees producing women's and misses' shoes at Lawrence Maid Footwear, Lawrence, Mass., a division of W. R. Grace & Co., New York.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

The women's dress shoes and casual shoes produced by Lawrence Maid Footwear, Inc., Lawrence, Mass., are included in the import category "Women's Nonrubber Footwear, Except Athletic." U.S. imports of this category, expressed as a percentage of domestic production, increased from 131.6 in 1976 to 137.3 in 1977, and from 139.7 in the first half of 1977 to 143.3 in the first half of 1978. Imports increased absolutely from 100.6 million pairs in the first half of 1977 to 105.6 million pairs in the first half of 1978.

Firms, representing a significant portion of Lawrence Maid Footwear's sales in 1976 and 1977, reported that they decreased purchases from the subject firm while increasing purchases of imports, in the first half of 1978 as compared to the time period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with women's dress shoes and casual shoes produced at Lawrence Maid Footwear, Inc., Lawrence, Mass., contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Lawrence Maid Footwear, Inc., Lawrence, Mass., engaged in employment related to the production of women's dress shoes and women's casual shoes who became totally or partially separated from employment on or after September 16, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32451 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3757, 3758, 3759]

M. WILE & CO., INC., ELMWOOD AVENUE, BUFFALO, N.Y., DUNKIRK, N.Y., GOODELL STREET, BUFFALO, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3757, 3758 and 3759: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 23, 1978, in response to a worker petition received on May 15, 1978, which was filed by the Amalagamated Clothing & Textile Workers' Union on behalf of workers and former workers producing men's tailored clothing at the Elmwood Avenue, Buffalo, N.Y., plant (TA-W-3757) the Dunkirk, N.Y., plant (TA-W-3758) and the Goodell Street, Buffalo, N.Y., plant (TA-W-3759) of M. Wile & Co., Inc.

The Department's investigation revealed that M. Wile & Co., Inc., produced men's tailored suits and men's sportjackets.

The notice of investigation was published in the FEDERAL REGISTER on June 6, 1978 (43 FR 24633). No public hearing was requested, and none was held.

The information upon which the determination was made was obtained principally from officials of M. Wile & Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. With respect to workers at the Elmwood Avenue, Buffalo, N.Y., and Dunkirk, N.Y., plants, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Pursuant to the requirements of 29 CFR 90.2, total or partial separations must be the equivalent to a total unemployment of 5 percent or 50 workers, whichever is less, or a reduction in hours worked to 80 percent or less of average weekly hours.

Evidence developed in the Department's investigation revealed that the total number of workers experiencing involuntary separations during the period from May 11, 1977, one year prior to the signature date of the petitions, to the present at the Elmwood Avenue, Buffalo, N.Y., plant and the Dunkirk, N.Y., plant of M. Wile & Co., amounted to less than 5 percent of the workforce and less than 50 workers in each plant, respectively. Average hours worked by employees in the respective plants were not reduced to 80 percent or less of employees' average weekly hours during the period from May 11, 1977 to the present.

There is no immediate threat to employment for the workers at the Elmwood Avenue, Buffalo, N.Y., plant and the Dunkirk, N.Y., plant of M. Wile & Co., Inc.

With respect to workers at the Goodell Street, Buffalo, N.Y., plant, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Coat production at the Elmwood Avenue plant increased from 1976 to 1977 and increased in the first 5 months of 1978 compared to the first 5 months of 1977.

CONCLUSION

After careful review I determine that all workers at the Elmwood Avenue, Buffalo, N.Y., Dunkirk, N.Y., and Goodell Street, Buffalo, N.Y., plants of M. Wile & Co., Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32452 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4039]

MARSHALL RAY CORP., TROY, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4039: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 7, 1978, in response to a worker petition received on July 17, 1978, which was filed by the Amalgalated Clothing & Textile Workers' Union on behalf of workers and former workers producing men's sportcoats and leisure suits. The investigation revealed that the plant produces men's sportcoats exclusively.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29,1978 (43 FR 38635). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Marshall Ray Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that imports of men's and boys' tailored dress coats and sportcoats decreased in quantity from 6,965 thousand units in 1976 to 6,269 thousand units in 1977 and decreased from 3,537 thousand units in the first half of 1977 to 3,237 thousand units in the first half of 1978. The ratio of imports to domestic production decreased from 30.0 percent in 1976 to 26.5 percent in 1977.

CONCLUSION

After careful review, I determine that all workers of Marshall Ray Corp., Troy, N.Y., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc 78-32127 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3972]

NEKO TOGS, PATERSON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3972: Investigation regarding certification of eligibility to

apply for worker adjustment assistance as prescribed in section 222 of the Act.

The Investigation was initiated on July 13, 1978, in response to a worker petition received on July 10, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's dresses at Neko Togs, Paterson, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Neko Togs, Benco Togs, Inc. (the parent Company of Neko Togs), its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

Neko Togs markets the children's dresses it produces through its parent company, Benco Togs, Inc., New York, N.Y. A survey of a significant portion of Benco Togs' customers indicated that in general, customers that decreased purchases from the subject firm did not increase purchases of imported children's dresses in 1977 as compared to 1976, or in the first half of 1978 as compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of Neko Togs, Paterson, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32128 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3692]

NEW BRUNSWICK CHILDREN'S COAT CO., HIGHLAND PARK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3692: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's coats at New Brunswick Children's Coat Co., Highland Park, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of New Brunswick Children's Coat Co., its customers (manufacturers), customers of the manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978.

Subsequent to the earliest impact date which could be set under the law, April 25, 1977, there were no significant layoffs until November 1977, when the layoffs typical to the firm and the industry occurred. Employment at New Brunswick Children's Coats increased in the first 5 months of 1978 compared with the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of New Brunswick Children's Coat Co., Highland Park, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Adminstration and Planning.

[FR Doc. 78-32129 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4139]

PARKER MANUFACTURING CO., WORCESTER, MASS., NORTHBORO, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4139: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 6, 1978 in response to a worker petition received on September 5, 1978 which was filed on behalf of workers and former workers producing hand tools at the Parker Manufacturing Co., Worcester, Mass. The investigation revealed that the Parker Manufacturing Co. also operates a plant in Northboro, Mass. which represents an integrated part in the production of the hand tools produced at the Worcester plant. The investigation was expanded to include the Northboro plant.

The Notice of Investigation was published in the FEDERAL REGISTER on September 29, 1978 (43 FR 44935). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Parker Manufacturing Co., and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm of subdivision have decreased absolutely.

Sales at the Parker Manufacturing Co. increased in 1977 compared to 1976 and in the first three quarters of 1978 compared to the same period in 1977. Production at the Parker Manufacturing Co. also increased in 1977 compared to 1976 as well as in the period January through August 1978 compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of the Worcester and Northboro, Mass. plants of the Parker Manufacturing Co. be denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32453 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3198]

PETROCELLI CLOTHES, NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3198: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 22, 1978 in response to a worker petition received on February 6, 1978 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's and boys' tailored clothing. The investigation revealed that men's suits, sportcoats, and trousers were produced.

The Notice of Investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8863). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Petrocelli Clothes, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The Department's investigation revealed that the average employment of workers at Petrocelli Clothes and its subdivisions increased in 1977 compared to 1976. Average employment remained constant for the first half of 1978 compared to that for 1977.

Average weekly hours worked increased in 1977 over 1976 and did not change significantly in the first half of 1978 compared with the first half of 1977.

There is no immediate threat of separation of workers at this firm.

Workers at Petrocelli Clothes and its subdivisions were previously certified as eligible to apply for adjustment assistance on February 18, 1976 (TA-W-363). That certification expired on February 18, 1978.

CONCLUSION

After careful review, I determine that all workers of Petrocelli Clothes and its subdivisions, located in New York, N.Y., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32130 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3263]

Q-T SHOE MANUFACTURING CO., INC., LEBANON, PA., PATERSON, N.J.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents in the results of TA-W-3263: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 27, 1978 in response to a worker petition received on February 13, 1978, which was filed on behalf of workers and former workers producing women's casual footwear at Q-T Shoe Manufacturing Co., Inc., Lebanon, Pa. The investigation was expanded to include the workers at the company's Paterson, N.J. plant.

The notice of investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10648). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Q-T Shoe Manufacturing Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. With respect to workers producing women's casual footwear at the Paterson, N.J. plant of Q-T Shoe Manufacturing Co., Inc., without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Evidence developed in the course of the investigation revealed that total or partial separation did not occur at the Paterson, N.J. plant.

Employment of production workers at Paterson did not change from 1976 to 1977. Layoffs occurred in the second half of 1976 up to December of that year, more than 1 year prior to the date of the petition. In the first two quarters of 1977 workers were being recalled from the 1976 layoffs. From the third quarter of 1977 to the second quarter of 1978 employment increased every quarter compared to the same quarter of the previous year. Hours per worker remained stable throughout the period.

With respect to workers producing women's casual footwear at the Lebanon, Pa. plant of Q-T Shoe Manufacturing Co., Inc., it is concluded that all of the requirements have been met.

U.S. imports of women's and misses' nonrubber footwear, except athletic increased from 190.7 million pairs in 1975 to 195.5 million pairs in 1976 and decreased to 181.8 million pairs in 1977. In the first quarter of 1978 imports increased to 56.3 million pairs compared to 48.9 million pairs in the same period of 1977.

The ratio of imports to domestic production increased from 114.0 percent in 1976 to 119.2 percent in 1977 and increased from 126.0 percent in the first quarter of 1977 to 132.2 percent in the same period of 1978.

A survey of customers of Q-T Shoe Manufacturing Co., Inc. revealed that several customers increased purchases of imported women's nonrubber shoes and decreased purchases from the subject firm in 1977 and in the first quarter of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's casual shoes produce by Q-T Shoe Manufacturing Co., Inc., Lebanon, Pa. contributed importantly to the decline in production and to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Q-T Shoe Manufacturing Co., Inc., Lebanon, Pa. who became totally or partially separated from employment on or after November 30, 1977, and before May 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further determine that all workers at the Paterson, N.J. plant of Q-T Shoe Manufacturing Co., Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32131 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3606]

RIVERSIDE MANUFACTURING CO., ELMWOOD PARK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3606: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigaton was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Riverside manufacturing Co., Paterson, N.J. The investigation revealed that the plant is located in Elmwood Park, N.J. not Paterson, N.J.

On February 8, 1978, the Office of Trade Adjustment Assistance issued a negative determination regarding eligibility to apply for adjustment assistance for workers at Riverside Manufacturing Co., Elmwood Park, N.J. (TA-W-2258).

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Riverside Manufacturing Co., its customers (manufacturers), customers of the manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the principal manufacturers who contracted work with Riverside in 1976 and 1977. Manufacturers that accounted for 100 percent of sales in 1977 did not purchase imported ladies' coats nor did they use foreign contractors in 1976, 1977, or 1978. One manufacturers' sales declined in 1977 compared to 1976. A survey of this manufacturer's customers revealed that, in general, respondents did not reduce purchases for the manufacturer while also increasing purchases of imports.

CONCLUSION

After careful review, I determine that all workers of Riverside manufacturing Co., Elmwood Park, N.J. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32132 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3673]

RUTGERS CLOAK MANUFACTURING CO., INC., EAST BRUNSWICK, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3673: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's coats at Rutgers Cloak Manufacturing Co., Inc., East Brunswick, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 28, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Rutgers Cloak Manufacturing Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of customers of Rutgers Cloak Manufacturing Co., Inc. Customers that accounted for a significant portion of Rutgers' sales in 1976 reduced purchases from Rutgers and increased purchases of imported children's coats in 1977 compared to 1976. Customers that accounted for a significant portion of Rutgers sales in 1977 reduced purchases from Rutgers and increased purchases of imported children's coats in the first half of 1978 compared to the first half of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the children's coats produced at Rutgers Cloak Manufacturing Co., Inc., East Brunswick, N.J., contributed importantly to the decline in sales or production and to the total or partial separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Rutgers Cloak Manufacturing Co., Inc., East Brunswick, N.J., who became totally or partially separated from employment on or after April 25, 1977, are eligible to apply for adjustment assistance

under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32454 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4029]

SANDVIK CONVEYOR, INC., HURFFVILLE, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4029: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 2, 1978, in response to a worker petition received on July 28, 1978, which was filed on behalf of all workers and former workers producing steel belt conveyors and processing units at the Hurffville, N.J., plant of Sandvik Conveyor, Inc. The investigation revealed that the workers produced textile dryers and conveyors, primarily conveyors.

The Notice of Investigation was published in the FEDERAL REGISTER on August 11, 1978 (43 FR 35759). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Sandvik Conveyor, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Workers at the Hurffville, N.J., plant of Sandvik Conveyor, Inc. produced two types of products: textile dryers and conveyors. The majority of production in 1977 and 1978 was conveyors.

U.S. imports of conveyors and conveying equipment increased in value in 1977 to 34.2 million dollars from 16.2 million dollars in 1976. The ratio of imports of conveyors and conveying equipment increased to 2.1 percent in 1977 compared to 1.2 percent in 1976.

Production of conveyors manufactured at the Hurffville plant has been transferred to a Sandvik plant located outside the United States. Company imports of conveyors from this plant increased in value in 1977 compared to 1976 and increased in the first 6 months of 1978 compared to the first 6 months of 1977. With the closing of production at the Hurffville plant, Sandvik Conveyor expects to increase its imports of conveyors in the last half of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with conveyors produced at the Hurffville, N.J., plant of Sandvik Conveyor, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Sandvik Conveyor, Inc., Hurffville, N.J., who became totally or partially separated from employment on or after July 21, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32133 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3446]

SANGAMO-WESTON, INC., SPRINGFIELD, ILL.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3446: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 30, 1978 in response to a worker petition received on March 21, 1978, which was filed by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America on behalf of workers and former workers producing electrical measuring meters and transformers and data recording equipment at the Springfield, Ill. plant of Sangamo-Weston, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17551). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Sangamo-Weston, Inc., its customers, Schlumberger, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to made an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of electricity supply meters, also known as electrical measuring meters, were negligible for the period 1976 through March, 1978. The imports to domestic production ratio was less than one-half of 1 percent throughout the period.

A Department of Labor survey of customers of Sangamo-Weston's Springfield plant indicated that none purchased imported data recording equipment from January 1976 through June 1978.

According to another Labor Department survey regarding electrical measuring meters and transformers, most customers increased purchases from Sangamo-Weston in 1977 compared to 1976 and in the first half of 1978 compared to the first half of 1977. Most customers did not purchase any imports during these period. Only one customer increased purchases from foreign sources in the first half of 1978 compared to the first half of 1977 while decreasing purchases from Sangamo-Weston. However, the value of import purchases by this customer was insignificant in relation to sales of electrical measuring meters and transformers by Sangamo-Weston.

Subsequent to the closure of the Springfield plant, production was transferred to other domestic facilities of Sangamo-Weston.

CONCLUSION

After careful review, I determine that all workers at the Springfield, Ill. plant of Sangamo-Weston, Inc. are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32455 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4125 and 4126]

SOUTHERN DIVISION AND MIDDLE DIVISION OF COLORADO & WYOMING RAILWAY CO., PUEBLO, COLO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4125 and 4126: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on August 31, 1978 in response to a worker petition received on August 9, 1978 which was filed by the Brotherhood of Maintenance of Way Employees Mountain & Plains Federation on behalf of workers and former workers engaged in transporting coal from CF&I Steel Corp. to an interchange (TA-W-4125), transporting raw materials from the interchanges to the plant (CF&I Steel), and transporting finished products to commercial interchanges (TA-W-4126) at the Southern Division and the Middle Division of the Colorado & Wyoming Railway Co., Pueblo, Colo.

The Notice of Investigation was published in the FEDERAL REGISTER on September 12, 1978 (43 FR 40576). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of CFF&I Steel Corp., the Colorado & Wyoming Railway Co. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of the section 222 of the Act must be met. With respect to workers of the Middle Division, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

With respect to workers of the Southern Division, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Average employment at the Middle Division of the Colorado & Wyoming (C&W) Railway Co. increased in the period January to August 1978 compared to the same period in 1977. Average employment increased in each of the most recent four quarters compared to the same quarter of the previous year. There is no immediate threat of separation to workers of the Middle Division of C&W Railway.

Average employment at the Southern Division of the Colorado & Wyoming (C&W) Railway Co. did not decrease in the period January to August 1978 compared to the same period in 1977. At the end of 1977 and in the first three months of 1978 all significant layoffs were caused by the coal strike. There is no immediate threat if separation to workers of the Southern Division of the C&W Railway.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers of the Middle and Southern Divisions of the Colorado & Wyoming Railway Co., Pueblo, Colo., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32134 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3512]

TIMEX COMPONENTS, INC., SOMERSET, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3512: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 13, 1978, in response to a worker petition received on April 4, 1978, which was filed by the International Union of Electrical Workers on behalf of workers and former workers producing liquid crystals and displays for digital watches at Timex Components, Inc., Somerset, N.J. The investigation revealed that the plant primarily produces liquid crystal displays for watches and clocks.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17552). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Timex Components, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of elibility to apply for adjustment assistance each of the group eligibilty requirements of section 222 of the Act must be met. With respect to workers producing liquid crystal displays for watches, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Timex purchased the Somerset plant in April 1976. Timex Components, Inc., first received orders for liquid crystal displays for watches in the same month. Sales of liquid crystal displays for watches by Timex Components, Inc., increased in April-December 1977 compared to the same period of 1976 and increased in the first 6 months of 1978 compared to the same period of 1977. Sales increased in each of the last three quarters of 1977 compared to the same quarter of 1976 and increased in each of the first two quarters of 1978 compared to the same quarter of 1977.

Production of liquid crystal displays for watches began in May 1976. Production increased in May-December 1977 compared to the same period of 1976 and increased in the first 6 months of 1978 compared to the same period of 1977. Production increased in each of the last two quarters of 1977 compared to the same quarter of 1976 and increased in each of the first two quarters of 1978 compared to the same quarter of 1977.

With respect to workers producing liquid crystal displays for clocks, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The value of U.S. imports of liquid crystal displays increased from $0.7 million in 1976 to $1.0 million in 1977. The ratio of imports to domestic production decreased from 11.7 percent in 1976 to 8.6 percent in 1977. The value of imports increased from $0.2 million in the first 3 months of 1977 to $0.3 million in the first 3 months of 1978. The ratio of imports to domestic production increased from 7.7 percent in

the first 3 months of 1977 to 8.6 percent in the first 3 months of 1978.

Timex Components, Inc., produced liquid crytal displays for clocks from June 1977 through May 1978. In May 1978, Timex Components, Inc., discontinued production of liquid crystal displays for clocks and arranged for outstanding customer orders to be supplied by another domestic manufacturer.

CONCLUSION

After careful review, I determine that all workers of Timex Components, Inc., Somerset, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32456 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3974]

TITANIUM ENTERPRISES, GREEN COVE SPRINGS, FLA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3974: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 13, 1978 in response to a worker petition received on July 5, 1978 which was filed on behalf of workers and former workers mining heavy minerals, dry mill to produce zircon, rutile, ilmenite, monazite, staurolite, and leucoxene at Titanium Enterprises, Green Cove Springs, Fla. The Department's investigation revealed that zircon, ilmenite, and rutile represented almost all of Titanium Enterprises sales. Sales of staurolite, monazite and leucoxene are insignificant.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885-6). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Titanium Enterprises, its customers, the U.S. Department of Commerce, the U.S. international Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

ZIRCON

Imports of zircon increased from 62,643 short tons in 1976 to 65,204 short tons in 1977 and increased to 49,193 short tons in the first 6 months of 1978 compared to 16,877 short tons for the same 1977 period. The ratio of imports to domestic production decreased slightly from 160.6 percent in 1976 to 152.0 percent in 1977. For the first half of 1978, the ratio increased substantially to 229.3 percent compared to 78.7 percent for the same 1977 period.

According to industry sources, the leading supplier of zircon to the United States is Australia. Australian reserves exceed those of the United States and are less expensive to recover. Domestic prices of zircon have steadily declined from $300 per short ton in 1974 to $150 in 1977. As of September, 1978 the domestic price of zircon remained at $150 per short ton while Australian zircon was priced at $140 per short ton. Evidence developed during the investigation indicated that this downward pressure on market prices has forced the company to sell at prices below production costs.

ILMENITE

Imports of ilmenite have steadily increased from 168,402 tons in 1976 to 334,990 tons in 1977 and increased to 151,757 tons in the first half of 1978 compared to 112,340 tons in the same 1977 period. The ratio of imports to domestic production has also increased during this same period from 25.81 percent in 1976 to 52.46 percent in 1977 and increased to 49.59 percent in the first half of 1978 compared to 35.19 percent in the same 1977 period.

The downward pressure on market prices from imported ilmenite has reduced the ability of domestic producers to profitably mine and process the ore. An analysis of the industry indicates that the average price for ilmenite from 1976-1977 was $55 per ton. Foreign ilmenite ran from $15.71-14.81 per ton in the same period. As of August 1978 the average domestic price declined to $50 per ton. The average world price, however, was approximately $15 per ton, 70 percent below the domestic price. As a consequence, it is increasingly unprofitable to continue to mine and produce ilmenite and the company stopped this operation on June 30, 1978.

In addition, the customer purchasing ilmenite from Titanium Enterprises indicated it reduced purchases of ilmenite and are replacing it with imported titanium slag. The slag is used in the same basic process as the ilmenite to make titanuim dioxide, however, the costs of production are less.

RUTILE

Imports of rutile increased in each year from 226,860 tons in 1973 to 281,712 tons in 1976 and declined to 123,800 tons in 1977. In the first 6 months of 1978 imports increased substantially to 138,991 tons compared to 73,372 tons in the same 1977 period. The ratio of imports to domestic production followed a similar trend during the same time periods.

Industry sources report that Australia is the world's major supplier of rutile. Since domestic production of rutile has historically been low, the United States has depended almost entirely on Australian imports of rutile ore. Spot rutile prices, controlled by Australian producers and by the Australian Government, were $510 (per short ton c.i.f. Atlantic ports) in 1976 and $360 in 1977. The price of rutile in the first half of 1978 was $325-350 in the United States.

Industry sources have stated that as a result of this price control by Australian producers, companies have been forced to sell rutile at a price below their operating costs.

In addition, the customer buying rutile from Titanium Enterprises indicated it reduced purchases from the subject firm and increased purchases from foreign sources in the first half of 1978 compared to the same 1977 period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with zircon, ilmenite, and rutile produced at Titanium Enterprises, Green Cove Springs, Fla., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Titanium Enterprises, Green Cove Springs, Fla., who became totally or partially separated from employment on or after January 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32135 Filed 11-16-78; 8:45 am]

[4510-26-M]

[TA-W-4018]

UNITED SLIPPER CO., BRIDGEPORT, CONN.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4018: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 31, 1978 in response to a worker petition received on July 28, 1978 which was filed on behalf of workers and former workers producing men's, women's and children's soft-soled slippers at the United Slipper Co., Bridgeport, Conn.

The Notice of Investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130). No public hearing was requested and none was held.

The information upon which the determination was made as obtained principally from officials of the United Slipper Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Footwear Industries Association, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's, women's and children's house slippers increased absolutely and relatively in 1975 and 1976 compared to the preceding years. Imports in 1977, both absolutely and relatively, were above the average annual level for the period 1974-1976. Major customers of United Slipper which utilize foreign sources for a major part of their slipper supplies ceased buying from United Slipper completely in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with slippers produced at United Slipper Co., Bridgeport, Conn. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of United Slipper Co., Bridgeport, Conn. who became totally or partially separated from employment on or after August 20, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32457 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4017]

UNIROYAL, INC., WASHINGTON, IND.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4017: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 31, 1978, in response to a worker petition received on July 20, 1978, which was filed on behalf of workers and former workers producing vinyl-coated rainwear at the Washington, Ind., plant of Uniroyal, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130-1). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Uniroyal, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of waterproof rainwear and other waterproof garments increased from 221.6 thousand dozen in 1975 to 403.9 thousand dozen in 1976, and decreased to 317.7 thousand dozen in 1977. Imports increased from 162.2 thousand dozen in the first half of 1977 to 214.2 thousand dozen in the first half of 1978.

The company started to import waterproof clothing in July 1976. These imports increased significantly relative to company production in the first 7 months of 1978 compared with the like period of 1977. Company plans for the Washington, Ind., plant call for the complete replacement of plant production with company imports of waterproof clothing by the end of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the waterproof clothing produced at the Washington, Ind., plant of Uniroyal, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Washington, Ind., plant of Uniroyal, Inc. who became totally or partially separated from employment on or after March 24, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32136 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3918]

VICTORY OPTICAL MANUFACTURING CO., NEWARK, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3918: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 27, 1978, in response to a worker petition received on June 27, 1978, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers producing opthalmic frames and finished sunglasses at Victory Optical Manufacturing Co., Newark, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29364). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Victory Optical Manufacturing Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make a affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of eyeglass frames increased from 27.1 million units in 1976 to 29.0 million units in 1977 and from 7.6 million units in the first quarter of 1977 to 8.4 million units in the same period of 1978.

U.S. imports of sunglasses increased from 75.6 million pairs in 1976 to 86.8 million pairs in 1977 and from 24.2 million pairs in the first 3 months of 1977 to 31.1 million pairs in the same period of 1978.

Company imports of eyeglass frames and sunglasses increased in 1976 and 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with opthalmic frames and finished sunglasses produced at Victory Optical Manufacturing, Newark, N.J., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Victory Optical Manufacturing Co., Newark, N.J., who became totally or partially separated from employment on or after June 21, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc 78-32458 Filed 11-16-78; 8:45 am]

[7537-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ARTISTS-IN-SCHOOLS ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Artists-In-Schools Advisory Panel to the National Council on the Arts will be held on December 6, 1978, from 9 a.m. to 5 p.m., December 7, 1978, from 9 a.m. to 5 p.m., and December 8, 1978, from 9 a.m. to 5 p.m., in Room 1422, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

A portion of this meeting will be open to the public on December 6, 1978, from 9 a.m. to 2 p.m., December 7, 1978, from 9 a.m. to 5 p.m., and December 8, 1978, from 9 a.m. to 5 p.m. The topic of discussion will be Policy.

The remaining sessions of this meeting on December 6, 1978, from 2 p.m. to 5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER, March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32424 Filed 11-16-78; 8:45 am]

[7537-01-M]

DANCE ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel to the National Council on the Arts will be held December 9, 1978, from 9 a.m. to 6 p.m., December 10, 1978, from 9 a.m. to 6 p.m., and December 11, 1978, from 9 a.m. to 6 p.m., in Room 1422, Columbia PLaza Office Building, 2401 E Street NW., Washington, D.C.

A portion of this meeting will be open to the public on December 10, 1978, from 4:30 p.m. to 6 p.m., and December 11, 1978, from 9 a.m. to 1 p.m. The topic of discussion will be policy.

The remaining sessions of this meeting on December 9, 1978, from 9 a.m. to 6 p.m., December 10, 1978, from 9 a.m. to 4:30 p.m., and December 11, 1978, from 1 p.m. to 6 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32427 Filed 11-14-78; 8:45 am]

[7537-01-M]

FOLK ARTS ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel to the National Council on the Arts will be held December 7, 1978, from 9 a.m. to 5 p.m., December 8, 1978, from 9 a.m. to 5:30 p.m., December 9, 1978, from 9 a.m. to 5:30 p.m., and December 10, 1978, from 9 a.m. to 5 p.m.

A portion of this meeting will be open to the public on December 9, 1978, from 9 a.m. to 1 p.m. The topic of discussion will be Policy and Guidelines.

The remaining sessions of this meeting on December 7, 1978, from 9 a.m. to 5 p.m., December 8, 1978, from 9 a.m. to 5:30 p.m., December 9, 1978, from 1 p.m. to 5:30 p.m., and December 10, 1978, from 9 a.m. to 5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32429 Filed 11-16-78; 8:45 am]

[7537-01-M]

MEDIAL ARTS (PRODUCTION AID) ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Production Aid) to the National Council on the Arts will be held on December 11, 1978, from 9 a.m. to 6 p.m., December 12, 1978, from 9 a.m. to 6 p.m., and December 13, 1978, from 9 a.m. to 6 p.m., Room 1220, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, descussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairmen published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32425 Filed 11-16-78; 8:45 am]

[7537-01-M]

MUSIC (PLANNING SECTION) ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music (Planning Section) Advisory Panel to the National Council on the Arts will be held December 5, 1978, from 9:30 a.m. to 6 p.m., December 6, 1978, from 9:30 a.m. to 5:30 p.m., December 7, 1978, from 9:30 a.m. to 6 p.m., and December 8, 1978, from 9:30 a.m. to 5:30 p.m., in room 1422, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

A portion of this meeting will be open to the public on December 5, 1978, from 9:30 a.m. to 5 p.m., December 6, 1978, from 1:45 p.m. to 5:30 p.m., and on December 7, 1978, from 9:30 a.m. to 1:30 p.m. The topic of discussion will be Policy and Guidelines.

The remaining sessions of this meeting on December 5, 1978, from 5 p.m. to 6 p.m., December 6, 1978, from 9:30 a.m. to 1:45 p.m., December 7, 1978, from 1:30 p.m. to 6 p.m., and December 8, 1978, from 9:30 a.m. to 5:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER, March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32428 Filed 11-16-78; 8:45 am]

[7537-01-M]

VISUAL ARTS (CRAFTS EXHIBITION AID/WORKSHOPS) PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts (Crafts Exhibition Aid/Workshops).

Advisory Panel to the National Council on the Arts will be held December 11, 1978, from 9:30 a.m. to 5:30 p.m., December 12, 1978, from 9:30 a.m. to 5:30 p.m., and December 13, 1978, from 9:30 a.m. to 5:30 p.m., in Room 1426, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32426 Filed 11-16-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

LICENSING PROCEDURES FOR GEOLOGIC REPOSITORIES FOR HIGH-LEVEL RADIOACTIVE WASTES

Proposed General Statement of Policy

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed General Statement of Policy.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has under consideration the following proposed policy statement regarding establishment of procedures for licensing geologic high-level waste repositories to be constructed and operated by the U.S. Department of Energy (DOE). This NRC policy statement is intended to inform DOE, interested States and members of the public of the procedures with which DOE will be required to comply to receive a license to construct and operate a repository. The policy, as finally adopted, may be codified as part of the Commission's regulations.

DATE: Comments are due on or before January 16, 1979.

ADDRESSES: Send comments and sugestions to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Docketing and Service Branch. Copies of comments may be examined in the: U.S. Nuclear Regulatory Commission Public Document Room, 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

James C. Malaro, Chief, High-Level and Transuranic Waste Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

SUPPLEMENTAL INFORMATION: The Commission is considering the procedures to be used in the licensing of high-level waste repositories, and believes that it would be useful to solicit the views of interested persons prior to making any final decision. Accordingly, the Commission is publishing for comment the Proposed General Statement of Policy on high-level radioactive waste repository licensing procedures set forth below. The Proposed General Statement of Policy could also be used by DOE for interim planning purposes pending a final Commission decision on repository licensing procedures.

Under present statute, it is not clear whether NRC would have licensing authority over DOE's planned Waste Isolation Pilot Plant (WIPP) proposed to be located at Carlsbad, N. Mex. However, if the WIPP facility is subject to NRC licensing, NRC expects to apply these procedures in the licensing review.

NRC licensing authority over DOE waste management activities is derived from sections 202(3) and 202(4) of the Energy Reorganization Act of 1974. These sections confine NRC licensing authority over DOE waste management activities to certain DOE facilities for receipt and storage of high level radioactive waste. If WIPP is to be used exclusively for disposal of transuranic wastes from the defense program and 1,000 commercial spent fuel rod assemblies, then WIPP might not be licenseable. While the 1,000 commercial spent fuel rod assemblies would be "high level radioactive waste," [1] the transuranic wastes would not be, and the facility would not be "primarily" for receipt and storage of "high level radioactive wastes" (section 202(3) of the Energy Reorganization Act). If WIPP is to be used for disposal of defense program high level wastes, then it would be licenseable under section 202(4) of the Act provided it was not "used for, or . . . part of, research and development activities." It is possible that, depending upon the exact program proposed by DOE, WIPP could be regarded as a research and development facility exempt from licensing.

Introduction

The U.S. Nuclear Regulatory Commission ("NRC" or "Commission") is vested with licensing authority over certain DOE high-level radioactive waste repositories by sections 202(3) and 202(4) of the Energy Reorganization Act of 1974. These sections refer to:

(3) Facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act (Atomic Energy Act).

(4) Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by the Administration, which are not used for, or are part of, research and development activities.

Under the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, such repositories would not be licensed as "production" or "utilization" facilities. Rather, they would be licensed under those provisions of the Atomic Energy Act dealing with receipt and possession of "byproduct" and "special nuclear" materials. However, the Commission has authority under the Atomic Energy Act to fashion procedures for licensing of byproduct and special nuclear material that are tailored to the kinds of activities being authorized and the potential hazards involved. For example, although a license for possession and use of plutonium in a sealed calibration source and a license for possession and use of plutonium for purposes of processing and fuel fabrication are both special nuclear materials licenses, the former license may be issued after a single review (and indeed may even be generally licensed without the need for filing and review of a specific license application—see 10 CFR 70.19), while the latter license may only be issued after a review process resembling in many respects the two-step licensing review provided in the Atomic Energy Act for production and utilization facilities (see 10 CFR 70.22(f) and 70.23(b)).

In fashioning the procedures which follow, several unique features of geologic high-level waste repositories were carefully considered. For such a repository, the suitability of the site becomes crucial, for the integrity of the site itself is essential to assure containment of the radioactive materials. Thus, sound policy suggests that the Commission be afforded the opportunity to participate in DOE's site selection process, though—considering the tentative character of the activities involved—only in an informal advisory capacity. Also, for such an application, construction of a repository shaft would constitute the first major penetration of the geologic containment. If improperly constructed or sealed, it could impair the ability of the geologic containment to isolate wastes over long periods of time. At the same time, construction of this shaft is expected to dispel some of the uncertainties in the accuracy of data necessary for design of the underground repository. Thus, while a safety review prior to sinking of a shaft would be appropriate, the scope of review and the findings required need to take into account the possibility that only limited data may be available. Further, there should be a formal safety review of the main repository design features before substantial commitments are made and alterations become impracticable to implement. Finally, the Commission believes that it should examine the methods of construction and any new information that may have been developed during construction before formally authorizing receipt and storage of radioactive materials at the repository.

If a repository is subject to the NRC licensing authority, the entire repository will be subjected to licensing review, including those activities which by themselves might not be within the scope of NRC responsibility. This comprehensive review will be necessary because loss of integrity in any part of a repository could imperil the integrity of the entire repository.

The Commission believes it should prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 ("NEPA") prior to authorizing construction of the main repository shaft. This statement could be updated prior to receipt and storage of radioactive materials at the repository should new information warrant.

Early Notification to States and Other Interested Parties

In order to provide opportunity for early input from States and other interested parties, the Commission would, upon receipt of a DOE license application or request for an informal early site review, (1) publish in the Federal Register a notice of such receipt (2) make a copy of the application or request available at the Public Document Room, and (3) transmit copies of such request to the Governor of the State and to the Chief Executive of the municipality in which the respository is tentatively planned to be located and to the Governors of any contiguous States. Also, the staff would offer to meet with State and local officials to provide them with information about the Commission's review and to explore the possibilities of State and local participation in the Commission licensing process.

Licensing Procedures

The proposed repository licensing procedures are divided into four parts: review of DOE site selection, review of

[1] Even though spent fuel which is to be disposed of in a geologic repository may have some resource value, it contains radioactive waste. Thus, it is clearly a "high level" radioactive waste because it contains all the toxic and long-lived radionuclides contained in the liquid wastes from reprocessing that have traditionally been regarded as a form of high level radioactive waste.

repository development, repository licensing, and respository closure.

1. *Review of DOE site selection.* There would be informal NRC staff comments to DOE on site suitability matters after DOE's site selection. Such informal consultation, which might take the form of written NRC staff comments supplemented by one or more open meetings between the two agency staffs, would enable the NRC staff to point out those aspects of a location which in its judgment might require special attention or present special problems, and would help to define the kinds of information that might be needed for the Commission to make licensing decisions.

As indicated, the interaction between NRC staff and DOE at this early stage would be consultive in nature. That is, NRC staff may provide comments and advice, but the Commission will neither make formal findings nor take other formal action. DOE would remain at liberty to come forward later with any license application that it believed would conform to Commission requirements, and the Commission would be free, as the evidence might warrant, to formally approve or disapprove the application.

2. *Review of repository development.* The formal Commission licensing review process would begin with the filing of an application for a license by DOE prior to commencement of construction of a repository shaft. The application would be docketed for review after a preliminary review for completeness, notice of the application would be published in the FEDERAL REGISTER offering an opportunity for interested persons to intervene and request a hearing, and a public announcement would be issued.

The application would include information on site suitability and repository design features important to safety. An environmental report prepared by DOE addressing the matters set forth in section 102(2)(C) of NEPA would be submitted with or prior to the application.

It is probable that some information necessary to make a definitive finding of the repository's safety will not then be available. Nevertheless, the Commission [2] could authorize construction of the repository upon completion of a review of all NEPA, safety, and common defense and security issues, and upon finding (1) after considering reasonable alternatives that the benefits of the proposal exceed the costs under NEPA, and (2) that there is reasonable assurance that the types and amounts of wastes described in the application can be stored in a repository of the design proposed without unreasonable risk to the health and safety of the public or being inimical to the common defense and security. Construction would commence with the sinking of the main repository shaft. In the alternative, where insufficient information is available prior to shaft sinking to permit the Commission to make the complete findings set forth above, on request by DOE or on the Commission's own initiative, the Commission could allow the safety review to be conducted in two phases. Construction of the shaft could commence upon finding (1) after considering reasonable alternatives, that the benefits of the proposal exceed the costs under NEPA, and (2) that there is reasonable assurance that: (a) The site is suitable for a repository within which high-level wastes of the kinds and quantities described in the application can be stored without unreasonable risk to the health and safety of the public or being inimical to the common defense and security, and (b) the plans for construction of the main shaft and related structures can be implemented in a manner compatible with the use of the site for a respository. The full findings set forth previously would, then, have to be made before the start of construction of surface and underground structures. Safety issues that could not be resolved based upon the available information might be deferred until the repository operating license review provided that: (1) an adequate program has been developed to resolve the issue prior to that time, and (2) there is reasonable assurance that the issue can be resolved in a favorable manner at the later date. The Commission requests public comments on this possible course of action.

The NEPA environmental review would address, to the extent possible based on available information, environmental impacts and alternatives associated directly or indirectly with siting, construction, and operation of the repository. Any hearing held upon request of an interested person would be conducted in accordance with subpart G of 10 CFR Part 2.

The applicant will be required to report to the NRC, during the course of construction, any site characterization data obtained which are not within the predicted limits upon which the repository design was based. Also, it would be required to report deficiencies in design and construction which, if uncorrected, could have a significant adverse effect upon the safety of the repository at any future time.

3a. *Repository licensing.* Prior to receipt of any radioactive material at the repository, DOE will need to file an updated license application with the Commission. The license authorizing actual receipt and storage of radioactive materials would be issued after the Commission has conducted a final review of health and safety and common defense and security issues in the light of (1) any additional geologic, hydrologic, and other data obtained during construction; (2) conformance of construction of repository structures, systems, and components with the earlier received design; (3) results of research programs carried out to resolve questions identified during prior reviews; (4) plans for startup and routine operations; and (5) plans for identifying and responding to any unanticipated releases of radioactive material from the repository. Issuance of a license will require a definitive finding under the Atomic Energy Act that the receipt, possession, and use of the special nuclear and byproduct materials at the repository will not constitute unreasonable risk to the health and safety of the public or be inimical to the common defense and security. If warranted by new information which the staff judges could materially alter the NEPA cost-benefit balance, the earlier environmental impact statement will be updated. Also, if requested by a person whose interest may be affected, a hearing in accordance with subpart G of 10 CFR Part 2 would be held prior to license issuance.

3b. *License amendment (as needed).* If special restrictions such as retrievability or a limit on amounts or types of wastes have been imposed in the license, an amendment will be required prior to committing waste to irretrievable disposal or prior to the receipt of additional waste. It is anticipated that the required review procedures and findings will be similar to those described above for initial licensing, taking into account additional information abtained during the retrievable storage phase or during operation with limited inventory.

DOE will be required to conduct and monitor its operations, to keep records, and to submit routine and special reports, in accordance with Commission regulations and orders. All operations will be subject to such continuing NRC inspection activities as may be found to be appropriate.

4. *Review of repository closure.* After the repository has been developed and filled to maximum capacity but prior to final closure of the underground excavations and shafts and the decommissioning of surface facilities, and NRC review and approval will be required of the licensee's proposed program for compliance with regulations governing sealing of the underground repository, decommissioning of surface facilities, storage of permanent rec-

[2] For hearings granted on an application, the Commission expects, as in a nuclear power reactor licensing proceeding, to designate an Atomic Safety and Licensing Board to hear and initially decide the contested issues. As in any licensing case, it would be possible for the Board to render partial decisions on several discrete issues, such as NEPA issues.

ords, and long-term monitoring. Following completion of the review, a change in license status may be warranted.

For the U.S. Nuclear Regulatory Commission.

Dated at Washington, D.C. this 14th day of November, 1978.

JOHN C. HOYLE,
Acting Secretary of the Commission.

[FR Doc. 78-32416 Filed 11-16-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 9, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service
Point of Purchase Survey
Single-time
Various farm operations, 11,000 responses; 7,333 hours
Office of Federal Statistical Policy and Standard, 673-7956

DEPARTMENT OF DEFENSE

Departmental and other
CAMPUS/CAMPVA Unified Report on Mental Health Services
CAMPUS 368
On occasion
Mental health service professional providers, 149,000 reponses; 22,350 hours
Caywood, D. P., 395-3443

REVISIONS

FEDERAL RESERVE SYSTEM

Domestic Finance Company Report of Consolidated Assets and Liabilities (Monthly Reprot)
FR 2248
Monthly
Sample of finance companies, 960 responses; 2,400 hours
Geiger, Susan B., 395-5867

FEDERAL RESERVE SYSTEM

Domestic Finance Company Report of Consolidated Assets and Liabilities (Quarterly Report)
FR 2248A
Quarterly
Sample of finance companies, 480 responses; 1,440 hours
Geiger, Susan B., 395-5867

DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service
List sampling frame
Annually
Farmers, 406,530 responses; 33,745 hours
Office of Federal Statistical Policy and Standard, 673-7956

DEPARTMENT OF THE TREASURY

Bureau of Customs
Special summary steel invoice
Customs 5520
On occasion
Foreign shipper, seller, or manufacturer, 175,000 responses; 43,750 hours
Geiger, Susan B., 395-5867

EXTENSIONS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

State and local government information (EEO-4)
EEOC 164
Annually
State and local governments with 15+ employees, 45,600 responses; 364,800 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF AGRICULTURE

Forest Service
Technical data—electronic type land use
3700-10
On occasion
Radio, TV, and telephone companies, 100 responses; 25 hours
Ellett, C. A., 395-6132
Economics, Statistics, and Cooperatives Service
Retail seed price inquiry
Semi-annually
Retail seed dealers, 1,400 responses; 467 hours
Ellett, C. A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-32415 Filed 11-16-78; 8:45 am]

[4510-23-M]

PRESIDENT'S COMMISSION ON COAL

HEARINGS

The President's Commission on Coal will be holding public hearings at the following locations and times:

Date and time: November 29, 1978; 1:00 p.m. to 6:30 p.m.
Place: City Council Chambers, City Hall, 55 West Maiden Street, Washington, Pa.
Date and time: December 14, 1978; 9:30 a.m. to 5:30 p.m.
Place: Armington Science Center, Chrisman Auditorium, Pikeville College, Pikeville, Ky.

The hearings are being held to assure that the views of the public are heard and considered by the Commission in its study.

The Commission was created to conduct a comprehensive review of the state of the coal industry in the United States with particular emphasis on matters pertaining to productivity, capital investment, and the general economic health of the industry; collective bargaining, grievance procedures, and such other aspects of labor-management relations as the Commission deems appropriate; health, safety, and living conditions in the Nation's coal fields; the development and application of new technologies to the industry; the impact on the coal industry of Federal regulations and such other matters as the Commission deems appropriate.

Hearings have already been held by the Commission in Charleston, W. Va., and Denver, Colo. At these sessions, witnesses discussed the broad range of issues which the Commission will be considering over the coming year. The Washington, Pa., and Pikeville, Ky., hearings will be more directed in their scope, with segments of each hearing being devoted to a single topic.

A major portion of the Washington, Pa., hearing will be devoted to testimony from witnesses addressing issues relating to productivity in the coal industry.

The morning session of the Pikeville hearing will focus on problems of the transportation of coal, and the afternoon, housing needs in coal production areas.

The latter parts of both hearings will be open to witnesses who wish to address any of the other issues before the Commission.

In addition to the oral presentations, the Commission will accept written statements from persons or organizations for 30 days after each hearing.

Anyone wishing to testify at either hearing, or to submit a written statement for the record, should contact Mr. James Childress, President's Commission on Coal, Box 1424, Washington, D.C. 20013, or call 202-673-7925.

MICHAEL S. KOLEDA,
Executive Director,
President's Commission on Coal.

NOVEMBER 14, 1978.

[FR Doc. 78-32465 Filed 11-16-78; 8:45 am]

[4710-08-M]

DEPARTMENT OF STATE

Secretary of State's Advisory Committee on Private International Law

STUDY GROUP ON INTERNATIONAL CHILD ABDUCTION BY ONE PARENT

Meeting

A meeting of the Study Group on International Child Abduction by One Parent, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will be held on Saturday, December 9, 1978, at 9:30 a.m., in room 219, Hastings School of Law, 198 McAllister Street, San Francisco, Calif.

The purpose of the meeting will be to consider and review possible responses to the Questionnaire and Report on International Child Abduction by One Parent prepared by the Hague Conference on Private International Law, and to identify and consider relevant legal issues arising in connection with these abductions in such areas as conflicts of law and comparative law.

Members of the general public may attend the meeting up to the limits of the capacity of the meeting room and may participate subject to instructions of the chariman. It is requested that, prior to December 9, 1978, members of the general public who plan to attend the meeting inform Ms. Susan Short, Office of the Legal Adviser, Department of State, of their name, affiliation, and address. The telephone number is 202-632-0522.

Dated: November 14, 1978.

STEPHEN M. SCHWEBEL,
Vice Chairman.

[FR Doc. 78-32418 Filed 11-16-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8/127]

ADVISORY COMMITTEE ON INTERNATIONAL INTELLECTUAL PROPERTY

Meeting

The International Copyright Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on Tuesday, December 12, 1978, at the Department of State in conference room 1105 from 9:30 a.m. to 1 p.m.

The purpose of this open meeting will be to discuss the following topics:

1. Possible U.S. adherence to the Bern Convention;
2. UNESCO/WIPO Subcommittee on Off-the-Air Videotaping Meeting, September 1978;
3. UNESCO/WIPO Subcommittee on Cable Television Meeting, July 1978;
4. UNESCO/WIPO Draft Convention for the Avoidance of Double-taxation of Copyright Royalties;
5. Fellowships for Foreign Copyright Trainees.

The public attending may, as time permits and subject to the instruction of the chairperson, participate in the discussions or may submit their views in writing to the chairperson prior to or at the meeting for later consideration by the committee.

Members of the public who plan to attend will be admitted up to the limits of the conference room's capacity. Entrance to the Department of State building in controlled and entry will be facilitated if arrangements are made in advance of the meeting. Members of the general public who plan to attend the meeting are requested to provide their name, affiliation, and address to Steven Brattain, Office of Business Practices, Department of State, 202-632-3491, prior to December 12, 1978. All non-Government attendees should use the C Street entrance to the building.

Dated: November 7, 1978.

HARVEY J. WINTER,
Executive Secretary.

[FR Doc. 78-32410 Filed 11-16-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8/128]

SHIPPING COORDINATING COMMITTEE; SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on ship design and equipment of the Subcommittee on Safety of Life at Sea, a subcommitteee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Thursday, December 7, 1978, in room 9232 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C.

The purpose of this meeting will be to consider the following:

General commentary on the Canadian effort to edit the Code and combine Chapters 1 and 2;
Prepare final recommendations for Chapter 5B (electrical plant);
Review the single failure criteria for consistency as used throughout the Code;
Review the various angles of heel and list which are used to describe limiting conditions throughout the Code;
Discuss the adequacy of the quality assurance measures currently in the Code.

Requests for further information should directed to Commander John Deck III, U.S. Coast Guard (G-MMT-4/82), telephone 202-426-2197.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

NOVEMBER 9, 1978.

[FR Doc. 78-32411 Filed 11-16-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8.129]

SHIPPING COORDINATING COMMITTEE; SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea (SOLAS), a part of the Shipping Coordinating Committee, will conduct an open meeting at 1:30 p.m. on Thursday, December 14, 1978, in Room 8442 of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

The purpose of the meeting is to prepare position documents for the Twentieth Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMCO) to be held in London on March 26-30, 1979. In particular, the working group will discuss the following topics:

Survival craft radio equipment;
Operational requirements for future EPIRBs;
Operational standards for shipboard radio equipment;
Maritime distress system.

Requests for further information should be directed to Lieutenant R. F. Carlson, U.S. Coast Guard (G-OTM/74), Washington, D.C., telephone: 202-426-1345.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

NOVEMBER 10, 1978.

[FR Doc. 78-32412 Filed 11-16-78; 8:45 am]

[3410-01-M]
[4910-62-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

RURAL TRANSPORTATION ADVISORY TASK FORCE

Nominations For Membership

The Secretaries of Agriculture and Transportation hereby solicit nominations for membership on the Rural Transportation Advisory Task Force in accordance with subsection 2(c) of Pub. L. 95-580.

The "Act to Establish a Rural Transportation Advisory Task Force" (Pub. L. 95-580, enacted November 2, 1978) created a 16-member task force, jointly chaired by the Secretaries of Agriculture and Transportation. The Secretaries appoint the members of the task force on the following basis:

(1) One to be selected from a list of qualified individuals recommended by the Secretary of Agriculture;

(2) One to be selected from a list of qualified individuals recommended by the Secretary of Transportation;

(3) One to be selected from a list of qualified individuals recommended by the chairman of the Interstate Commerce Commission;

(4) One to be selected from a list of qualified individuals recommended by the chairman of the Committee on Agriculture, Nutrition, and Forestry, U.S. Senate;

(5) One to be selected from a list of qualified individuals recommended by the Chairman of the Committee on Agriculture, U.S. House of Representatives;

(6) Three to be selected from lists of qualified individuals recommended by carriers and associations of carriers, not to include more than one representative from each of the three transport modes, rail, motor, and water;

(7) Four to be selected from lists of qualified individuals recommended by the agricultural community including agricultural shippers and associations of shippers; and

(8) Two to be selected from lists of qualified individuals recommended by the academic community.

Purpose of the task force. The task force will study and report on methods for enhancing the economical and efficient movement of agricultural commodities (including forest products) and agricultural inputs, including recommendations for approaches for determining the continuing transportation needs of agriculture, for establishing a national agricultural transportation policy and for identifying impediments to a railroad transportation system adequate for the needs of agriculture. The task force is authorized to publish an initial report within 180 days of enactment. After holding public hearings, the task force is required to compile a final report which addresses the same issues provided for in the initial report and which contains specific recommendations for a railroad transportation system adequate to meet the essential needs of the agricultural industry. The final report is due within 420 days of enactment.

Members of the task force who are full time officers or employees of the United States shall receive no additional pay on account of service on the task force. While away from their homes or regular places of business in the performance of services for the task force, members of the task force shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

The Secretaries shall furnish such supplies, and clerical and administrative support as they deem necessary to enable the task force to carry out its responsibilities.

The task force shall be dissolved 45 days after publication of the final report.

The nominations sought are those from which the Secretaries may make the selections described in (6), (7), and (8) above. Nominations should state clearly which category the nominee is to represent, i.e., carrier, agricultural shipper, or academe. Nominations should also include a statement of the nominee's qualification, or reason the nomination is made.

Nominations must be received by December 15, 1978, to insure consideration. Send to Ronald F. Schrader, Special Assistant for Transportation, Office of the Secreatry, U.S. Department of Agriculture, Washington, D.C. 20250, Attention: Rural Transportation Advisory Task Force.

Dated: November 14, 1978.

CAROL TUCKER FOREMAN,
Acting Secretary of Agriculture.

BROCK ADAMS,
Secretary of Transportation.

[FR Doc. 78-32464 Filed 11-16-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Application No. D-809]

EMPLOYEE BENEFIT PLANS

Proposed Exemption for Certain Transactions Involving the Trend Mills, Inc. et al. Profit Sharing Plan

AGENCIES: Department of the Treasury/Internal Revenue Service Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (the Agencies) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the purchase by Champion International Corporation (CIC), and the subleasing and transfer to WWG Industries, Inc. (WWG), of a certain parcel of land containing a factory/office building presently owned for the Trend Mills, Inc. et al. profit sharing plan (the plan) by the related Trend Mills, Inc. et al. profit sharing trust (the trust). The proposed exemption, if granted, would affect participants and beneficiaries of the plan, CIC, WWG, and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before December 20, 1978.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption would be effective March 17, 1977.

ADDRESS: All written comments and requests for a public hearing (at least six copies) should be sent to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT:1 (D-809). The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224 and at the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, 200 Constitition Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Timothy S. Smith of the Prohibited

Transactions Staff of the Employee Plans Division, Internal Revenue Service, 202-566-6761. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of a proposed exemption from the restrictions of sections 406(a)(1) (A) through (D), 406(a)(2), 406(b)(1) and 407(a) of the Act and from the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of CIC and Citizens and Southern Bank (C & S) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. While certain aspects of the transactions for which relief has been requested may be permissible under the transitional relief afforded by sections 2003(c) and 414 of the Act, other aspects of the transactions might not be so covered and, thus, the agencies are proposing relief with respect to each requested transaction.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Agencies for the complete representations of the applicants.

1. The plan was established on June 30, 1961, effective July 1, 1960. The original plan sponsors were Trend Mills, Inc. (Trend), Trend Sales Co. and Trend Latex & Chemical Co. Through a series of plan and trust amendments plan sponsors were added and deleted so that by the time of the ninth amendment to the plan, effective December 31, 1969, the only employers remaining as plan sponsors were Trend & Trend Industries, Inc. The Trust Co. of Georgia was the original trustee for the Trust. Under the seventh amendment to the Trust, C & S became successor trustee for the Trust on August 20, 1969.

2. Effective December 18, 1969, Trend merged into a subsidiary of CIC which was subsequently merged into CIC. The plan continued in existence. However, since approximately December 31, 1971, no new contributions to the Trust have been made and no new participants have been admitted to the plan.

3. The trust owns a one story carpet manufacturing plant with office space (the plant) situated on approximately 11.3 acres of land in Plainville, Ga. The total building area is approximately 216,133 square feet (including 3,867 square feet of office space). The plant was built in six phases between 1960 and 1973. The first four phases containing 124,200 square feet (the original building) were completed by 1968. The fifth stage containing 93,933 square feet (the addition) was completed in 1970.

4. The plant at all relevant times has been used by Trend and CIC as a carpet manufacturing facility. The original Building was involved in a sale and leaseback transaction consummated on June 26, 1968 involving the sale by Trend of the original building to the Trust Co. of Georgia as then trustee of the trust and a subsequent leaseback of the building to Trend. The original term of this lease was 10 years and the annual rental was $53,400. The lease also specified that it would continue on a year-to-year basis with the same terms at the option of Trend or its successor.

5. Under a construction agreement signed and dated April 21, 1969 between Trend and the Trust Co. of Georgia, as the then trustee of the trust, Trend agreed to construct the addition to the plant. Trend was to act as general contractor and the trust was to pay Trend for the costs of construction upon presentation by Trend to the trustee of a certification of completion and a statement of the costs of construction and, subsequent to the completion of the addition, the lease covering the plant was to be amended to reflect an increased rent. The addition was completed sometime prior to December 31, 1970 at a cost of approximately $499,641. However, for reasons unexplained and unknown to CIC and C & S, Trend never presented to the trustee the agreed upon certificate of completion and the trust never paid Trend the costs of construction nor was the lease agreement ever amended nor did Trend or CIC ever pay any increased rent for the addition.

6. As of December 31, 1976 the trust carried the entire plant on its books of account with a market and book value of $426,000 (the bookvalue of the original building). Using this market value the books of account showed the plant as comprising 50.14 percent of the market value of the trust's assets. During the 5 plan years ending December 31, 1976 an average of 20 percent of each year's remaining year-end participants terminated from the plan. The applicants estimate that for the next 5 years this rate will increase to 25 percent and that if this trend continues the entire liquid balance of the trust (comprising all of its assets other than the plant) will be paid out by the end of 1979.

7. An appraisal made by Kirkland & Co. of Atlanta, Ga. on March 16, 1976 placed the market value of the plant at $900,000 and the rental value at $119,973 a year.

8. On March 17, 1977 C & S and CIC entered into an agreement under which C & S, as trustee for the trust agreed to sell and CIC agreed to buy the plant for a price of $604,497, subject to obtaining from the Department of Labor and the Internal Revenue Service a ruling that the transaction was not a prohibited transaction or, in the alternative, an exemption from the prohibited transaction provisions of the Act and Code. On the same date C & S and CIC and Chicago Title Insurance Co. (Chicago Title), as escrow agent, entered into an escrow agreement under which CIC deposited $604,497 toward the purchase price for the plant and C & S deposited a trustee's deed from C & S as grantor to CIC as grantee with Chicago Title pending notice to Chicago Title that the transaction should be completed.

9. The applicants have submitted a memorandum of law which states that there is authority under Georgia statutory and case law for the proposition that the trust is obliged to make payment to CIC for the addition and that the obligation on the part of CIC, as successor to Trend, to pay increased rent is dependent upon the performance of the trust's covenant to pay for the addition. In order to determine the net sales price to be paid by CIC to the trust for the plant, CIC and C & S agreed, as a result of arm's-length negotiations, that the proper method should be to recreate the events that would have taken place beginning in 1970 and ending on December 31, 1976 if the terms of the construction agreement had been carried out, and if the lease had been amended to reflect the construction of the addition. Accordingly, the purchase price agreed to by C & S and CIC for the plant was caluclated by taking into consideration the fair market value of the plant (arrived at primarily through the income method of valuation) and the fact that the trustee for the trust did not pay Trend for the costs of the addition to the plant and the fact that Trend did not pay any increased rent, with compounding or discounting, as appropriate, of amounts by an interest factor of 8.8 percent (the rate determined by C & S and CIC to be the average rate which would have been paid or earned during the years involved, i.e., the average prime rate plus 1 percent for the years 1971-76). The fair market value of the plant used in this calculation was $900,000. This figure was based on the appraisal of March 16, 1976 as well as on other relevant factors including the adverse economic conditions then prevailing in the carpet industry, the singular purpose of the plant and the abundance of sim-

ilar industrial facilities in the Plainville, Ga. area.

10. A second appraisal of the plant by Frank B. Roberts and Associates of Atlanta, Ga., as of November 21, 1977, placed its market value at $1,000,000. In light of this higher value CIC and C & S entered into an agreement dated February 28, 1978 under which CIC agreed to pay $25,641 as additional consideration for the plant.

11. C & S has not attempted to locate a purchaser or lessee for the plant who is not a disqualified person (party in interest). C & S believes that in light of the continuing lease obligations and the fact that the property is subject to lease renewals running to CIC on the original building but not on the addition that no purchaser could be located who would pay the trust a price comparable to that which will be received from the employer. The trustee also believes that its efforts to locate an unrelated lessee or purchaser would be unproductive because of the depressed conditions of the carpet industry in the vicinity of the plant and because of the singular purpose of the plant.

12. On March 30, 1978 CIC sold the assets of its Trend Carpet Division to WWG, a Delaware corporation. Pursuant to the terms of the asset purchase agreement between CIC and WWG, CIC has entered into a sublease with WWG under which WWG is the sublessee of the plant, subject to all of the terms and conditions of the lease between CIC and C & S. Under this agreement, following receipt by CIC of the exemption requested from the Agencies, CIC will deliver a deed conveying the plant to WWG or will cause C & S to deliver a trustee's deed for the plant directly to WWG. The employees at the plant are now employed by WWG.

NOTICE TO INTERESTED PERSONS

Written notice will be given to all plan members, and all beneficiaries presently receiving distributions under the plan. Notice will be provided by posting a notice on bulletin boards which are regularly reviewed by all Plan members at the plant, which notice will set forth the nature of the pending exemption and inform the plan members of their right to submit comments. In addition, as soon as feasible after notice is published in the FEDERAL REGISTER, a copy of the notice in the FEDERAL REGISTER will be mailed to each plan member and to each beneficiary receiving benefits under the plan by first-class mail. Copies of all such notifications will be forwarded to the Agencies at the time they are made available or distributed.

The posting of notice on the plan member bulletin board referred to above will take place within seven (7) days after publication in the FEDERAL REGISTER of notice of this application; the sending of copies of the notice as published in the FEDERAL REGISTER will be accomplished within a reasonable time not to exceed fourteen (14) days after the date of publication of notice in the FEDERAL REGISTER of this application.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code and section 408(a) of the act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Code and the act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act which, among other things, require that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(2) and (b)(3) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the Act, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

PROPOSED EXEMPTION

Based upon the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in ERISA procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the taxes imposed by section 4975(a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (E) of the Code and the restrictions of sections 406(a)(1) (A) through (D), 406(a)(2), 406(b)(1) and 407(a) of the act shall not apply to the purchase of the plant by CIC from the trust for $630,138 in cash, provided that this amount is not less than the fair market value of the plant after making appropriate adjustments for costs in connection with the construction of the addition and rent due the trust, nor to the subleasing and transfer to WWG. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 9th day of November, 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-32226 Filed 11-16-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice 742]

ASSIGNMENT OF HEARINGS

NOVEMBER 14, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be pub-

lished 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 95876 (Sub-235F), Anderson Trucking Service, Inc., now being assigned for hearing on February 6, 1979 (1 day), at St. Paul, MN, in a hearing room to be later designated.

MC 92950 (Sub-1F), Wolverton Dray Lines, Inc., now being assigned for hearing on February 7, 1979 (3 days), at St. Paul, MN in a hearing room to be later designated.

MC 134477 (Sub-243F), Schanno Transportation, Inc., now being assigned for hearing on February 12, 1979 (2 days), at St. Paul, MN, in a hearing room to be later designated.

MC 144452 (Sub-2F), Arlen Lindquist d.b.a. Arlen E. Lindquist Trucking, now being assigned for hearing on February 14, 1978 (3 days), at St. Paul, MN, in a hearing room to be later designated.

MC 133119 (Sub-134F), Heyl Truck Lines, Inc., now being assigned for hearing on January 24, 1979 (1 day), at Omaha, NE, in a hearing room to be later designated.

MC 144265 (Sub-1F), Aid, Inc., now being assigned for hearing on February 7, 1979 (3 days), at New Orleans, LA, in a hearing room to be later designated.

MC 2908 (Sub-24F), Capital Motor Lines, d.b.a. Capital Trailway, now being assigned for hearing on February 12, 1979 (1 week), at Montgomery, AL, in a hearing room to be later designated.

MCC 10094, International Brotherhood of Teamster, Chauffers, Warehousemen & Helpers of America versus Akers Motor Lines, Inc., MCC 10167, Akers Motor Lines, Inc., and Akers-Central Motor Lines, Inc.—Investigation and Revocation of Certificates, now being assigned for hearing on February 5, 1979 (2 weeks), at Charlotte, NC in a hearing room to be later designated.

MC 123681 (Sub-34F), Widing Transportation, Inc., now assigned for hearing on January 15, 1979, at Portland, OR, will be held in Court Room 2, Bankruptcy Court, Pioneer Courthouse, 555 Southwest Yamhill Street and continued to January 22, 1979 (5 days), at Seattle, WA, in a hearing room to be later designated.

MC 100666 (Sub-384F), Melton Truck Lines, Inc., now assigned November 13, 1978, at Columbus, OH, is canceled and transferred to Modified Procedure.

MC 36989, Adams Packing Association, Inc., et al. versus Consolidated Rail Corp., et al., now assigned for hearing on January 9, 1979, at Orlando, FL, is postponed indefinitely.

MC 2908 (Sub-23F), Capitol Motor Lines, d.b.a. Capitol Trailways, now assigned for hearing on December 5, 1978, at Tuscaloosa, AL, is postponed indefinitely.

MC 115841 (Sub-589), Colonial Refrigerated Transportation, Inc., now assigned for hearing on November 30, 1978, at Dallas, TX, is canceled and reassigned for November 30, 1978 (2 days), at San Antonio, TX, in a hearing room to be later designated.

MC 144285F, Bay Haven Marina, Inc., now assigned for hearing on November 15, 1978, at Chicago, IL, is canceled.

AB 7 (Sub-62), Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor, Abandonment Near Faribault and Zumbrota, in Rice and Goodhue Counties, MN, now assigned for hearing on November 27, 1978, at Zumbrota, MN, is postponed to November 28, 1978, at Zumbrota, MN, City Hall, 55 East Third.

MC 144225, Jadeel Trucking, Inc., now assigned for hearing on November 3, 1978, at Boston, MA, is postponed indefinitely.

MC 113678 (Sub-740F), Curtis, Inc., now assigned for hearing on November 29, 1978, at Chicago, IL, is postponed indefinitely.

MC 115826 (Sub-327F), W. J. Digby, now assigned December 11, 1978 at Denver, CO, is advanced and reassigned to November 28, 1978 (1 day), at Denver, CO, and will be held at Room C-503, U.S. Courthouse, 1929 Stout Street.

MC 117119 (Sub-619), Willis Shaw Frozen Express, Inc., now assigned December 11, 1978 (1 day), at Denver, CO, and will be held at Division 2, U.S. Courthouse, 1929 Stout Street.

MC 116915 (Sub-45), Eck Miller Transportation Corp., now assigned November 15, 1978 at Louisville, KY, is canceled and reassigned to November 21, 1978 for prehearing conference at the Offices of the Interstate Commerce Commission in Washington, DC.

MCC 10163, Clark Transfer, Inc., versus Consolidated Productions, Inc., now assigned November 29, 1978, for prehearing conference at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 113678 (Sub-749F), Curtis, Inc., now being assigned on February 27, 1979 (4 days), at Los Angeles, CA, and continued to March 5, 1979 (5 days), at San Francisco, CA, in rooms to be later designated.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 78-32441 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Notice No. 211]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

November 3, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is 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 8515 (Sub-14 TA), filed September 28, 1978. Applicant: TOBLER TRANSFER, INC., Junction Interstate 80 and IL 89, Spring Valley, IL 61354. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except commodities in bulk, household goods as defined by the Commission, Classes A and B explosives, and those requiring special equipment), serving the facilities of Caterpillar Tractor Co. at or near Pontiac, IL, as an off-route point in connection with applicant's existing regular route authority, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Caterpillar Tractor Co., C.R. Sommer, Supervisor, Inbound Traffic, 100 Northeast Adams Street, Peoria, IL 61629. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 102478 (Sub-8 TA), filed September 28, 1978. Applicant: BRIGHT BELT MOTOR LINES, INC., P.O. Box 237, Grifton, NC 28530. Representative: Ralph McDonald, 336 Fayetteville Street, P.O. Box 2246, Raleigh, NC 27602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, roofing materials, and industrial asphalt* (except commodities in bulk), from the facilities of Trumbull Asphalt Co., and Owens-Corning Fiberglas Corp., at Morehead City, NC, to points in VA, (expect Richmond

and Chesapeake), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Trumbull Asphalt Co., P.O. Box 37, Morehead City, NC 28557. (2) Owens-Corning Fiberglas Corp., 105 Arendel, Morehead City, NC 28557. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 107012 (Sub-284 TA), filed September 29, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns, P.O. Box 988, Fort Wayne, IN 46801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Artificial Christmas trees*, from the facilities of Marathon Carey-McFall Co., located at or near Montgomery, Avis, Jersey Shores, and Harrisburg, PA, to points in IA, IL, IN, MI, MN, OH, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Marathon Carey-McFall Co., Montoursville, PA 17754. 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 108119 (Sub-102 TA), filed September 27, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture of axle assemblies, (1) from Dayton and Tiffin, OH; Elkhart, Logansport, and Reynolds, IN; Chicago, IL; Mequon, WI; Jackson and Detroit, MI; Chattanooga, TN; and Montezuma, GA, to Seminole, OK; and (2) from Seminole, OK, to Chino, CA, Dayton, OH; Chattanooga, TN; McMinnville, OR; Elkhart, IN; and Montezuma, GA, for 180 days. Supporting shipper: Kelsey Hayes, Axle and Brake Division, P.O. Box 1587, Seminole, OK 74868. 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 108651 (Sub-22 TA), filed September 28, 1978. Applicant: ROY B. MOORE, INC., 233 Wilcox Drive, P.O. Box 628, Kingsport, TN 37662. Representative: Daniel H. Moore, Wilcox Drive, P.O. Box 628, Kingsport, TN 37662. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Alton, Leicester, Leroy, Oakfield, Phelps, Shortsville, and South Dayton, NY, to Charlotte, NC, for 180 days. Supporting shipper: Curtice Burns, Inc., Lent Avenue, Leroy, NY 14482. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 112750 (Sub-348TA), filed September 29, 1978. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11040. Representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, and written instruments* (except currency and negotiable securities) as are used in the business of banks and banking institutions, between Bluefield, WV, and Raleigh, NC, under a continuing contract or contracts, with The Flat Top National Bank of Bluefield, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Flat Top National Bank of Bluefield, P.O. Box 950, Bluefield, WV 24701. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 113429 (Sub-5TA), filed September 29, 1978. Applicant: MICHAEL CONTRIS, d.b.a. CONTRIS TRUCKING, R.R. No. 1, Faulkner Road, Harrod, OH 45850. Representative: Michael Contris, R.R. No. 1, Faulkner Road, Harrod, OH 45850. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Machine parts and materials* used in the manufacture or repair of construction equipment (except commodities in bulk), between Lima, OH; on the one hand, and, on the other hand, points in the United States, (except AK, HI, and OH), under a continuing contract or contracts, with Clark Equipment Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Clark Equipment Co., 525 North 24th Street, Battle Creek, MI. Send protests to: Interstate Commerce Commission, Bureau of Operations, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MX 115669 (Sub-171TA), filed September 28, 1978. Applicant: DAHLSTEN TRUCK LINE, INC., P.O. Box 95, 101 West Edgar Street, Clay Center, NE 68933. Representative: Howard N. Dahlsten, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry feed ingredients*, from the facilities of Occidental Chemical Co., at or near Montpelier, IA, to points in IL, IN, OH, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mike Gonzales, Manager, Motor Transportation, Occidental Chemical Co., P.O. Box 1185, Houston, TX 77001. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

MC 119702 (Sub-65TA), filed September 29, 1978. Applicant: STAHLY CARTAGE CO., 130-A Hillsboro Avenue, P.O. Box 486, Edwardsville, IL 62025. Representative: Carl Wetzel (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid Fertilizer* (in bulk, in tank vehicles), from Bourbon and Watseka, IL, to points in IN, for 180 days. Supporting shipper: R. R. Whipple, Supervisor-Traffic, Allied Chemical Corp., P.O. Box 2120, Houston, TX 77001. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 123179 (Sub-4TA), filed September 29, 1978. Applicant: ARROW FREIGHT LINES, INC., 80 Progress Street, West Springfield, MA 01089. Representative: Alan R. Barthelette, 80 Progress Street, West Springfield, MA 01089. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and metal articles, and materials and supplies* used in the manufacture and distribution thereof, between the facilities of N M Industries Division of Standex International Corp., at or near West Springfield, MA, on the one hand, and, on the other, points in MD, VA, NC, and SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: N M Industries Division of Standex International Corp., 203 Circuit Avenue, West Springfield, MA 01089. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 125335 (Sub-31TA), filed September 29, 1978. Applicant: GOODWAY INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, Peterson, Bowman, Larsen & Swanson, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as

a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except in bulk), from the facilities of Knouse Foods, Inc., in Adams and Franklin Counties, PA, to points in TN, MS, AR, LA, TX, OK, GA, and AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Knouse Foods, Inc., William H. Horner, Traffic Manager, Peach Glen, PA 17306. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

MC 125535 (Sub-8TA), filed September 21, 1978. Applicant: JOHN SHARP TRUCKING CO., INC., Hamilton Court, South Warwick Road, Somerdale, NJ 08083. Representative: Donald S. Helm, P.O. Box 814, Cherry Hill, NJ 08003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Shelves, bins, counters, refrigerators, freezers, cooling rooms, cooling boxes, and parts and accessories thereto*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between Cherry Hill, NJ, on the one hand, and, on the other, points in the United States in and east of KS, NE, ND, OK, SD, and TX (except points in CT, DE, DC, MD, NJ, NY, PA, VA and WV), under a continuing contract or contracts, with Hussman Refrigerator Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Hussmann Refrigerator Co., P.O. Box 507, Cherry Hill, NJ 08034. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 126622 (Sub-6TA), filed September 27, 1978. Applicant: AUDET & MEGANTIC TRANSPORT LTEE., P.O. Box 1330, Lac Megantic, PQ. Representative: Harold Paschios, 443 Congress Street, Portland, ME 04101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, (in bulk), from ports of entry on the International Boundary Lines between the United States and Canada located at or near Jackman and Coburn Gore, ME, to points in ME, restricted to the transportation of traffic originating at Lac Megantic and Woburn, PQ, and limited to a transportation service to be performed, under a continuing contract or contracts, with Torpedo Lumber Enc., for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Torpedo Lumber, Enc., 3677 Rue Levis, Lac Megantic, PQ (Attn: Michel Boisvert, President). Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 126844 (Sub-56TA), filed September 28, 1978. Applicant: R. D. S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Terrence D. Jones, 2033 K Street NW, Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods, and commodities* exempt from regulation under section 203(b)(6) of the Interstate Commerce Act when moving in mixed loads with frozen foods, from the facilities of Empire Freezers of Syracuse, Inc., at Syracuse, NY, to points in CT, MA, NH, RI, VT, NY, PA, NJ, DE, MD, OH, MI, VA and the DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Empire Freezers of Syracuse, Inc., P.O. Box 4892, Syracuse, NY 13221. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 128592 (Sub-14TA), filed September 28, 1978. Applicant: KLM, INC., Old Highway 49 South, P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ham*, from Miami, FL, to Greeley, CO; and (2) *frozen foods*, from Denver and Greeley, CO, to the distribution facilities of the Burger King Corp. at Seattle, WA, under a continuing contract, or contracts, with Burger King Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Burger King Corp., 9200 South Dadeland Boulevard, Miami, FL 33156. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 134531 (Sub-13TA), filed September 29, 1978. Applicant: AGGREGATE HAULERS, INC., Route 2, Box 559-A, West Columbia, SC 29169. Representative: Burton W. Lanier, Route 2, Box 559-A, West Columbia, SC 29169. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and fertilizer materials*, (except in bulk, in tank or hopper-type vehicles), between points in SC, GA, TN, and NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kaiser Agricultural Chemicals, 1101 Harbor Road, West Columbia, SC 29169. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 134531 (Sub-14TA), filed September 29, 1978. Applicant: AGGREGATE HAULERS, INC., Route 2, Box 559-A, West Columbia, SC 29169. Representative: Burton W. Lanier, Route 2, Box 559-A, West Columbia, SC 29169. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete products*, from Richland, Spartanburg and Greenville Counties, SC, to points in GA, NC and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Interpace Corp., P.O. Box 5008, Columbia, SC 29250. (2) Metromont Materials, P.O. Box 1292, Spartanburg, SC 29301. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 134592 (Sub-14TA), filed September 28, 1978. Applicant: HERB MOORE AND HAZEL MOORE, d.b.a. H. & H TRUCKING CO., 10360 North Vancouver Way, Portland, OR 97211. Representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from Van Nuys, Fairfield and San Rafael, CA to Seattle and Bellevue, WA, and (2) *wine and champagne*, from San Francisco, San Jose, Sacramento, Lodi, and Sonoma, CA, to Seattle and Bellevue, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) K & L Distributors, Inc., P.O. Box 1969, Bellevue, WA 98009. (2) Alaska Distributors, Co., 4601 6th Avenue South, Seattle, WA 98108. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

MC 138732 (Sub-17TA), filed September 28, 1978. Applicant: OSTERKAMP TRUCKING, INC., Box 5546, Orange, CA 92667. Representative: Steven K. Kuhlman, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite clay* (except in bulk), from the facilities of American Colloid Co., at or near Lovell, WY, to

points in CA, for 180 days. Supporting shipper: American Colloid Co., P.O. Box 228, Skokie, IL 60077. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA. 90012.

MC-139458-TA, filed September 27, 1978. Applicant: RICHNER, INC., P.O. Box 1488, Durango, CO 81301. Representative: J. Albert Sebald, 1700 Western Federal Building, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal* (in bulk), from the mine of Arness-McGriffin Coal Co. about 4 miles west of Durango, La Plata County, CO, on U.S. Hwy 160, to the Hanna rail siding on U.S. Hwy 160 about 6 miles west of Del Norte, Rio Grande County, CO, for 180 days. Supporting shipper: Arness-McGriffin Coal Co., 1139 Main Avenue, Durango, CO 81301. Send protests to: H. C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 140118 (Sub-9TA), filed September 28, 1978. Applicant: S.T.L. TRANSPORT, INC., P.O. Box 9776, 1000 Jefferson Road, Rochester, NY 14623. Representative: S. Michael Richards/Raymond A. Richards, P.O. Box 225, Webster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Costume jewelry and materials, supplies and equipment* used in the manufacture, sale, and distribution of costume jewelry, between Newark, NY, on the one hand, and, on the other, points in MA, NH, and RI, under a continuing contract or contracts, with C. H. Stuart, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. H. Stuart, Inc., Stuart Park, Route 88 South, Newark, NY 14513. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 140277 (Sub-9TA), filed September 27, 1978. Applicant: VAN ZEE EXPRESS, LTD., Box 125 West Highway, Orange City, IA 51041. Representative: Mark Menard, Rentschlers Truck Plaza, P.O. Box 480, Sioux Falls, SD 57101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodity bags, envelopes, packets, pouches, wrappers, and bag ties*, from Sioux Falls, SD, to Baltimore, MD, Norfolk, VA; South Plainfield, NJ; and the States of KS and OK, under a continuing contract or contracts, with American Western Co., for 180 days. Supporting shipper: American Western Co., 1500 "M" Avenue, Sioux Falls, SD 57102. (Robert L. Jonas plant manager). Send protest to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 140487 (Sub-3TA), filed September 21, 1978. Applicant: YELLOWSTONE TRUCKING, INC., North 9 Post Street, Room 425, Peyton Building, Spokane, WA 99210. Representative: William J. Monehim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from points in ID on and north of U.S. Hwy 95 from Lewiston to junction State Hwy 13 at Grangeville, then State Hwy 13 to U.S. Hwy 12 at Kooskia, then U.S. Hwy 12 to the ID-MT State line, points in MT on and west of U.S. Hwy 93 from the ID-MT State line to junction U.S. Hwy 2 at Kalispell, then on, north and west of U.S. Hwy 2 to junction State Hwy 49 at East Glacier Park, then State Hwy 49 to junction U.S. Hwy 89 at Kiowa, then U.S. Hwy 89 to the United States-Canadian border, and from Peshastin, WA, and points in WA on and east of U.S. Hwy 97 to points in CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, ND, OH, SD, UT, WA, WI, and WY, under a continuing contract or contracts, with The Pack River Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Pack River Co., North 9 Post Street, Room 425, Peyton Building, P.O. Box 1452, Spokane, WA 98174. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 858 Federal Building, Seattle, WA 98174.

MC 140849 (Sub-16TA), filed September 29, 1978. Applicant: ROBERTS TRUCKING CO., INC., P.O. Drawer G, U.S. Hwy 271 South, Poteau, OK 74953. Representative: Prentiss Shelley, P.O. Drawer G, Poteau, OK 74953. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Polyester fibers, quilting, quilting fillers, comforters, drapes and quilted bedspreads* in shipper-owned and carrier-owned trailers, from Clinton, OK, to points in MS, NE, TN, TX, and GA, under a continuing contract, or contracts, with Kellwood Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kellwood Co., 200 Sears Road, Perry, GA 31069. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 143214 (Sub-2TA), filed September 28, 1978. Applicant: MATUSZKO FARMS TRUCKING, INC., 19 Ball Lane, North Amherst, MA 01059. 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: *Beer, and materials and supplies* used in the distribution thereof (1) between Syracuse, NY, and Hartford, CT; and (2) between Rochester, NY, and Hartford, CT, and (3) between Philadelphia, PA, and Hartford, CT, under a continuing contract or contracts, with Rogo Distributors, Division of Allan S. Goodman, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rogo Distributors, Division of Allan S. Goodman, Inc., 191 Park Street, P.O. Box 1558, East Hartford, CT 06108. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 143503 (Sub-15TA), filed September 28, 1978. Applicant: MERCHANTS HOME DELIVERY SERVICE OF TEXAS, INC., P.O. Box 5067, Oxnard, CA 93031. Representative: David B. Schneider, 223 Ciudad Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, furnishings, and appliances*, from the facilities of Finger Furniture Co., Inc., at or near Beaumont and Houston, TX to points in Acadia, Allen, Beauregard, Calcasie, Cameron, Evangeline, Jefferson, Davis, Lafayette, Rapides, Sabine, Vermilion, and Vernon Parishes, LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Finger Furniture Co., Inc., P.O. Box 194, Houston, TX 77001. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, North Los Angeles Street, Los Angeles, CA 90012.

MC 143511 (Sub-2TA), filed September 29, 1978. Applicant: HARDINGER TRANSFER CO., P.O. Box 521, Erie, PA 16512. Representative: William A. Schaal, P.O. Box 521, Erie, PA 16512. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum scrap metal* (except in dump vehicles), from Erie, PA, to Cleveland, Sandusky, Toledo, and Heath, OH; Wabash and East Chicago, IN; Detroit, Benton Harbor, and Coldwater, MI; and Chicage, IL, for 180 days. Applicant has also filed an un-

derlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kaiser Aluminum & Chemical Co., 1015 East 12th Street, Erie, PA 16512. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 143593 TA, filed September 27, 1978. Applicant: ROTA-CONE OIL-FIELD OPERATING CO., 429 North 14th Street, Muskogee, OK 74401. Representative: C. L. Phillips, Room 248, Classen Terrace Building, 1411 North Classen, Oklahoma City, OK 73106 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, materials, supplies and equipment* used in the manufacture and distribution of paper and paper products (except commodities in bulk), in LTL and truckload lots, from the facilities of Container Corp. of America, Muskogee, OK, to points in AR, KS, and MO, under a continuing contract or contracts, with Container Corp. of America, for 180 days. Supporting shipper: Container Corp. of American, P.O. Box 1441, Fort Worth, TX 76101. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office & Court House Building, 215 Northwest, 3d, Oklahoma City, OK 73102.

MC 143603 (Sub-2TA), filed September 28, 1978. Applicant: BENJAMIN DIMEDIO, JR,. d.b.a. FREIGHT CONSULTANTS CO., 1631 South 6th Street, Camden, N.J. 08104. Representative: Francis W. McInerny, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Zinc concentrates* (in bulk, in dump vehicles), from Camden, NJ, to Palmerton, PA, under a continuting contract or contracts with G & W Industries, Natural Resources Group, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: G & W Natural Resources Group, a division of Gulf & Western Industries, Inc., First American Center, Nashville, TN 37238. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204 Trenton, NJ 08608.

MC 143775 (Sub-20TA), filed September 29, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, 6601 West Orangewood, Glendale, AZ 85301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Adams and Franklin Counties, PA, to AR, LA, MS, OK, TN, and TX, for 180 days. Supporting shipper: Knouse Foods, Inc., Peach Glen, PA 17306. (William H. Horner, Traffic Manager). Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 230 North First Avenue, 2020 Federal Building, Phoenix, AZ 85025.

MC 144191 (Sub-4TA), filed September 28, 1978. Applicant: ELAINE MOON SIGNS, INC., T/A CLASSIC VANS OF VA., P.O. Box 2471, West Springfield, VA 22152. Representative: John M. Ballenger, 6121 Lincolnia Road, Suite 400, Alexandria, VA 22312. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic sheeting and chemicals* used in the production of electronic circuit boards (except in bulk), between Vienna, VA, on the one hand, and, on the other, Tampa and Orlando, FL, under a continuing contract or contracts, with Thickol Dynachem, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Thickol Dynachem, 234 Dominion Road NE., Vienna, VA. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA.

MC 144428 (Sub-4TA), filed September 27, 1978. Applicant: TRUCKADYNE, INC., Route 16, Mendon, MA 01756. Representative: Samuel L. Watts, TDS, Inc., 1050 Waltham Street, Lexington, MA 02173. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic flower pots, and other plastic articles* used in the horticultural business and in the return direction products used or useful in the manufacture, processing and marketing of the above products (except in bulk), between the facilities of Lockwood Products, Inc., located at Leominster, MA, and Toledo, OH; on the one hand, and the 48 contiguous States on the other, under a continuing contract or contracts, with Lockwood Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lockwood Products, Inc., 80 Sherman Street, Cambridge, MA 02140. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 145152 (Sub-7TA), filed September 27, 1978. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery items*, (except in bulk), *dessert preparations, advertising and display materials, gum ball machines and stands*, from the facilities of Leaf Confectionery, Inc., at or near Chicago, IL, to Birmingham and Montgomery, AL; Little Rock, AR; Atlanta, GA; Kansas City and Wichita, KS; Baton Rouge, New Orleans, and Shreveport, LA; Jackson, MS; Kansas City and St. Louis, MO; Oklahoma City and Tulsa, OK; Memphis and Nashville, TN; and Corpus Christi, Dallas, Fort Worth, Houston, and San Antonio, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Leaf Confectionery, Inc., 1155 North Cicero Avenue, Chicago, IL 60651. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145192TA, filed August 8, 1978, and published in the FEDERAL REGISTER issue of October 16, 1978, and republished as corrected this issue. 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), between ports of entry in CA and AZ on the United States-Mexico boundary, on the one hand, and, on the other, San Diego, Los Angeles and San Francisco, CA, and Phoenix and Tucson, AZ, including the commercial zones of named points, restricted to traffic moving in foreign commerce, for 180 days. Supporting shipper: There are approximately twenty-five 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 Building, 727 E. Durango Street, San Antonio, TX 78206. The purpose of this republication is to include the territorial scope which was previously omitted.

MC 145283 (Sub-1TA), filed September 28, 1978. Applicant: JOHN D. LITTLE and JAMES E. RICHARDS d.b.a. TOTAL TRANSPORTATION SYSTEMS, 2422 South Peck Road, Whittier, CA 90601. Representative: James E. Richards, 2422 South Peck Road, Whittier, CA 90601. Authority

sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires, pneumatic, auto, loose*, from South Gate, CA, to Yuma, Tucson, Tempe and Phoenix, AZ, on a split delivery basis, for the account of the Fed-Mart Corp., under a continuing contract or contracts, with the Fed-Mart Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Fed-Mart Corp., 8001 Othello, San Diego, CA 92138. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 145395TA, filed September 28, 1978. Applicant: LUCKEY TRUCKING, INC., R.R. No. 45, Streator, IL 61364. Representative: Robert T. Lawley, Routman and Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Prestressed concrete beams*, from Blackstone and Crystal Lake, IL, to points in the United States (except AK and HI), under a continuing contract or contracts, with Pre-Stressed Engineering Co., Division of Road Materials Corp., for 180 days. Supporting shipper: Pre-Stressed Engineering Co., Division of Road Materials Corp., William Holub, Vice President, Route 1, Blackstone, IL 61313. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145405 (Sub-1TA), filed September 28, 1978. Applicant: JOHN W. WOLFE, 274 Mindella Way, Layton, UT 84041. Representative: Raymond M. Kelley, Thompson and Kelley, 450 Capitol Life Center, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cedar shake, shingles and ridge*, (2) *Roofing and siding and roofing and siding materials and equipment*, (1) From points in Forks, WA, and its commercial zone and Port Angeles, WA, and its commercial zone to points in Denver, CO, and its commercial zone, Grand Junction, CO, and its commercial zone, Casper, WY, and its commercial zone and Cheyenne, WY, and its commercial zone, and (2) From points in Denver, CO, and its commercial zone to points in ID, MT, OR, UT, WA, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately (five) 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: L. D. Helfer, District Supervisor, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 145478TA, filed September 28, 1978. Applicant: RUBEN BERMUDEZ G., d.b.a. TRANSPORTES BERMUDEZ, S.A., de C.V., P.O. Box 970, Tecate, CA 92080. Representative: Ruben Bermudez G., P.O. Box 970, Tecate, CA 92080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Hides, catele, loose on pallets*, and (B) *Chemicals, equipment and supplies* used in the tanning of hides, (C) *returning pallets and containers*, between Long Beach, Los Angeles, Modesto, Oakland, San Diego, San Francisco and Santa Cruz, CA, on the one hand, and points at the United States International Boundary at San Ysidro and Tecate, CA, on the other hand, under a continuing contract or contracts, with Teneria Ensenada S.A., de C.V., for 180 days. Supporting shipper: Teneria Ensenada S.A., de C.V., D. R. Coleman Apoderado, APdo No. 376, Ensenada, Mexico. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 N. Los Angeles Street, Room 1321, Los Angeles, CA 90012.

MC 145489TA, filed September 28, 1978. Applicant: ROSE-WAY, INC., 1914 E. Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum products*, from the facilities of Reynolds Metals Company at or near McCook, IL, to points in CA, OR, and WA, under a continuing contract or contracts with Reynolds Metals Co. of Richmond, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Reynolds Metals Co., P.O. Box 27003, Richmond, VA 23161. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32430 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Notice No. 212]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 3, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is 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 25798 (Sub-336TA), filed September 26, 1978. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell, P.O. Box 1186, Auburndale, FL 33823. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Fox Deluxe Pizza Co. at Joplin, MO and the facilities of the Pillsbury Co. at Joplin and Carthage, MO to points in NE, IA, CO, KS, OK, AR, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Totino's Frozen Foods Division, the Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: Donna M. Jones, Transportation As-

sistant, Interstate Commerce Commission, Bureau of Operations Monterey Building, Suite 101, 8410 NW. 53d Terrace, Miami, FL 33166.

MC 37656 (Sub-11TA), filed October 2, 1978. Applicant: DOYLE TRUCKING CORP., 100 Plaza Center, Secaucus, NJ 07094. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* dealt in or used by manufacturers of furniture, bedding, and home furnishings (except commodities in bulk), between the facilities of Simmons Company at Elizabeth and Linden, NJ, on the one hand, and, on the other, points in MA, RI, CT, NY, NJ, PA, DE, MD, VA, WV, and DC under a continuing contract or contracts with Simmons Co., for 180 days. Supporting shipper: Simmons Co., 6428 Warren Drive, Norcross, GA 30090. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Washington, DC 20423.

NOTE.— Applicant presently operates as a contract carrier for Simmons Co. between Elizabeth and Linder, NJ, and points in CT, DE, DC, and portions of NY, PA, and MD, and seeks an extension of its service area to meet changing requirements of Simmons Co. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 48441 (Sub-26TA), filed September 19, 1978. Applicant: R.M.E. INC. P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper articles and plastic articles*, (1) from the facilities of Continental Diversified Industries, Bondware Division at or near Chicago, IL to points in WI, and (2) from the facilities of Continental Diversified Industries, Bondware Division at or near Shelbyville, IL to points in IN and OH for 180 days. Supporting shipper: Walter L. Weart, Division Manager—Traffic Methods and Control, Continental Diversified Industries, Bondware Division, 800 E. Northwest Hwy, Palatine, IL 60067. Send protests to: Lois M. Stahl, Transportation Analyst, I.C.C., Room 1386, 219 S. Dearborn Street, Chicago, IL 60604.

MC 51146 (Sub-649TA), filed October 2, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representive: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet food* from Camp Hill, PA to IL, IN, MI, OH, and WI, for 180 days. Applcant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Perk Dog Food Co., 1580 N. Northwest Hwy, Park Ridge, IL 60068 (Leonard L. Golz). Send protest to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 53841 (Sub-15TA), filed October 2, 1978. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State Street, Knox, PA 16232. Representative: John A. Pillar, Attorney at Law, 205 Ross Streeet, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Berverge containers and materials, equipment and suppplies* used in the manufacture or sale of containers and empty pallets (except commoditieis in bulk) between the facilities of Berverage Bottle Division, Hoover Universal, Inc., at or near Columbus, OH on the one hand, and, on the other, points in IL, IN, KY, MI, PA, TN, and WV, for 180 days. Supporting shipper: Hoover Universal, Inc., Route 2, Triport Road, Georgetown, KY 40323. Send protest to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, Pittsburgh, PA 15222.

MC 55896 (Sub-92TA), filed September 19, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty, 20225 Goddard Road, Taylor, MI 48180. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty plastic bottles*, from Port Clinton, OH to Franklin, KY and Elizabethton, TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Aim Packaging, Inc., P.O. Box 278, Port Clinton, OH 43452. Send protests to: T. S. Quinn, District Supervisor, Interstate Commerce Commission, 604 Federal Building and U.S. Courthouse, 231 West Lafeyette Boulevard, Detroit, MI 48226.

MC 64932 (Sub-588TA), filed September 19, 1978. Applicant: ROGERS CARTAGE CO., 10735 South Cicero Avenue, Oak Lawn, IL 60453. Representative: William F. Farrell, Traffic Manager, Commerce, 10735 South Cicero Avenue, Oak Lawn, IL 60453. Authqrity sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Freon* in bulk in tank vehicles, from the DuPont plant at or near Montague, MI to OH on and west of a line beginning at the MI-OH State line and extending along I 475 to Junction I 75, thence along I 75 to Junction U.S. Hwy 68, thence along U.S. Hwy 68 to the OH-KY State line; also to MO destinations other than St. Louis Commercial Zone, for 180 days. Supporting shipper: G. W. Fillingame, Freight Traffic Manager, E.I. Du Pont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 71593 (Sub-11TA), filed September 19, 1978. Applicant: FORWARDERS TRANSPORT, INC., 1815 Front Street, Scotch Plains, NJ 07076. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by retail stores*, (except commodities in bulk), from the facilities of United States Packing & Shipping Co., Inc., at Jersey City, NJ, to Detroit, MI, Milwaukee, WI, CHicago, IL, Cinncinnati and Columbus, OH, and their respective commercial zones, for 180 days. Supporting shipper: Milwaukee Sores Car Association, 1818 North Commerce Street, Milwaukee, WI 53212. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Newark, NJ 07102.

MC 94265 (Sub-283TA), filed October 2, 1978. Applicant: BONNEY MOTOR EXPRESS, INC., Post Office Box 305, Route 460, Windsor, VA 23487. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road, NE., Atlanta, GA 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Particle board, pulpboard, and paper* from the facilities of Union Camp Corp. at or near Franklin, VA to points in AR, IA, KS, LA, MO and TX for 180 days. Supporting shipper: Union Camp Corp., George L. Wright, Jr., Area Traffic Manager, Franklin, VA 23851. Send protests to: Paul D. Collins, District Supervisor, Interstate Commerce Commission, 10-502 Federal Building, 400 North Eighth Street, Richmond, VA 23240.

MC 105375 (Sub-78TA), filed September 19, 1978. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Avenue, Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., 1680 Fourth Avenue, Newport, MN 55055. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pellets*, in bulk, from the Minneapolis/St. Paul Commercial Zone to

the plantsite of 3M Co. at Menomonie, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Minnesota Mining & Manufacturing Co., 3M Center, St. Paul, MN 55101. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 105375 (Sub-79TA), filed September 19, 1978. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Avenue, Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., 1680 Fourth Avenue, Newport, MN 55055. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, in bulk, in tank vehicles, from Prescott, WI to points in MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Allied Chemical Corp., P.O. Box 2120 Houston, TX 77001. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 106674 (Sub-343TA), filed October 2, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Hwy 24 West, Remington, IN 47977. Representative: Jerry L. Johnson, P.O. Box 123, Remington, IN 47977. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grain flour and prepared flour in bags*, from Springfield, IL, to AL, FL, GA, SC and TN, for 180 days. Supporting shipper: Pillsbury Co., 608 2nd Avenue South, Minneapolis, MN 55402. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 107403 (Sub-115TA), filed September 22, 1978. Applicant: MATLACK, INC., 10 W. Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rock salt*, in bags, from The Village of Brodhead, Northampton County, PA, to points in NJ, NY, MD and DE, for 180 days. Supporting shipper: International Salt Co., 30 Buxton Farm Road., Stamford, CT 06905. Send protests to: T. M. Esposito, Transportation Assistant, 6 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 107496 (Sub-1164TA), filed September 26, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (Same as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petroleum wax*, in bulk, in tank vehicles, from Casper, WY to Naugatuck, CT, for 180 days. Supporting shipper: Amoco Oil Co., P.O. Box 6110A, Chicago, IL 60680. Send protests to: Herbert W. Allen, District Supervisor Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 107743 (Sub-52TA), filed September 19, 1978. Applicant: SYSTEM TRANSPORT, INC., E. 11707 Montgomery, P.O. Box 3456 T.A., Spokane, WA 99220. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Collapsible plastic bins*, from Dawson Springs, KY and Liberty Center, OH to points in CA, OR, WA, ID, NV, AZ, UT, MT, WY, CO, NM and TX, for 180 days. Supporting shipper: The Boxx Corp., Suite 815, Northtown Office Building, Spokane, WA 99207. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, I.C.C., 858 Federal Building, Seattle, WA 98174.

MC 111375 (Sub-101TA), filed September 26, 1978. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3385, Madison, WI 53704. Representative: Charles E. Dye, P.O. Box 3358, Madison, WI 53704. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuff*, from Albert Lea, MN and its Commercial Zone to point in SD, for 180 days. Supporting shipper: Miami Margarine Co., 5226 Vine Street, Cincinnati, OH 45217. Send protests to: District Supervisor, Ronald A. Morken, Interstate Commerce Commission, 212 E. Washington Avenue, Room 317, Madison, WI 53703.

MC 113434 (Sub-112TA), filed September 19, 1978. Applicant: GRABELL TRUCK LINE, INC., 679 Lincoln Avenue, P.O. Box 511, Holland, MI 49423. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and accessories therefor and cartons* when moving in mixed shipments with glass containers, from the facilities of Thatcher Glass Manufacturing Co., Division of Dart Industries, at Lawrenceburg, IN to Paducah, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Thatcher Glass Manufacturing Co., 1901 Grand Central Avenue, Elmira, NY 14901. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 113434 (Sub-115TA), filed September 26, 1978. Applicant: GRABELL TRUCK LINE, INC., P.O. Box 511, 679 Lincoln Avenue, Holland, MI 49423. Representative: Miss Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers and container ends*, from the facilities of Owens Illinois, Inc., at or near Perrysburg, OH to Holland, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 113463 (Sub-10TA), filed October 2, 1978. Applicant: CONTRACT CARRIER, INC., 830 Broadway NE., Albuquerque, NM 87102. Representative: Edwin E. Piper, Jr., 1115 Sandia Savings Building, Albuquerque, NM 87102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodity, doors and component parts thereof*, from the facilities of Dependable Door Co., Inc., at or near Belen, NM, to points in Denver, Adams, Arapahoe, Jefferson, Douglas, Boulder, Weld Larimer, El Paso, and Pueblo Counties, CO, under a continuing contract or contracts with Dependable Door Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dependable Door Co., Inc., Belen, NM. Send protests to: District Supervisor, Interstate Commerce Commission, 1106, Federal Office Building, 517 Gold Avenue SW, Albuquerque, NM 87101.

MC 113828 (Sub-261TA), filed October 2, 1978. Applicant: O'BOYLE TANK LINES, INC., P.O. Box 30006, Washington, DC 20014. Representative: William P. Sullivan, 1320 Fenwick Lane, Silver Spring, MD. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinegar*, in bulk, in tank vehicles, from Winchester, VA, to Muscatine, IA, for 180 days. Supporting shipper: Heinz USA, Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: T. M. Esposito, Transportation Assistant,

600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 115322 (Sub-151TA), filed October 2, 1978. Applicant: REDWING REFRIGERATED, INC., 9831 South Orange Avenue, P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry spaghetti and macaroni products*, from Jersey City, NJ, to points in FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. F. Mueller Co., 180 Baldwin Ave., Jersey City, NJ 07306. Send protests to: District Supervisor, G. H. Fauss, Jr., ICC, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 115648 (Sub-31TA), filed October 2, 1978. Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82201. Representative: Ward A. White, Attorney, P.O. Box 568, Cheyenne, WY 82001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ore and concentrates*, in dump vehicles, from points in Converse and Platte Counties, WY, to the Cotter Corp. Mill in Fremont County, CO, approximately 5 miles south of Canon City, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: UO CO, Inc., a UT corporation, 304 First Security Building, Salt Lake City, UT 84111. Send Protests to: District Supervisor, Paul A. Naughton, Interstate Commerce Commission, Room 105 Federal Building and Courthouse, 111 South Wolcott, Casper, WY 82601.

MC 115826 (Sub-352TA), filed September 26, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, Denver, CO 80217. Representative: Howard Gore, 1960 31st Street, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carcass meat*, from Fort Morgan CO, to Wallula, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Columbia Foods, Inc., Dakota City, NE 68731. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 116073 (Sub-370TA), filed October 2, 1978. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Maine Avenue, P.O. Box 919, Moorhead, MN 56560. Representative: John C. Barrett, Box 919, Moorhead, MN 56560. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Travel trailers*, from Jackson Center and Versailles, OH, to points and places in the United States, including AK but excluding HI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Airstream, Division of Beatrice Foods Co., West Pike Street, Jackson Center, OH 45334. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 116763 (Sub-440TA), filed October 2, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira, North West Street, Versailles, OH 45380. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products, in packages*, from Texaco Inc., facilities in Jefferson County, TX, to MN, WI, IA, MO, IL, IN, MI, OH, KY, NY, Bayonne, NJ, and Martinsburg, WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Texaco, Inc., William K. Marshall, Assistant Manager—Traffic U.S., 1111 Rusk, Houston, TX 52332. 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 117439 (Sub-60TA), filed September 26, 1978. Applicant: BULK TRANSPORT, INC., 5500 Florida Boulevard, P.O. Box 1429, Baton Rouge, LA 70821. Representative: Mr. Edward A. Winter, 235 Rosewood Drive, Metairie, LA 70005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mineral filler*, from the facilities of Louisiana Cement Co., a division of OKC Corp. located at or near New Orleans, LA, to Houston and Galveston, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mr. Michael Fandal, Traffic Manager, Louisiana Cement Co., 14900 Intracoastal Drive, New Orleans, LA 70129. Send protests to: Connie A. Guillory, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 117815 (Sub-298TA), filed October 2, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, IA 50317. Representative: Jack H. Blanshan, attorney at Law, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, trasnporting: *Such commodities* as are dealt in by business and office supply companies, from the facilities of United Stationers at Forest Park, IL, to Des Monies, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United Stationers, 1701 South First Avenue, Maywood, IL 60153. send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 118130 (Sub-89TA), filed September 19, 1978. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 9093, Fort Worth, TX 76107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, and (2) *empty containers*, commodities named in (1) from Jefferson County, CO, to points in TX and commodities named in (2) from points in TX to Jefferson County, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Adolph Coors Co., Golden, CO 80401. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Building, 819 Tayor Street, Ft. Worth, TX 76102.

MC 118159 (Sub-278TA), filed August 1, 1978, and published in the FEDERAL REGISTER issue of October 4, 1978, and republished as corrected this issue. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Reresentative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Battery boxes, covers and vents, rubber and plastic*, from Indianapolis, IN, and Philadelphia, MS to points in AL, CT, DE, GA, KS, KY, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, and WI, for 180 days, Supporting shipper: The Richardson Co., 2701 Lake Street, Melrose Park, IL 60160. send protests to: Connie Stanley, transportation assistant, Room 240, Old Post Office and Court House Building, 215 Northwest 3d, Oklahoma City, OK 73102.

MC 118159 (Sub-279TA), filed August 10, 1978, and published in the FEDERAL REGISTER issue of October 18, 1978, and republished as corrected this issue. Applicant: NATIONAL RE-

FRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, from the facilities of Hoover Universal at or near Lenexa, KS to points in AL, AR, AZ, CA, CO, FL, GA, ID, KS, LA, MS, MT, NM, NV, NE, NC, ND, OK, OR, SC, SD, TN, TX, UT, WA, and WY, 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. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest 3d, Oklahoma, OK 73102.

MC 125777 (Sub-231TA), filed September 19, 1978. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grinding balls*, in dump vehicles from Kansas City, MO, to Baltimore, MD, Dividing Creek, NJ, Martinsburg, WV, Powderly, AL, Richards City, TN, and Shamokin Dam, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kenneth E. Brewer, Assistant Manager—Transportation, ARMCO, Inc., 7000 Roberts Street, Kansas City, MO 64125. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 127974 (Sub-15TA), filed October 2, 1978. Applicant: P. LIEDTKA TRUCKING, INC., 110 Patterson Avenue, Trenton, NJ 08610. Representative: Alan Kahn, Esquire, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, particleboard, hardboard, gypsumboard, moulding and accessories* used in the installation thereof from the plant and storage facilities of Weyerhaeuser Co. located at Chesapeake, VA, to points in DE, MD, ME, NH, PA, and VT for 180 days. Supporting shipper: Weyerhaeuser Co., P.O. Box 1188, Chesapeake, VA 23320. Send protests to: John P. Lynn, District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 129624 (Sub-18TA), filed October 2, 1978. Applicant: ROUTE MESSENGERS OF PA, INC., 2425 Bainbridge Street, Philadelphia, PA 19146. Representative: Alan Kahn, Esquire, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds, insecticides, air fresheners, deodorizers, brooms, brushes, mops, toilet preparations, food supplements, food seasoning, household utensils, clothing hangers, mirrors, custume jewelry, books, magnetic tapes, and advertising and promotional material* related to the foregoing (1) from the facilities of Amway Corp., in Dayton, NY, to the carrier's terminal in Philadelphia, PA (2) from the carrier's terminals in Philadelphia, PA, and Camden, NJ, to points in that part of PA east of the western boundaries, of Potter, Clinton, Centre, Huntingdon, and Fulton Counties, PA, and north and west of the northern and western boundaries of Northampton, Lehigh, Berks, Lancaster, and York, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amway Corp., Monmouth Junction Road, Box 900, Dayton, NJ 08810. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 129759 (Sub-26TA), filed October 2, 1978. Applicant: TRIANGLE TRUCKING CO., P.O. Box 490, McKees Rocks, PA 15136. Representative: David A. Turano, George, Greek, King, McMahon & McConnaughey, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Roof deck, bridge deck, metal roofing and siding, and equipment, materials and supplies* (except commodities in bulk) used in the manufacture and installation thereof between Cambridge, OH, on the one hand, and, on the other, points in the States of CA, CT, DE, FL, IL, IN, KS, KY, MA, MI, MN, MO, MS, NE, NJ, NY, OH, OR, PA, SC, SD, TN, TX, UT, VA, and WI. Restricted to service performed under a continuing contract or contracts with Elwin G. Smith Division, Cyclops Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Elwin G. Smith Division, Cyclops Corp., 100 Walls Street, Pittsburgh, PA 15202. Send protests to: J. A. Neggemyer, District Supervisor, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, WV 26003.

MC 133591 (Sub-50TA), filed September 19, 1978. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mt. Vernon, MO 65712. Representative: Harry Ross, 58 South Main Street, Winchester, KY 40391. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and plastic cups, containers, dishes, plates, trays, napkins and related articles*, from Springfield, MO, to Denver, CO, for 180 days. Supporting shipper: Lily Division of Owens-Illinois, 707 Madison, Toledo, OH 43666. Send protests to : District Supervisor, John V. Barry, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 133689 (Sub-232TA), filed October 2,, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street, Southwest, New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Furnaces and heat exchangers*, from McGregor, Cloquet and St. Paul, MN, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, ME, MD, MA, MI, MS, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC. (2) Materials and supplies used in the manufacture of commodities named in (1) above from Wall Lake, MI, Fort Wayne, IN, and Mexico, MO, to Cloquet, McGregor, and St. Paul, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilson Heating & Air Conditioning, 2296 Wycliff, St. Paul, MN 55114. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 134405 (Sub-53TA), filed October 2, 1978. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: Dean Williamson, 280 National Foundation Life Building., Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in tank vehicles, from McCulloch County, TX, to AL, AR, CO, KS, LA, MS, NM, OK, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Halliburton Services, a division of Halliburton Co., P.O. Box 1431, Duncan, OK 73533. Dowell Division of Dow Chemical Co., P.O. Box 21, Tulsa, OK 74102. Texas Mining Co., Suite 2420, 1425 Elm Street, Dallas, TX 75201. Send protests to: Connie Stanley, Transportation Assist-

ant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 134477 (Sub-263TA), filed August 10, 1978. and published in the FEDERAL REGISTER issue of October 18, 1978, and republished as corrected this issue. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, P.O. Box 3496, St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and microwave ovens, and such commodities*, as are used in the manufacture, sale and distribution of electric ranges and microwave ovens from the facilities of Litton Microwave Cooking Products, Litton Systems, Inc., at Minneapolis, MN, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC, for 180 days. Supporting shipper: Litton, Inc., 1405 Xenium Lane North, Minneapolis, MN 55441. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 134604 (Sub-3TA), filed September 26, 1978. Applicant: HOWARD DULLUM, Gardner, ND 58036. Representative: Alan Foss, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicle, from Barnesville, MN, to points in ND and SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 Second Avenue North, Fargo, ND 58102.

MC 135874 (Sub-140TA), filed September 19, 1978. Applicant: LTL PERISHABLES, INC., 550 East Fifth Street South, South St. Paul, MN 55075. Representative: K. O. Petrick, 550 East Fifth Street South, South St. Paul, MN 55075. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk), from the facilities of Continental Freezers of Illinois, Chicago, IL, to points in SD, MN, NE, ND, KS, IA, WI, IN, MI, KY, MO, OH, and Sharon, PA. Restricted to traffic originating at the facilities of Continental Freezers of Illinois, Chicago, IL, and destined to points in the named States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Continental Freezers of Illinois, 4220 South Kildare Bouvelard, Chicago, IL 60632. 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 138157 (Sub-90TA), filed September 19, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Synthetic plastics, adhesives, sealants, cements, chemicals, chemical compounds, cleaning compounds, rubber compounds, soldering flux, coatings, lubricants, and materials, equipment and supplies*, used in the application of the commodities named above, from Cambridge, MA, to points in the United States (except AK and HI); (2) *synthetic plastics, adhesives, sealants, cements, chemicals, chemical compounds, gas absorbing compounds, rubber compounds, soldering flux, coatings, lubricants, and materials, equipment and supplies*, used in the application of the commodities named above, from Woodbury, NJ, and Atlanta, GA, to points in the United States (except AK and HI); (3) *synthetic plastic adhesives, sealants, cements, chemicals, chemical compounds, gas absorbing compounds, rubber compounds, soldering flux, coatings, lubricants, air entraining agents, cement clinker or grinding compounds, concrete or masonry plasticizer and water reducing compounds, tall oil, lignin liquors and materials, equipment and supplies*, in the application of the commodities named above from Chicago, IL, to points in the United States (except AK and HI); (4) *cleaning compounds, chemicals, chemical compounds, and fertilizer compounds*, from Nashua, NH, to points in the United States (except AK and HI); (5) *synthetic plastics, synthetic latex, battery insulating partitions, and pulpboard*, from Owensboro, KY, to points in the United States (except AK and HI); (6) *synthetic plastics, synthetic latex, battery insulating partitions, and cleaning compounds*, from Acton, MA, to points in the United States (except AK and HI); and (7) *materials, equipment, and supplies*, used in the manufacture, production, and distribution of the commodities named in (1) through (6) above, from points in the United States (except AK and HI), to the origins named in (1) through (6) above, and to San Leandro, CA. Restrictions: Restricted against the transportation of commodities in bulk, in tank vehicles, and commodities which by reason of size and weight require the use of special equipment and further restricted to traffic originating at or destined to the facilities of W. R. Grace & Co., for 180 days. Supporting shipper: W. R. Grace & Co., 55 Hayden Avenue, Lexington, MA 02173. Send protests to: Mr. Joe J. Tate, District Supervisor, A-422 Federal Building, 801 Broadway, Nashville, TN 37203.

NOTE.—Applicant holds contract carrier authority in MC 134150 and Subs thereunder, therefore dual operations may be involved.

MC 138824 (Sub-15TA), filed September 19, 1978. Applicant: REDWAY CARRIERS, INC., 5910 49th Street, Kenosha, WI 53140. Representative: Paul J. Maton, 10 South LaSalle Street, Suite 1620, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Food products dry or liquid, in containers and materials and supplies*, incidental to, and used in the processing, canning, and bottling of said food products, between the facilities of Ocean Spray Cranberries, Inc., in Kenosha County, WI, and North Chicago, IL, on the one hand, and, on the other, points in MO west of U.S. Hwy 65 (including Springfield), AR, KS, and MN, under a continuing contract or contracts with Ocean Spray Cranberries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ocean Spray Cranberries, Inc., 7800 South 60th Avenue, Kenosha, WI 53140. 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 138225 (Sub-8TA), filed August 7, 1978, and published in the FEDERAL REGISTER issue of October 18, 1978, and republished as corrected this issue. Applicant: HEDRICK ASSOCIATES, INC., Rural Route No. 2, Box 10A2, Douglas Road, Far Hills, NJ 07931. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as *contract carrier*, by motor vehicle, over irregular routes, transporting: *Marine engines*, from the facilities of Chrysler Corp., Marine Division, at or near Beaver Dam, WI, to the facilities of Trojan Boat Co., at or near Lancaster, PA, under a continuing contract or

contracts with Trojan Yacht Co., for 180 days. Supporting shipper: Trojan Yacht Co., Greenfield Road, P.O. Box 3571, Lancaster, PA. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 138438 (Sub-32TA), filed October 2, 1978. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, from Frederick, MD, and its commerical zone, to points in PA, VA, WV, and DC, for 180 days. Applicant has also filed and underlying ETA seeking up to 90 days of operating authority. Supporting shipper: M. J. Grove Lime Co., Campbell Grove Division, the Flintkote Co., 11350 McCormick Road, Hunt Valley, MD 21031. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 139923 (Sub-50TA), filed October 2, 1978. Applicant: MILLER TRUCKING CO., INC., P.O. Drawer "D," Stroud, OK 74079. Representative: Stephen H. Loeb, attorney at law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wax paper*, and (2) *meat processing machines*, when moving in mixed loads with the commodities described in (1) above, (1) from the facilities of Hollymatic Corp. at Plymouth, IN, to points in CA, CO, NE, OR, TX, and WA, and (2) from the facilities of Hollymatic Corp., at Park Forest, IL, to points in CO, NE, OR, TX, and WA, for 180 days. Supporting shipper: Hollymatic Corp., 80 North Main, Park Forest, IL 60466. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 140118 (Sub-8TA), filed September 26, 1978. Applicant: S. T. L. TRANSPORT, INC., 1000 Jefferson Road, P.O. Box 9776, Rochester, NY 14263. Representative: S. Michael Richards/Raymond A. Richard, P.O. Box 225, Webster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beverages, in cans and bottles* (except malt beverages), from Springfield, Ma, to all points in NY, under a continuing contract or contracts with Country Club Soda Co., Inc., for 180 days. Applicant has also filed and underlying ETA Seeking up to 90 days of operating authority. Supporting shipper: Country Club Soda Co., Inc., 180 Avocado Street. Springfield, MA 01104. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 140665 (Sub-37TA), filed September 19, 1978. Applicant: PRIME, INC., Route 1, Box 115-B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automotive parts and accessories, rubber or rubber products, then or tire treads, vehicle wheels, and materials and supplies*, used in the production or marketing of the above commodities between points in Portage, Summit, and Stark Counties, OH, on the one hand, and, on the other, points in TX and CA, for 180 days. Supporting shipper: Teledyne Monarch Rubber, 10 Lincoln Park, Hartville, OH 44632. Send protests to: District Supervisor, John V. Barry, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 142368 (Sub-14TA), filed October 10, 1978. Applicant: DANNY HERMAN TRUCKING, INC., 15252 Valley Boulevard, City of Industry, CA 91744. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Safes*, from City of Industry, CA, to Chicago, IL, Cincinnati, OH, Denville, NJ, and Florence, KY, and from Cincinnati, OH to Denville, NJ, for 180 days. Supporting shipper: Gary Safe Co., 330 Ninth Avenue, City of Industry, CA 91746. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 142559 (Sub-59TA), filed October 2, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: David A. Turano, Suite 1800, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, supplements, additives, materials and supplies*, used in the manufacture and promotion of animal feeds (except in bulk), between the facilities of Kal Kan Foods, Inc., at or near Hutchinson, KS, on the one hand, and, on the other, points in CT, DE, IN, ME, MA, MD, MI, NJ, NY, NC, OH, PA, RI, SC, VT, VA, and DC, for 180 days. Applicant has also filed and 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: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 143059 (Sub-30TA), filed October 2, 1978. Applicant: MERCER TRANSPORTATION CO., 12th and Main Streets, P.O. Box 35610, Louisville, KY 40232. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe in coils or packages and on pallets, and fittings* used in the installation thereof when moving in connection therewith, from the plantsite of DuPont Co. at Tulsa, OK, to Union City, Pico Rivera, and San Diego, CA, Little Rock and Fort Smith, AR, Colorado Springs, CO, Springfield, MO, North Beloit, Green Bay, Sheboygan, and Oshkosh, WI, Carlsbad, Farmington, Lovington, and Tantum, NM, White Bear Lake, St. Paul, and Minneapolis, MN, Jackson, MS, Salt Lake City, UT, Boise and Idaho Falls, ID, Great Falls, Harvre, Kalispell, and Missoula, MT, Lincoln and Grand Island, NB, Beaumont, Houston, Longview, and Midland, TX, Spokane, WA, Douglas, Powell, Riverton, and Casper, WY, and Tuscon, AZ. Restriction: Restricted to the use of two (2) trailers or semi-trailer puled in tandem, for 180 days. Supporting shipper: Mr. David McCormick, Assistant Freight Traffic Manager, Dupont Corp., Wilmington, DE 19898. Send protests to: Ms. Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, KY 40202.

MC 143127 (Sub-14TA), filed October 2, 1978. Applicant: K. J. TRANSPORTATION, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: John M. Nader, Attornery at Law, Route 3, Box 4, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick, briquettes and brickettes and equipment, materials and supplies* used in the installation of brick, briquettes and brickettes (except commodities in bulk, in tank vehicles), from Owensboro, KY, to points in the United States in and east of MN, IA, MO, AR, and LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Modern Methods, Inc., P.O. Box 370, Owensboro, KY 42301. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 143540 (Sub-7TA), filed October 2, 1978. Applicant: MARINE TRANS-

PORT CO., 2321 Burnette Boulevard, P.O. Box 2142, Wilmington, NC 28402. Representative: Jean H. Lewis, Esq. 9525 Trojan Court, Richmond, VA 23229. Temporary authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wood pulp, paper, waste paper, paper articles, and lumber:* From the facilities of Federal Paper Board Co., Inc. located at or near Riegelwood, NC; Wilmington, NC; Cape Fear, NC; Roanoke Rapids, NC; and Richmond, VA, to points in the United States (except AK and HI); and (2) *materials, supplies, and equipment used in connection with the manufacture, distribution, and sale of wood pulp, paper, waste paper, paper articles, and lumber* (except in bulk) from points in the United States (except AK and HI) to the facilities of Federal Paper Board Co., Inc., located at or near Riegelwood, NC: Wilmington, NC; Cape Fear, NC; Roanoke Rapids, NC; and Richmond, VA., under continuing contract or contracts with Federal Paper Board Co., Inc., for 180 days. Supporting shipper: Federal Paper Co., Inc., Riegelwood, NC 28456. Send protests to: Mr. Archie.W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 143605 (Sub-1TA), filed October 2, 1978. Applicant: B & M EXPRESS, INC., 500 South Western, P.O. Box 25852 Oklahoma City, OK 73112. 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: (1) *Tires, tire parts, inner tubes, inner tube parts;* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities described in (1) above (except commodities in bulk), between the plantsite and facilities of Dayton Tire & Rubber Co. at or near Oklahoma City, OK, on the one hand, and, on the other, points in AR, CO, KS, NE, OK, and TX, for 180 days. Supporting Shipper: Dayton Tire & Co., P.O. Box 24011, Oklahoma City, OK 73124. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 144682 (Sub-7TA), filed October 2, 1978. Applicant: R. R. STANTLEY, P.O., Box 95, Mesquite, TX 75149. Representative: Richard T. Churchill, Attorney at Law, 5001 South Hulen, Suite 106, Fort Worth, TX 76132. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery Goods, NOI; prepared dough, not frozen; cakes, cookies, rolls, frozen icing paste*, from plantsite of the Pillsbury Co., Denison, TX, to points in the States of AZ, CA, CO, NM, for 180 days. Supporting shipper: The Pillsbury Co., 3400 Texoma Drive, Denison, TX. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 110 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 144855 (Sub-4TA), filed October 2, 1978. Applicant: TRANS CONTINENTAL CARRIERS, INC., 169 East Liberty Avenue, Anaheim, Calif. 92803. Representative: Elizabeth I. Abreu, Knapp, Stevens, Grossman & Marsh, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foods foodstuffs, food-treating compounds; chemicals and additives* (except in bulk), *and advertising paraphernalia; and materials equipment and supplies* used in the manufacture, preparation, sales, and distribution of spices, extracts, convenience foods, confectionery products, food products, salad dressings, and foodstuffs (except in bulk), and (2) *commodities*, the transportation of which is exempt from regulation under the provision of section 203(b) of the Interstate Commerce Act, in mixed loads with commodities described in (1) above, between CA, on the one hand, and, on the other, OR and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: McCormick & Co., Inc. 1311 Schilling Place, Salinas, CA 93901. Send protest to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144879 (Sub-2TA), filed October 2, 1978. Applicant: D & J TRANSFER CO., Sherburn, MN 56171. Representative: Mr. Lavern R. Holdeman, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products, and articles* distributed by meat packinghouses, as described in sections A and C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except in bulk), from the facilities of Sioux Pac of Iowa, Inc., at or near Sioux City, IA, to points in the States of IL and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sioux Pac of Iowa, Inc., P.O. Box 2354, Stockyard Station, Sioux City, IA 51107. Send Protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 145065 (Sub-2TA), filed September 19, 1978. Applicant: WESTERN CARRIER, INC., 2100 Alaskan Way, Seattle, WA 98121. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen and perishable foodstuffs* when moving in vehicles equipped with mechanical refrigeration, from Seattle and its commercial zone, Ocean Park, and South Bend, WA to points in OR and CA, for 180 days. Supporting shipper(s): 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 filed office named below. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, ICC 858 Federal Building, Seattle, WA 98174.

MC 145072 (Sub-3TA), filed October 10, 1978. Applicant: M. S. CARRIERS, INC., 7372 Eastern Avenue, Germantown, TN 38138. Representative: Mr. A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soap and soap products* from the plantsite of Proctor and Gamble, Inc. at or near Kingsville, LA to the facilities of Malone and Hyde, Inc. located at Memphis, TN and its commercial zone, for 180 days. Supporting shipper(s): Malone and Hyde, Inc., 1991 Corporate Avenue, Memphis, TN 38132. Send protests to: Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 145320 (Sub-1TA), filed October 2, 1978. Applicant: CHARLES ALLEN d.b.a. CHARLES ALLEN CONSTRUCTION CO., 1012 South Margrave, Fort Scott, KS 66701. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from the minesite of Bills Coal Co. at or near Fulton, KS to Stotesbury, MO, for 180 days. Applicant has also filed an unerlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Bills Coal Co., Suite 500, 5200 South Yale, Tulsa, OK 74135. Send protests to: M. E. Taylor, District Supervisor, Interstate Com-

merce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 145366 (Sub-1TA), filed September 19, 1978. Applicant: VENABLE TRUCKING CO., INC., Rt. 1, Box 313, Odenville, AL 35120. Representative: John W. Cooper, 200 Woodward Building, Birmingham, AL 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cold mix ashphalt*, in open dump vehicles, from the facilities of Ashland-Warren, Inc., at or near Birmingham, AL to points in FL west of Apalachicola River and points in GA, LA, MS, and TN. (2) *Sand*, from points in FL west Apalachicola River, and points in GA, LA, MS, and TN to Jefferson, Shelby, Calhoun and Etowah Counties, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ashland-Warren, Inc., 700 37th Street, South, Birmingham, AL. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 145367 (Sub-1TA), filed September 28, 1978. Applicant: STANLEY DILLEY TRUCKING CO., INC., 5718 North Broadway, Wichita, KS 67219. Representative: Paul V. Dugan, 2707 West Douglas, Wichita, KS 67213. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides*, between Solomon, KS, on the one hand, and the States of OK, TX, NM, AZ, and CA, on the other hand, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Rueb Associates, Inc., Solomon, KS 67480. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 145384 (Sub-8TA), filed October 2, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, and plywood*, from the facilities of the Pacific Lumber Co., at or near Scotia and Fortuna, CA, to points in IA, IL, IN, MN, MO, OH, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: the Pacific Lumber Co., P.O. Box 37, Scotia, CA 95565. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145387TA, filed September 19, 1978. Applicant: Joseph J. Faria and Jearldene Faria d.b.a. FARRIA TRUCKING, Route 2, Box 122B Valeria Road, Dos Palos, CA 93620. Representative: Joseph J. Garia, Route 2, Box 122B Valeria Road, Dos Palos, CA 93620. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel nuts and bolts*, from Los Angeles, CA, to Tacoma and Seattle, WA, and their commercial zones, under a continuing contract or contracts with John Perine Co., Fastco, Inc., for 180 days. Supporting shippers: John Perine Co., 820 South Adams Street, Seattle, WA 98108. Fastco, Inc., 2306 East 11th Street, Tacoma, WA 98421. Send protests to: District Supervisor, Michail M. Butler, 211 Main, Suite 500, San Francisco, CA 94105.

MC 145463TA, filed October 2, 1978. Applicant: BRINK'S INC., Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street, NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precious metals*, between Rochester, MN, and Cudahy, WI, on the one hand, and, on the other, Rochester, MN, Elk Grove Village, IL, and Fairfield, CT, under a continuing contract or contracts with Handy & Harman for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Handy & Harman, Richard E. Hart, General Manager, 1770 Kings Highway, Fairfield, CT 06430. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145464TA, filed October 2, 1978. Applicant: James Taylor d.b.a. JAMES TAYLOR TRUCKING, 114 Twilight Circle, Placentia, CA 92670. Representative: David Nissenberg, Esq., 7855 Ivanhoe Avenue, Suite 224, La Jolla, CA 92037. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bathroom vanities and culture marble tops*, between Orange, CA, and points in the State of AZ, under a continuing contract or contracts with Aztec Industries, Inc., for 180 days. Supporting shipper: Aztec Industries, Inc., 212 West Taft, Orange, CA 92665. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Room 1321, Los Angeles, CA 90012.

MC 145465TA, filed October 2, 1978. Applicant: GURN ENTERPRISES, INC., Route 6, Box 8, Allegan, MI 49010. Representative: Edward N. Button, P.O. Box 1417, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Drugs and toilet articles and materials and supplies used in the manufacture, sale, and distribution thereof*, between Allegan, MI, and points in its commercial zone, on the one hand, and, on the other, points in AR, CT, DE, DC, KY, ME, MD, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, NH, and MA, under a continuing contract or contracts with L. Perrigo Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: L. Perrigo Co., 117 Water Street, Allegan, MI 49010. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32431 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Notice No. 130]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 17, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC-77910. (correction) (Pebble Haulers, Inc.—transferee—Dalby Transfer & Storage, Inc.—transferor), published in the November 2, 1978, issue of the FEDERAL REGISTER, on page 51195. Previous notice should have read as follows: PEEBLE HAULERS, INC., 2630 Delta Avenue, Colorado Springs, CO 80910, seeks temporary authority to transfer a portion of the operating rights of Dalby Transfer & Storage, Inc., P.O. Box 7187, 641 Winters Drive, Colorado Springs, CO 80933, under section 210a(b) * * *.

MC-FC-77927. By application filed November 6, 1978, TROWMAN TRANSPORT, INC., 14 Beech Street, Corinth, NY 12822, seeks temporary authority to transfer the operating rights of Ashline Trucking, Inc., 14 Beech Street, Corinth, NY 12822, under section 210a(b). The transfer to Trowman Transport, Inc., of the operating rights of Ashline Trucking, Inc., is presently pending.

MC-FC-77928. By application filed November 1, 1978, WINSTON LIMOUSINE SERVICE, INC., 41 Pembrook Drive, Stony Brook, NY 11790, seeks temporary authority to transfer the operating rights of Tri-Cities Limo Service, Inc., 567 Main Street, Passaic,

NJ 07055, under section 210a(b). The transfer to Winston Limousine Service, Inc., of the operating rights of Tri-Cities Limo Service, Inc., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32432 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Notice No. 129]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before December 18, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notices of the proposed transfer.

MC-FC-77838, filed September 7, 1978. Transferee: A & H Enterprises, Ltd., 62 Third Avenue, Southwest, Britt, IA 50423. Transferor: Robert H. Lewerke, Bob's Freight Line, Golfview Avenue, Britt, IA 50423. Representative: G. W. Templeton, attorney at law, 190 East Fifth Street, Garner, IA 50438. By order of November 8, 1978, the Motor Carrier Board approved the transfer to transferee the operating rights in Certificate MC 124056 issued January 24, 1963, to transferor, authorizing the transportation of general commodities, with certain exceptions, over regular routes, between Mason City and Kanawha, IA, serving the intermediate points of Duncan and Britt, IA; and between junction IA Hwy 111 and unnumbered Hwy (approximately 7 miles east of Corwith, IA), and Corwith, IA, serving no intermediate points. Petitions for reconsideration may be filed by any interested person within 20 days. Send petitions for reconsideration to: The Secretary, Interstate Commerce Commission, Washington, DC 20423.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32433 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Docket No. AB-18 (Sub-No. 6)]

CHESAPEAKE & OHIO RAILWAY CO.

Abandonment Between Coleman and Union, Isabella County, Mich., Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on November 23, 1977, and the decision of the entire Commission, served September 12, 1978, as modified, adopted the decision of the Administrative Law Judge, which is administratively final, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the abandonment by the Chesapeake & Ohio Railway Co. of a portion of its Mt. Pleasant Branch between Valuation Station 41+06, southwest of Coleman, Mich., and Valuation Station 655+45 in Union Township, northeast of Mt. Pleasant, Mich., a distance of approximately 11.64 miles, all in Isabella County, Mich. A certificate of abandonment will be issued to the Chesapeake & Ohio Railway Co. based on the above-described finding of abandonment, 30 days after publication of this notice (on or before December 18, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32437 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Docket No. AB-1 (Sub-No. 56)]

CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Abandonment Between Marshall Junction and Vesta, in Lyon and Redwood Counties, Minn; Findings

Notice is herby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision decided September 13, 1978, a finding, which is administratively final, was made by the Commission, Division 2, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Chicago and North Western Transportation Co. of a line of railroad extend-

ing approximately 37.3 miles between Marshall junction and Vesta, in Lyon and Redwood Counties, Minn. A certificate of abandonment will be issued to the Chicago and North Western Transportation Co. based on the above-described finding of abandonment, 30 days after publication of this notice (on or before December 18, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a Government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquistion cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquistion 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. HOMMER, Jr.,
Acting Secretary.

[FR Doc. 78-32438 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Docket No. AB-1 (Sub-No. 40)]

CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Abandonment Between Gillett, Oconto County, Wis., and Scott Lake, Iron County, Mich., 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 October 4, 1978, a finding, which is administratively final, was made by the Commission, Administrative Law Judge, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Chicago & North Western Transportation Co. of its line of railroad extending northerly from milepost 33.3 at Gillett, Oconto County, Wis., to the end of the line at milepost 122.7 at Scott Lake, Iron County, Mich., a distance of 89.4 miles in Oconto, Forest and Florence Counties, Wis., and Iron county, Mich. A certificate of abandonment will be issued to the Chicago & North Western Transportation Co. based on the above-described finding of abandonment, 30 days after publication of this notice (on or before December 18, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a Government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or tha 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. 78-32440 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Docket No. AB-7 (Sub-No. 39)]

STANLEY E. G. HILLMAN, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO., DEBTOR

Abandonment Near Trail City to Faith Branch in Dewey, Corson, Ziebach, and Meade Counties, S. Dak.; Findings

Notice is herby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decison decided September 29, 1978, a finding, which is adminstratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line Railroad Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the abandonment by Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. of its line of railroad extending from milepost 0.0 near Trail City to milepost 106.5 near Faith, a distance of approximately 106.5 miles in Dewey, Corson, Ziebach and Meade Counties, S. Dak. A certificate of abandonment will be issued to Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. based on the above described finding of abandonment, 30 days after publication of this notice (on or before December 18, 1978) unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abondonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above referenced decision.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32439 filed 11-16-78; 8:45 am]

[7035-01-M]

[Ex Parte No. 241; Rule 19; 53d Rev. Exemption No. 90]

ABERDEEN & ROCKFISH RAILROAD CO. ET AL.

Exemption Under Mandatory Car Service Rules

It appearing, That certain of the railroads named below own numerous 50-ft. plain boxcars; that under present conditions, there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by car service rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, ICC-RER No. 409, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of car service rules 1, 2(a), and 2(b).

Aberdeen & Rockfish Railroad Co.
Reporting Marks: AR
Atlanta & Saint Andrews Bay Railway Co.
Reporting Marks: ASAB
XXX
XXX
Camino, Placerville & Lake Tahoe Railroad Co.
Reporting Marks: CPLT
XXX
City of Prineville
Reporting Marks: COP
The Clarendon & Pittsford Railroad Co.
Reporting Marks: CLP
XXX
XXX
Duluth, Missabe & Iron Range Railway Co.
Reporting Marks: DMIR
East Camden & Highland Railroad Co.
Reporting Marks: EACH
XXX
Genessee & Wyoming Railroad Co.
Reporting Marks: GNWR
XXX
Greenville & Northern Railway Co.
Reporting Marks: GRN
Lake Superior & Ishpeming Railroad Co.
Reporting Marks: LSI
Lenawee County Railroad Co. Inc.
Reporting Marks: LCRC
Louisiana Midland Railway Co.
Reporting Marks: LOAM
Louisville & Wadley Railway Co.
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC
Manufacturers Railway Co.
Reporting Marks: MRS
Middletown & New Jersey Railway Co., Inc.
Reporting Marks: MNJ
Missouri-Kansas-Texas Railroad Co.
Reporting Marks: BKTY-MKT
New Orleans Public Belt Railroad
Reporting Marks: NOPB
XXX
Oregon & Northwestern Railroad Co.
Reporting Marks: ONW
Oregon, Pacific & Eastern Railway Co.
Reporting Marks: OPE
Pearl River Valley Railroad Co.
Reporting Marks: PRV
Peninsula Terminal Co.
Reporting Marks: PT
Providence & Worcester Co.
Reporting Marks: PW
Raritan River Rail Road Co.
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN
St. Lawrence Railroad
Reporting Marks: NSL
Sierra Railroad Co.
Reporting Marks: SERA
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Co.
Reporting Marks: TM
Tidewater Southern Railway Co.
Reporting Marks: TS
Toledo, Peoria & Western Railroad Co.
Reporting Marks: TPW
Vermont Railway, Inc.
Reporting Marks: VTR
WCTU Railway Co.
Reporting Marks: WCTR
XXX
Youngstown & Southern Railway Co.
Reporting Marks: YS
Yreka Western Railroad Co.
Reporting Marks: YW

Effective November 9, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., November 7, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32434 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Service Order No. 1344, I.C.C. Order No. 1344]

ILLINOIS CENTRAL GULF RAILROAD CO.

Rerouting Traffic

In the opinion of Joel E. Burns, agent, The Illinois Central Gulf Railroad Co. is unable to transport traffic over its line between Bloomington, Ind., and Indianapolis, Ind., because of track conditions.

It is ordered, (a) *Rerouting traffic.* The Illinois Central Gulf Railroad Co. being unable to transport traffic over its line between Bloomington, Ind., and Indianapolis, Ind., because of track conditions, is authorized to divert or reroute such traffic over any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 10:30 a.m., November 3, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 15, 1979, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 3, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32436 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Service Order No. 1344; I.C.C. Order No. 1]

NEW YORK, SUSQUEHANNA & WESTERN RAILROAD CO.

Rerouting Traffic

In the opinion of Joel E. Burns, agent, the New York, Susquehanna & Western Railroad Co. in unable to transport traffic between Sparta, NJ, and Stockholm, NJ, because of a bridge out of service.

It is ordered, (a) *Rerouting traffic.* The New York, Susquehanna & Western Railroad Co., being unable to transport traffic between Sparta, NJ, and Stockholm, NJ, because of a bridge out of service, that carrier and its connections are hereby authorized to reroute or divert such traffic over any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted , before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11.59 p.m., October 31, 1978.[1]

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 31, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32435 Filed 11-16-78; 8:45 am]

[1] Replaces I.C.C. Order No. 2 issued under Service Order No. 1252.

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

1

[M-178, Nov. 9, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., November 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Delegation of Authority to the Director, Bureau of Pricing and Domestic Aviation, to act on complaints challenging the reasonableness of fares within the "no-suspend" zones established by PS-80. (Memo 7847-J, BPDA, OGC).

3. Dockets 33090 and 23080-2, Petition of AAT Airlines, Inc., d.b.a. Air Sunshine for the determination of mail rates; Motion of USPS to include Air Sunshine in Docket 23080-2 (Memo 7673-A, BPDA).

4. Docket 33635, Western's and Southern's requests to designate the hyphenated points Miami and Ft. Lauderdale as coterminals (Memo 8271, BPDA).

5. Dockets 32528 and 32574; United's application to remove closed-door restriction in Kansas City-Chicago/Denver markets and petition for order to show cause; Braniff's application to remove one-stop restriction in Kansas City-Denver market (Memo 8278, BPDA, OGC).

6. Dockets 32754 and 32751, Southern's motion for isssuance of an order to show cause why its certificate for Route 98 should not be amended so as to authorize it to serve Atlanta-Washington, D.C. (Dulles service only) nonstop and Atlanta-New York one-stop; and Southern's application for an exemption from the requirements of its certificate pending final Board action on its certificate amendment application (Memo 8281, BPDA, OGC).

7. Docket 33105, Braniff's extension of Exemption Authority, Reno-Las Vegas (Memo 8122-C, BPDA).

8. Dockets 28755, 29462, and 33213, Applications of United for realignment and restriction removal (Memo 8283, BPDA).

9. Docket 20051, Proposed waiver of ex parte rule to allow staff discussions with FAA and DOT on the application of Airline Scheduling Committees (Memo 8268, OGC).

10. Proposed waiver of ex parte rule to allow staff discussions with FAA and DOT on the Board's prospective scheduling of route cases (Memo 8269, OGC).

11. Docket 22641—Mackey Exemption. Dockets 25446 and 28266—Mackey Certification Proceeding (OGC).

12. Dockets 33361, 33362, 33363, Former Large Irregular Air Service Investigation, Certification to the Board (7690-I, OGC).

13. Dockets 32327, 33361, 33362, 33363, 33686, 33687, 32630, 32632, 31540, 33688, and 33689, Former Large Irregular Air Carrier Investigation—Order disposing of motions to consolidate and/or requests to reinstate previously dismissed applications (7690-H, OGC).

14. Docket 33216, Louisville-Kansas City Nonstop Route Investigation—Order on Reconsideration (OGC).

15. Final rules amending Part 384 Statement of Organization Delegation of Authority and Availability of Records and Information and Part 385 Delegations and Review of Action Under Delegation; Nonhearing Matters (Memo 8266, OGC, BAS, BCP, OMD).

16. Freedom of Information Act request by Institute for Public Interest Representation To Inspect Audit Materials Regarding Allocation of Costs of Discriminatory Employment Practices (Memo 8286, OGC).

17. Docket 31979, Kodiak-Western Alaska Airlines, Inc., Enforcement Proceeding (Memo 8277, OGC).

18. Docket 23080-2, Priority and Nonpriority Domestic Service Mail Rates Investigation (OGC).

19. Dockets 30587/30591, Colonial Airlines, Inc., (Memo 8015-D, OGC).

20. Docket 33275, New Orleans-West Service Investigation: Petitions for reconsideration (Memo 7879-B, OGC).

21. Dockets 33320, 31542 and 33605, Houston Service Investigation (Memo 8070-D, OGC).

22. Docket 30635, Arizona Service Investigation (OGC).

23. Docket 31989, Transportes Aereos Bolivianos' application for an initial foreign air carrier permit (Memo 8284, BIA, OGC).

24. Docket 32772, Application of Aerolineas Argentinas for a declaratory order stating that its current authority includes Miami-Montreal nonstop rights (Memo 8287, BIA).

25. Docket 31977, Application of International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc., for indirect foreign air carrier permit (Memo 8097-A, BIA, OGC).

26. Docket 31703, Application of Quebec<air for a new foreign air carrier permit to operate charters between 20 named European countries and any point or points in the United States, subject to conditions and limitations (BIA, OGC).

27. Canadian Restrictions on U.S. Carriers' Charter Operations into Northwest Ontario (Memo 8279, BIA, OGC).

28. Docket 33274, Application of the Fredericton Flying Club, Inc., for an initial foreign air carrier permit to operate charters between Canada and the U.S. using small aircraft (Memo 8275, BIA, OGC).

29. Docket 33229, Application of Aircair Services, Ltd., d.b.a. Yellow Bird Air for an initial foreign air carrier permit to operate charters between Canada and the U.S. using small aircraft (Memo 8274, BIA, OGC).

30. Dockets 25608 and 31006, Seagreen Air Transport, Ltd's, application to amend and renew its two foreign air carrier permits (Memo 8276, BIA, OGC).

31. Notice of Proposed Rulemaking to amend section 213.3(d) of the Economic Regulations to remove the mandatory 30-day waiting period for effectiveness of orders requiring foreign air carriers to discontinue operation of existing schedules (BIA, OGC, BPDA-Memo 8285).

32. Docket 21670, Frontier Airlines Mail Subsidy Rates (Instructions to staff).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068

[S-2321-78 Filed 11-15-78; 10:46 am]

[6320-01-M]

2

[M-178, Amdt. 1; Nov. 11, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the November 16, 1978, meeting agenda.

TIME AND DATE: 9:30 a.m., November 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 3a. Dockets 33913, 33851, 33846, and 33845, applications of Braniff, American, Continental and TWA for exemption authority to operate in markets in which authority is granted under section 401(d)(5).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: This item concerns requests for exemption authority in "dormant authority" markets. The staff issued an order under delegated authority last Thursday granting certificate authori-

ty in certain dormant authority markets. For any exemption authority to be effective it should be granted as close to the grant of the certificate authority as possible. In view of the extremely short deadlines on the issuance of dormant authority certificates—14 days—the staff was not able to prepare a memo on the exemption authority earlier. Accordingly, the following Members have voted that agency business requires the addition of 3a to the November 16, 1978, agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2322-78 Filed 11-15-78; 10:46 am]

[6712-01-M]

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 12:15 p.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street NW, Washington, D.C.

STATUS: Emergency closed Commission meeting.

SUBJECT

The decision in *Central Florida Enterprises, Inc.* v. *FCC* (D.C. Circuit No. 76 1742).

The prompt and orderly conduct of Commission business did not permit announcement prior to the meeting.

Additional information concerning this meeting may be obtained from FCC Public Information Office, telephone 202-632-7260.

Issued: November 14, 1978.

[S-2323-78 Filed 11-15-78; 11:01 am]

[6712-01-M]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, November 14, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: The following items have been deleted:

Agenda, Item No., and Subject

General—3—Petitions for special relief filed by Citizens Communications Center requesting approval of reimbursement provisions contained in certain licensee-citizens group agreements.

General—4—Petition for partial reconsideration of the Commission's decision in Mid-Continent Telecasting, Inc., et al., filed by Gilmore Broadcasting Corp.

Common Carrier—2—Application by A.T. & T. for authority to construct a domestic satellite Earth station at the Goddard Space Flight Center, Greenbelt, Md. (File No. 652-DSE-P-77).

Common Carrier—3—Western Union International, Inc., application for authority to lease and operate 14 56-kilobit circuits in the Westar and Intelsat satellite systems; construct and operate a domestic satellite Earth station at each Andover, Maine, and Etam, W. Va.; designate the Goddard Space Flight Center (GSFC), Greenbelt, Md., as a limited purpose gateway; and use the requested facilities to provide leased 56-kilobit leased channel service to the National Aeronautics and Space Administration (NASA) between GSFC and the Ascension Islands, Bermuda, Chile, Ecuador and Spain; Communications Satellite Corp. applications requesting authority to construct and operate an 11-meter antenna and associated facilities at each Andover, Maine and Etam, West Virginia and to use said facilities in conjunction with the Westar domestic satellites; to construct two Intelsat standard B antennas and associated facilities at the GSFC, Greenbelt, Md.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 14, 1978.

[S-2324-78 Filed 11-15-78; 11:01 am]

[6740-02-M]

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 52847, Published November 14, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., November 15, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CP-13. RP72-89, et al., Columbia Gas Transmission Corp., et al.

KENNETH F. PLUMB,
Secretary.

[S-2326-78 Filed 11-15-78; 3:35 pm]

[6740-02-M]

6

NOVEMBER 15, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 3 p.m. November 15, 1978.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Initiation of civil litigation.

CONTACT PERSON FOR INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

[S-2327-78 Filed 11-15-78; 3:35 pm]

[6740-02-M]

7

NOVEMBER 15, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 2 p.m., November 22, 1978.

PLACE: 825 North Capitol Street, NW., Washington, D.C. 20426, Hearing Room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will be briefed by the Staff on the comments received in Docket No. RM79-3, Notice of Proposed Rulemaking on Regulations implementing the Natural Gas Policy Act of 1978. No vote will be taken at this meeting, but drafting instructions may be given to the Staff.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

KENNETH F. PLUMB,
Secretary.

[S-2330-78 Filed 11-15-78; 3:35 pm]

[6720-01-M]

8

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., November 22, 1978.

PLACE: 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Branch Office Application—Eureka Federal Savings & Loan Association of San Francisco, San Francisco, Calif.

Branch Office Application—First Federal Savings & Loan Association of York, York, Nebr.

Satellite Office Application—Home Federal Savings & Loan Association, St. Petersburg, Fla.

Application for Bank Membership—Newport Savings Bank, Newport, N.H.
Applications for Bank Membership and Insurance of Accounts (Proposed)—Central Oregon Savings & Loan Association, Bend, Oreg.
Branch Office Application—Biscayne Federal Savings & Loan Association, Miami, Fla. (Broward County).
Branch Office Application—Biscayne Federal Savings & Loan Association, Miami, Fla. (Dade County).
Consideration of Forward Commitments to Purchase Securities.

No. 197, November 15, 1978.

RONALD A. SNIDER,
Assistant Secretary.

[S-2329-78 Filed 11-15-78; 3:35 pm]

[6210-01-M]

9

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, November 22, 1978. The closed portion of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED:

Open portion:

SUMMARY AGENDA

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed revision to the Report of Negotiable Orders of Withdrawal (NOW) Accounts (FR 2015).

DISCUSSION AGENDA

1. Board's regulatory improvement program: further consideration of Regulation V (Guarantee of Loans for National Defense Work).
2. Proposed Federal Reserve Bank budgets for 1979.
3. Any agenda items carried forward from a previously announced meeting.

NOTE.—The open portion of this meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Close portion:

1. Proposed system-wide facsimile network, including competitive procurement alternatives. (This matter was originally announced for a meeting on Friday, November 17, 1978).
2. Proposed negotiation of a construction contract for major power and air conditioning alterations for the building of the Federal Reserve Bank of New York.
3. Proposed negotiation of a contract for architectural and engineering services for the proposed new building project of the Federal Reserve Bank of San Francisco.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

NOVEMBER 14, 1978.

[S-2325-78 Filed 11-15-78; 11:36 am]

[7590-01-M]

10

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Tuesday, November 21, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

TUESDAY, NOVEMBER 21, 9:30 A.M.

1. Discussion of petition for hearing by NRDC in Tarapur matter (approximately 1 hour, public meeting).
2. Discussion of reducing procedural cost burdens (approximately 1 hour, public meeting).
3. Affirmation session (approximately 10 minutes, public meeting): (a) FOIA appeal of K. Gaynor.

TUESDAY, NOVEMBER 21, 1:30 P.M.

1. Briefing on NMSS role in international safeguards and physical security determinations (approximately 1 hour, closed—exemption 1).
2. Discussion of personnel matter (approximately 1 hour, closed—exemption 6).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

NOVEMBER 14, 1978.

[S-2328-78 Filed 11-15-78; 3:35 pm]

[8120-01-M]

11

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, October 19, 1978.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS TO BE CONSIDERED:

C—PURCHASE AWARDS

1. Amendment to contract 78K61-822569 with Westinghouse Electric Corp. for hydrogen recombiners for the proposed Yellow Creek Nuclear Plant.
2. Req. No. 577555—IQT contract for complete line of new tires and tubes for any TVA project or warehouse.
3. Rejection of bids received in response to Invitation No. 553593 for indefinite quantity term contract for electrical terminals, connectors, lugs, tools, and accessories for Hartsville Nuclear Plant.
4. Rejection of bids received in response to Invitation No. 824268 for wastewater management collection and holding facilities, including installation, for Muscle Shoals Reservation.

F—POWER ITEMS

1. Letter agreement with Interlake, Inc., covering relocation of TVA's Gallatin-Portland 69-kV line to provide clearance for company's proposed new plant near Gallatin, Tenn.

Dated: October 16, 1978.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington office, 202-566-1401.

SUPPLEMENTARY INFORMATION:

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that this meeting be called at the time set out above and that no earlier announcement of the meeting was possible.

The members of the TVA Board have voted to approve the above findings and their approvals are recorded below.

Approved:

S. DAVID FREEMAN.
RICHARD M. FREEMAN.

[S-2331-78 Filed 11-15-78; 3:58 pm]

Federal Register

FRIDAY, NOVEMBER 17, 1978
PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

PROTECTION OF HUMAN SUBJECTS

Proposed Regulations on Research Involving Those Institutionalized as Mentally Disabled

[4110-08-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 46]

PROTECTION OF HUMAN SUBJECTS

Proposed Regulations on Research Involving Those Institutionalized as Mentally Disabled

AGENCY: Department of Health, Education, and Welfare.

ACTION: Proposed rule.

SUMMARY: The Department of Health, Education, and Welfare (HEW) is proposing regulations to implement the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research pertaining to research involving those institutionalized as mentally disabled. Key provisions require that such research be carried out only if the methods are appropriate, the investigators competent, and the facilities adequate. Risks must be minimized, and the research performed in connection with medically indicated diagnosis and treatment wherever possible. Adequate provision must be made to obtain the subject's fully informed consent, or the consent of legal representatives if the subjects are incapable of consenting on their own behalf. Where the subject lacks full capacity to consent, provision is made for the subject's assent.

DATES: Written comments on the proposed rules are invited, and should be received on or before January 16, 1979, if they are to be given full consideration.

ADDRESSES: Send comments to: Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014. Additional copies of this notice may be obtained from the same address. All comments received will be available for inspection at Room 303, Westwood Building, 5333 Westbard Avenue, Bethesda, Md., weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Joseph R. Marches, Ph. D., Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, 301-496-7005.

SUPPLEMENTARY INFORMATION: Basic regulations governing the protection of human subjects involved in research, development, and related activities supported by HEW through grants and contracts were published in the FEDERAL REGISTER on May 30, 1974 (30 FR 18914).

In the preamble to these regulations, HEW indicated that it would propose further rules to provide additional protection for research subjects with diminished capacity to provide informed consent, including institutionalized individuals with mental disability.

The National Research Act (Pub. L. 93-348) was signed into law on July 12, 1974, creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (Commission). One of the charges to the Commission was to study the nature of the research being conducted which involved what the Act referred to as the "institutionalized mentally infirm," including the mentally ill, the mentally retarded, the emotionally disturbed, and the senile, who are confined to institutions either voluntarily or involuntarily. Such persons by the very nature of their disabilities may not be competent to provide informed consent to participation in research. At the same time, the nature of their disabilities requires extensive research efforts to study the etiology, pathogenesis, prevention, therapy, and management of their conditions. The Commission was required to recommend to the Secretary of Health, Education, and Welfare, policies defining the circumstances under which research involving the institutionalized mentally infirm might be appropriate and to make recommendations to Congress regarding the protection of subjects (including the institutionalized mentally infirm) involved in research not subject to regulation by HEW.

In discharging its duties under this mandate, the Commission studied the nature and extent of research in mental health, mental illnesses, and mental retardation, the purposes for which the research is conducted, and the issues surrounding the participation in research of the institutionalized mentally infirm. Representatives from professional societies, Federal agencies, and public interest groups, as well as private citizens presented their views to the Commission at public hearings. To assure that viewpoints of minorities would be expressed, the National Minority Conference on Human Experimentation made recommendations to the Commission on research involving the institutionalized mentally infirm. The Commission also reviewed papers and reports prepared under contract, including papers on informed consent and a survey of actual practices in research involving institutionalized subjects. Finally, the Commission conducted extensive deliberations in public and developed recommendations on the participation in research of "those institutionalized as mentally infirm."

ACTIONS ON RECOMMENDATIONS OF THE COMMISSION

Pursuant to section 205 of the National Research Act (Pub. L. 93-348), the recommendations of the Commission on research involving those institutionalized as mentally infirm were published in the FEDERAL REGISTER (43 FR 11328) on March 17, 1978. Comments were received from approximately 100 organizations, institutions, legal and medical practitioners, and private citizens. After reviewing the recommendations and the comments, the Secretary has prepared the notice of proposed rulemaking set forth below, which in essence accepts the recommendations. However, the proposed rules depart from the recommendations of the Commission in a few respects.

DEPARTMENT'S RESPONSE TO RECOMMENDATIONS

DEFINITIONS

The term "institutionalized mentally infirm" as used in section 202(a)(2) of the National Research Act, is defined to include "individuals who are mentally ill, mentally retarded, emotionally disturbed, psychotic, senile, or who have other impairments of a similar nature and who reside as patients in an institution." Thus, the term "mentally infirm" was intended to encompass a broad array of people who, because of cognitive or emotional handicaps, reside in institutions and are subject to institutional constraints. The Commission's recommendations are applicable to research involving individuals so impaired when they are residents of these institutions. However, as noted by the Commission and by the Department, the term "mentally infirm" is inadequate. First, it is not in current clinical use. Second, there is considerable debate about whether symptoms that may result in institutionalization are properly characterized as diseases or illnesses in the conventional sense, or whether they represent problems in social adaptation. Current theories of personal adjustment recognize an interaction between biological and environmental factors resulting in behavior that society regards as illness or disability. An alternative to psychiatric diagnosis, which assumes a medical or disease model, is the view that disturbing behavior is more appropriately described in terms of conditions that evoke, reinforce and perpetuate that behavior.

Third, it is increasingly recognized that labeling, by the use of such terms as "mentally infirm," may stereotype conceptions of people and their problems. Fourth, many individuals who

commented on HEW's November 16, 1973, proposed policy (39 FR 18914) objected to the use of the term "mentally infirm" because it reflected an antiquated notion of mental illness and its scope was unclear, e.g., some felt it included those incapacitated as a result of physical conditions.

HEW substituted the term "mentally disabled" in the proposed rulemaking of August 23, 1974 (39 FR 30648), and reaffirms this change here. The term is separately defined in § 46.503(c) of the proposed regulations.

The National Research Act does not separately define "institutionalized." The Commission has noted that institutionalization may result from misdiagnosis or error and that confinement to a mental institution does not necessarily establish the fact of mental disability. The Department feels that the protection of these regulations should extend to all individuals residing either voluntarily or involuntarily in residential institutions for the care and treatment of the mentally disabled, including those who are mentally ill, mentally retarded, emotionally disturbed, psychotic or senile, regardless of their legal status or reason for their being institutionalized. Such individuals include but are not limited to mentally disabled patients in public or private mental hospitals, psychiatric patients in general hospitals, inpatients of community mental health centers, and mentally disabled individuals who reside in halfway houses or nursing homes. These regulations would not include noninstitutionalized patients or out-patients who would be covered by general regulations, nor would they include patients who are not mentally disabled but who, for reasons of convenience, are temporarily housed in institutions for the care and treatment of the mentally ill. The term "individuals institutionalized as mentally disabled" is so defined in § 46.503(d).

The definition of "minimal risk" is drawn, with only minor editorial changes, from the Commission's definition. In the preparation of these proposed regulations, considerable attention focused on whether this definition adequately captures the thrust of the additional explanatory comments provided by the Commission. There was concern whether the definition of minimal risk as included here should be interpreted to mean that a minimal risk situation obtains only when the research procedures include risks for institutionalized mentally disabled subjects which are identical to those encountered by normal subjects in routine medical or psychological examinations, or whether research procedures involving risks similar to those encountered by normal subjects should be the standard. For example, should a procedure which is routinely included in examination of mentally disabled persons be regarded as involving minimal risk because it is similar to the risk encountered by normal persons, or as involving more than minimal risk simply because it is not identical to any procedure ordinarily experienced by a normal person.

The Commission proposes that risks normally encountered in the daily lives of normal persons, or in the routine medical or psychological examination of normal persons, serve as a standard against which the Institutional Review Board (Board) should judge risks for institutionalized mentally disabled subjects. The Commission notes that, for such subjects, "routine examination procedures present no more than minimal risk if the likely impact of such procedures on them is similar to what would be experienced by normal persons undergoing the procedures" (emphasis added). The Board is also charged with determining "the degree of risk that would be presented to normal persons and then consider whether such risk is heightened by the illness or institutionalization of the prospective subjects or class of subjects." Thus, the Department believes that risks normally encountered in the daily lives or routine examination of normal persons serve as a standard against which risks for mentally disabled subjects can be judged.

Consideration was given to inserting the words "comparable to that" between "discomfort" and "normally" in the definition as presented in these proposed regulations. This would serve to emphasize the comparative, judgmental nature of the assessment of risk. However, there was concern that such a phrase, if inserted, could be interpreted to permit disabled subjects to be exposed to greater risks than intended by the Commission. Hence, the definition in § 46.503(h) of the proposed regulations adheres to the original wording of the Commission. Comments from the public are especially invited on this definition.

The Department has also added definitions of "children," "parent," "legally authorized representative," and "assent," borrowed largely from its previous proposed rulemaking with respect to research with children (43 FR 31786 at p. 31793).

A definition of "consent auditor" is included as well as a definition of "advocate." The former describes an individual whose primary role is to assure that the consent/assent process functions properly; the latter contemplates someone who would in effect serve as another representative of the subject, in addition to the legally authorized representative. One or both of these definitions will be included in the final regulations on the institutionalized mentally disabled, depending on what if any functions are assigned to consent auditors and advocates in other sections of the regulations. The rulemaking on research involving children and these regulations will be conformed before either is issued in final form.

Recommendation (1) regarding the review of research by Boards is implemented by § 46.504 substantially as proposed by the Commission. Several of the Commission's comments on the recommendation were included in the regulations for purposes of clarification.

Special Considerations Regarding Individuals Who Object To Treatment

In its recommendations (2), (3), and (4), discussed below, the Commission provides special protections for subjects who are incapable of giving fully informed consent. The Department recognizes, however, that it is often difficult to demarcate between subjects who are capable and those who are not. Also, the decision as to capability normally cannot be made until the time when each subject is involved in the research. Leaving the institution and the research investigators the discretion to decide whether individual subjects are capable of giving consent could lead to uneven protections for human subjects. In recognition of this, the Commission has provided the institutional review boards with authority to appoint consent auditors to observe the consent process and determine in fact whether proper decisions are being made regarding capacity to consent (or assent). In recommendation (4), appointment of a consent auditor is mandatory.

One alternative, which was considered by the Department for the purpose of limiting the researchers' discretion, was to require added protections whenever the subject had been declared "legally incompetent" by a court of appropriate jurisdiction. This approach is not being pursued because in fact only a small proportion of the institutionalized mentally disabled, who may be less than fully capable of giving consent, have had their status adjudicated by a court.

Recommendations (2) and (3) contain two parallel clauses, (2)(b)(iii) and (3)(D)(iv), stating generally that when a subject objects to participation in an intervention which: Involves only minimal risk (recommendation 2), or holds out the prospect of direct benefit for the subject and is available only in the context of the research (recommendation 3), the research may be conducted or supported only if the subject's participation is specifically authorized by a court of competent ju-

risdiction. Although the Commission did not specifically indicate, we interpret these provisions as applying only when the subject lacks the capacity to give informed consent.

The Commission does not provide any clarifying comment on this clause. In a dissenting opinion (43 FR 11328 at page 11358), Commissioner King suggests that: "Perhaps the Commission required court authorization to insure as fair and objective an assessment of the quality of the objection as possible. I certainly share the Commission's concern about insuring a fair and objective assessment of the quality of the prospective subject's objection. Most forms of mental illness and mental retardation are viewed as possibly impairing a patient's ability to make sound personal decisions. We should be concerned therefore about a subject's ability to refuse as well as to assent to participation in research activities." Commissioner King proceeded to dissent on the ground that a court is not necessarily in the best position to make the necessary decision as to the quality of the objection, and in the belief that the decision should be left to the Board, which could, if it wished, seek assistance from a court.

The courts themselves are divided on this issue. In a Federal case, *Wyatt* v. *Stickney* (344 F.Supp. 373 [M.D. Ala. 1972]; 344 F.Supp. 387 [M.D. Ala. 1973]) (see also *Wyatt* v. *Aderholt*, 503 F.2d. 1305 [5th Cir. 1974]), the court held (appendix A,29) only that "Residents shall have a right not to be subjected to experimental research without the express and informed consent of the resident (or) of his guardian or next of kin * * * Such proposed research shall first have been reviewed and approved by the institution's Human Rights Committee." Court approval as such was not required, though consultation with legal counsel was recommended.

More recently, the Massachusetts Supreme Judicial Court in *Belchertown State School* v. *Saikewicz* (370 N.E.2d 417) has held that questions concerning the continuation of life extending therapy in incompetent patients must go before a probate court for approval. While the case involves life extending therapy, not merely benefits, the decision tends to support the Commission majority's view that the courts must play a central role in the consent process when a mentally disabled patient is unable to consent to a proposed treatment regimen.

There are arguments that neither next of kin, other legally authorized guardians, nor courts should be able to override the objection of a mentally disabled subject except in extreme cases. The Commission notes in its report the view of one of its consultants that "The burden in law for incompetence should be very high. No evidence other than a showing that the patient is comatose should ordinarily be accepted as proof of incompetence * * * To accept proxy consent is to authorize invasions of persons and personality without regard to the wishes of the research subject * * *." To date, no court has adopted such a view.

For purposes of the proposed regulations, the Department has followed the Commission's recommendations concerning authorization by a court of competent jurisdiction. At the same time, it is acknowledged that there are views in sharp conflict with this position. The Department therefore encourages further public comment on this issue.

Recommendation (2), on research that does not present more than minimal risk, is implemented by § 46.505 largely as suggested and with the Commission's recommended requirement of court approval to protect the objecting subject who lacks the capacity to give informed consent. If such a subject objects, the research must include an intervention that holds the prospect of direct benefit to the subject, or a monitoring procedure required for the well-being of the subject.

As an added protection for subjects who are incapable of giving informed consent, the Department is giving consideration to requiring that a consent auditor monitor all research covered by these regulations, including research involving no more than minimal risk. Whenever the consent auditor finds a particular subject lacks the capability to consent, the subject may not be involved in the research without the consent of an advocate (in addition to the consent of the legally authorized representative and, in the case of an objecting subject, a court). Public comment is requested on this added protection.

Recommendation (3) concerns research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects. Section 46.506 implements this recommendation with modifications. The term "legally authorized representative" is substituted for the term "guardian" since the latter is normally associated with persons having responsibility for minors, while these regulations apply both to adults and minors institutionalized as mentally disabled. Again, the requirement for court approval protects the objecting subject who lacks the capacity to consent. When such a subject objects, the research can proceed only if the Board finds that the intervention or monitoring procedure is available only in the context of the research.

Again, public comment is requested on a proposal to require the consent of an advocate whenever the consent auditor determines that the subject is incapable of giving informed consent.

Recommendation (4), pertaining to research involving greater than minimal risk but likely to yield generalizable knowledge about the subjects' disorder, is implemented by § 46.507. The regulation substantially follows the Commission's recommendation except with respect to subjects who are incapable of giving informed consent.

With regard to subjects who are capable of assenting (though not consenting), the Department is considering whether to follow the Commission's approach of permitting such subjects to participate if they assent and their legally authorized representative consent, or alternatively, to require in addition the consent of (1) the Secretary, based upon the advice of an expert panel, or (2) an advocate.

With regard to subjects incapable of assenting, the Department is considering whether to: (1) Bar their involvement in such research (on the assumption that needed research could be done using other subjects), (2) adopt the Commission's recommendation, which would permit their participation if they do not object and the legally authorized representative and a court of competent jurisdiction give their approval, (3) require, in addition to the approval of the legally authorized representative and the court, approval by the Secretary, or (4) require, in addition to that of the representative and the court, approval by an advocate.

Public comment is requested on the above alternatives.

The regulations proposed in § 46.508 for implementation of recommendation (5) depart slightly from paragraph B of that recommendation. Instead of referring to a national ethical advisory board as the body to review research that cannot be approved under recommendations (2), (3), and (4), § 46.508 would allow the Secretary to consult with a panel of experts in pertinent disciplines (e.g., science, medicine, education, ethics, law). Depending on the circumstances, the panel could be a national ethical advisory board or an ad hoc panel of experts. This gives the Secretary flexibility to secure the best advice available in a particular situation.

The Department is considering whether greater specifity should be required regarding the nature of the consent process under situations covered by recommendation (5). Public comment regarding this issue is requested.

DEPARTMENT'S RESPONSE TO PUBLIC COMMENTS

In response to publication in the FEDERAL REGISTER of the Commission's recommendations on research involving those institutionalized as mentally infirm, approximately 100 comments were received from individuals, citizen groups, legal and medical practitioners, researchers, and representatives of societies, university departments, and institutions. Although the respondents objected to some points in the recommendations, they were mainly complimentary of the Commission's recommendations. Several indicated complete acceptance of the recommendations as drafted.

Described below are the public responses received on the recommendations. In general, the comments directly addressed issues and implications of the recommendations but occasionally extended into the supplementary discussion material presented by the Commission relating to each of its recommendations.

1. *Comment on the definition of "institutionalized mentally infirm".* Public response to the March 17, 1978, recommendations contained objections to this term similar to those received in response to the proposed rulemaking of August 23, 1974. The major concern was that the term reflected an antiquated concept of mental illness with an ill-defined boundary as to the kinds of disabilities and conditions that would be included.

Response. The Department agrees. As noted under "Department's response to recommendations," the term "mentally disabled" has been substituted for "mentally infirm" in § 46.503 and is utilized throughout the proposed regulations.

2. *Comment on recommendation (1).* While there was general acceptance of this recommendation as drafted, a number of those commenting questioned the reality of delegating to Boards the task of discerning (A) that "the research methods are appropriate" to the research, and (B) the "competence of the investigator." The comments also expressed a desire for clarification of the "good reason" criterion included in paragraph (D) for involving participants and the meaning of "equitable" selection presented in paragraph (G).

Response. The Department does not feel that the recommendations of the Commission that Boards consider the appropriateness of the proposed methodology and the competence of the investigator are unrealistic. Boards are required under existing regulation (45 CFR 46.106) to have the professional competence and other qualifications necessary to the review of the specific activities likely to be presented to them. Under such circumstances, a properly constituted Board should have no difficulty in making such decisions. These recommendations are implemented substantially as written in § 46.504(a) (1) and (2).

The Department agrees that the "good reason" criterion deserves further explanation. Accordingly, the Department has added in § 46.504(a)(4) a brief description of the factors to be considered in determining the appropriateness of conducting research on those institutionalized as mentally disabled.

Similarly, the Department has provided additional explanation as to what is meant by "equitable" selection and incorporated this in § 46.504(a)(7).

3. *Comment on recommendation (2)(B)(ii).* Reservation was expressed as to the adequacy of accepting "assent" or "no objection" as criteria for allowing the participation of patients who are incapable of consenting. Some public respondents felt that the opportunity to object might be vitiated by the institutional setting or the subject's lack of decisionmaking experience.

Response. The standard for "assent" requires that the subject be told what procedures will be performed in the research and on this basis choose, or not choose, to participate. The subject would be expected to be able to communicate this choice unambiguously and be aware that subjects may withdraw from participation. Assent is not intended to be a substitute for the informed consent of legally authorized representatives, but as an additional applicable standard for affirmative agreement to participate in research. Assent is to be obtained whenever a subject is not capable of giving informed consent and other conditions are satisfied. Mere failure to object is not to be construed as assent.

The "absence of an objection" criterion is appropriate only where the subject is incapable of assenting and where the research is relevant to the subject's condition and presents no more than minimal risks. These points were included in the Commission's discussion pertaining to this recommendation and serve to clarify the Department's intent.

4. *Comment on recommendations (2)(B)(iii), (3)(D)(iv), and (3)(E)(ii).* Recommendations (2) and (3) contain provisions for court authorized participation of objecting subjects if the research holds the prospect of direct benefit to the subject or includes a monitoring procedure required for the well-being of the subject. As we have already said, we interpret these provisions as applying only when the subject is incapable of giving informed consent.

Public comment reflected varying degrees of objection to the suggested role of the court in overriding the right to refuse participation in research even when judged to be beneficial.

Reponse. The Department acknowledges the difficulty of resolving the conflicting right of a patient to refuse treatment for whatever reason, and of the right, even the duty, of the State to provide treatment when it is in the apparent best interest of the patient. This matter is discussed above under "Department's response to recommendations" and additional public comment is encouraged.

5. *Comment on recommendation (3)(D)(ii).* Several comments in connection with recommendation (3) were in reference to the concept of the guardian. Some proposed that the guardian's role be limited to concurrence with or withdrawal of the subject's consent to participation in research. Other respondents favored a change in the word "guardian" to the term "legally authorized representative" as used in subpart A of 45 CFR Part 46. It was suggested that the "legally authorized representative" concept would be more amenable to family input and patient-family decision making than the "guardian" notion.

Response. In light of these comments, the Department has substituted the term "legally authorized representative" in the wording of §§ 46.505(b)(2), 46.506(a)(4)(B), 46.507 (a)(4)(C), and 46.508(b)(2)(C) of the proposed regulations. The term "guardian" has been retained only in connection with minors.

6. *Comment on recommendation (4).* Public reaction to this recommendation was mixed as to whether persons institutionalized as mentally disabled should be involved in research with more than minimal risk and holding no prospect of direct benefit for individual subjects. At least one person supported the dissenting position of Commissioner Cooke to the effect that research involving more than minimal risk not be performed unless it can clearly be shown that the anticipated knowledge might reasonably benefit the individual subjects in the future.

Response. This recommendation is implemented by § 46.507, which requires that all of the safeguards of § 46.504 must be met. This includes the requirement in § 46.504(a)(4) that there be good reasons for using institutionalized individuals as subjects. Section 46.507(a)(3) further requires that the Board must find the research to be of vital importance for the understanding or amelioration of the type of disorder or condition affecting the subject, if the Board is to allow research under this recommendation.

If the subject is a child, § 46.507 (a)(5) requires satisfaction of §§ 46.407

and 46.409 of subpart D relating to research involving children.

Sections 46.507 (b) and (c) also state that no subject may be allowed in the research over his or her objection and that the IRB shall appoint a consent auditor to ensure the adequacy of the consent process.

7. *Comment on recommendation (5).* A number of those commenting view this Recommendation as a questionable means for extending the latitude of conditions under which research may involve institutionalized persons. They fear that the risk of abuse or exploitation would be high for the category of research encompassed by this recommendation. It was further felt that a need for specifically involving institutionalized individuals should be documented before any research could be permitted under this Recommendation. The opinion was also expressed that the need for involving a national ethical advisory board in decision-making was not self-evident, and that the required review (paragraph B) might be more satisfactorily handled at the Board or program level, thus negating the need for a national board.

Response. The Department acknowledges the Commission's view that only research of major significance and the presence of a serious health problem would justify the approval of research under recommendation (5). The problem addressed must be a grave one with a reasonable expectation of producing important and needed scientific information, and must be implemented by an equitable method for inviting participation among institutionalized subjects. Approval of any research under this recommendation is contingent upon the Board's determination as to the critical nature of the health problem involved. The Secretary will give the public an opportunity to review and comment on any proposed action. Hence, it gives the Secretary discretion to approve important research when conditions warrant, while providing adequate safeguards against abuse.

Notice is given that it is proposed to make any amendments that are adopted effective upon publication in the FEDERAL REGISTER.

Dated: November 1, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: November 6, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

It is therefore proposed to amend Part 46 of 45 CFR, Subtitle A, by:

§ 46.301 (Subpart C) [Redesignated as § 46.601 (Subpart F)]

1. Redesignating subpart C and § 46.301 as subpart F and § 46.601 respectively.

2. Adding the following new subpart E.

Subpart E—Additional Protections Pertaining to Biomedical and Behavioral Research Involving as Subjects Individuals Institutionalized as Mentally Disabled

Sec.
46.501 Applicability.
46.502 Purpose.
46.503 Definitions.
46.504 Additional duties of the Institutional Review Boards where individuals institutionalized as mentally disabled are involved.
46.505 Research not involving greater than minimal risk.
46.506 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.
46.507 Research involving greater than minimal risk and no direct benefit to individual subjects, but likely to yield generalizable knowledge about the subjects' disorder or condition.
46.508 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of individuals institutionalized as mentally disabled.

AUTHORITY: 5 U.S.C. 301.

Subpart E—Additional Protections Pertaining to Biomedical and Behavioral Research Involving as Subjects Individuals Institutionalized as Mentally Disabled.

§ 46.501 Applicability.

(a) The regulations in this subpart are applicable to all biomedical and behavioral research conducted or supported by the Department of Health, Education, and Welfare involving as subjects individuals institutionalized as mentally disabled.

(b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will in any way render inapplicable pertinent State or local laws bearing upon activities covered by this subpart.

(c) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

§ 46.502 Purpose.

Individuals institutionalized as mentally disabled are confined in institutional settings in which their freedom and rights are potentially subject to limitation. In addition, because of their impairment they may be unable to comprehend sufficient information to give a truly informed consent. Also, in some cases they may be legally incompetent to consent to their own participation in research.

At the same time, so little is known about the factors that cause mental disability that efforts to prevent and treat such disabilities are in the primitive stages. There is widespread uncertainty regarding the nature of the disabilities, the proper identification of persons who are disabled, the appropriate treatment of such persons, and the best approaches to their daily care. The need for research is clearly manifest. It is the purpose of this subpart to permit the conduct of responsible investigations while providing additional safeguards for those institutionalized as mentally disabled.

§ 46.503 Definitions.

As used in this subpart:

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

(b) "DHEW" means the Department of Health, Education, and Welfare.

(c) "Mentally disabled" individuals includes those who are mentally ill, mentally retarded, emotionally disturbed, psychotic or senile, regardless of their legal status or the reason for their being institutionalized.

(d) "Individuals institutionalized as mentally disabled" means individuals residing, whether by voluntary admission or involuntary confinement, in institutions for the care and treatment of the mentally disabled. Such individuals include but are not limited to patients in public or private mental hospitals, psychiatric patients in general hospitals, inpatients of community mental health centers, and mentally disabled individuals who reside in halfway houses or nursing homes.

(e) "Children" are persons who have not attained the legal age of consent to general medical care as determined under the applicable law of the jurisdiction in which the research will be conducted.

(f) "Parent" means a child's natural or adoptive parent.

(g) "Legally authorized representative" means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to such subject's participation in the particular activity or procedure. An official serving in an institutional capacity may not be considered a legally authorized representative for purposes of this subpart.

(h) "Minimal risk" is the probability and magnitude of physical or psychological harm or discomfort that is normally encountered in the daily lives, or in the routine medical or psychological examination, of normal individuals.

(i) "Assent" means a prospective subject's affirmative agreement to par-

ticipate in research. Mere failure to object shall not, absent affirmative agreement, be construed as assent. Assent can only be given following an explanation, based on the types of information specified in § 46.103(c), appropriate to the level of understanding of the subject, in accordance with procedures established by the Institutional Review Board.

(j) "Consent auditor" means a person appointed by the Institutional Review Board to ensure the adequacy of the consent process, particularly when there is a substantial question about the ability of a subject to consent or assent or when there is a significant degree of risk involved. Consent auditors are responsible only to the Board and should not be involved with the research, nor should they be employed by or otherwise associated with the institution conducting or sponsoring the research, or with the institution in which the subject resides. They should be persons familiar with the physical, psychological, and social needs of the class of prospective subjects as well as with their legal status.

(k) "Advocate" means an individual appointed by the Institutional Review Board to act in the best interests of the subject. The advocate will, although he or she is not appointed by a court, be construed to carry the fiduciary responsibilities of a guardian ad litem toward the person whose interests the advocate represents. No individual may serve as an advocate if the individual has any financial interest in, or other association with, the institution conducting or sponsoring the research, nor with the institution in which this research in conducted; nor, where the subject is the ward of a State or other agency, institution, or entity, may the advocate have any financial interest in, or other association with, that State, agency, institution, or entity. An advocate must be familiar with the physical, psychological, and social needs and the legal status of the class of individuals institutionalized as mentally disabled in the institution in which the research is conducted. [This definition will be retained in the final regulations if duties are assigned to "advocates."]

§ 46.504 Additional duties of the institutional review boards where individuals institutionalized as mentally disabled are involved.

(a) In addition to all other responsibilities prescribed for Institutional Review Boards under this part, the Board shall review research covered by this subpart and approve such research only if it finds that:

(1) The research methods are appropriate to the objectives of the research;

(2) The competence of the investigator(s) and the quality of the research facility are sufficient for the conduct of the research;

(3) Appropriate studies in nonhuman systems have been conducted prior to the involvement of human subjects;

(4) There are good reasons to involve institutionalized individuals as subjects of the research. In reviewing proposals to involve institutionalized persons in research, the Board should evaluate the appropriateness of involving alternative, noninstitutionalized populations in the study instead of, or along with, the institutionalized individuals. Sometimes, the participation of alternative populations will not be possible or relevant, as when the research is designed to study problems or functions that have no parallel in free-living persons, (e.g., studies of the effects of institutionalization or studies related to persons, such as the profoundly retarded or severely handicapped, who are almost always found in residential facilities.)

(5) Risk of harm or discomfort is minimized by using the safest procedures consistent with sound research design and by using procedures performed for the diagnosis or treatment of the particular subject whenever possible;

(6) Adequate provisions are made to protect the privacy of the subjects and to maintain confidentiality of data. For example, data may be disclosed to authorized personnel and used for authorized purposes only; data should be collected only if they are relevant and necessary for the purposes of the research and analysis; data should be maintained only as long as they are necessary to the research or to benefit the subjects; and all data should be maintained in accordance with fair information practices;

(7) Selection of subjects among those institutionalized as mentally disabled will be equitable. Subjects in an institution should be selected so that the burdens of research do not fall disproportionately on those who are least able to consent or assent, nor should one group of patients be offered opportunities to participate in research from which they may derive benefit to the unfair exclusion of other equally suitable groups of patients.

(8) Adequate provisions are made to assure that no prospective subject will be approached to participate in the research unless the health care professional who is responsible for the health care of the subject has determined that the invitation to participate in the research and the participation itself will not interfere with the health care of the subject;

(9) The Board shall appoint a consent auditor to ensure the adequacy of the consent procedures when, in the opinion of the Board, such a person is considered necessary, e.g., when there is a substantial question about the ability of a subject to consent or to assent or when there is a significant degree of risk involved; and

[In the event the Department decides that there should be consent auditors for all projects, the above paragraph will be appropriately modified.]

(10) The conditions of all applicable subsequent sections of this subpart are met.

(b) The Board shall carry out such other duties as may be assigned by the Secretary.

(c) The institution shall certify to the Secretary, in such manner as the Secretary may require, that the duties of the Board under this subpart have been fulfilled.

§ 46.505 Research not involving greater than minimal risk.

Biomedical or behavioral research that does not involve greater than minimal risk to subjects who are institutionalized as mentally disabled may be conducted or supported by DHEW provided the Institutional Review Board has determined that:

(a) The conditions of § 46.504 are met; and

(b) Adequate provisions are made to assure that no subject will participate in the research unless:

(1) The subject gives informed consent to participation;

(2) If the subject lacks the capacity to give informed consent, the research is relevant to the subject's condition, the subject assents or does not object to participation, and the subject's legally authorized representative consents to the subject's participation; or

(3) If a subject, who lacks the capacity to give informed consent, objects to participation: (i) The research includes an intervention that holds out the prospect of direct benefit to the subject, or includes a monitoring procedure required for the well-being of the subject, (ii) the subject's legally authorized representative consents to the subject's participation, and (iii) the subject's participation is authorized by a court of competent jurisdiction.

[Consideration is being given to mandating that, in addition to the above requirements: (1) A "consent auditor" be appointed by the Institutional Review Board to ensure the adequacy of the consent process and determine whether each subject consents, or is incapable of consent but assents, or objects to participation, and (2) whenever the consent auditor determines that a subject is incapable of consenting, the subject may not par-

ticipate without the authorization of an "advocate."]

§ 46.506 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

(a) Biomedical or behavioral research in which more than minimal risk to subjects who are institutionalized as mentally disabled is presented by an intervention that holds out the prospect of direct benefit for the individual subjects, or by a monitoring procedure likely to contribute to the well-being of the subjects, may be conducted or supported provided the Institutional Review Board has determined that:

(1) The conditions of section 46.504 are met;

(2) The risk is justified by the prospect of benefit to the subjects;

(3) The relation of the risk to anticipated benefit to subjects is at least as favorable as that presented by available alternative approaches;

(4) Adequate provisions are made to assure that no adult will participate in the research unless:

(i) The subject gives informed consent to participation;

(ii) If the subject lacks the capacity to give informed consent, the subject assents to participation, and the subject's legally authorized representative consents to the subject's participation; or

(iii) If a subject who lacks the capacity to give informed consent, does not assent, or objects to participation: (A) The intervention or monitoring procedure is only available in the context of the research, (B) the subject's legally authorized representative consents to the subject's participation, and (C) the subject's participation is authorized by a court of competent jurisdiction.

[Consideration is being given to mandating that, in addition to the above requirements: (1) A "consent auditor" be appointed by the Institutional Review Board to ensure the adequacy of the consent process and determine whether each subject consents, or is incapable of consent but assents, or objects to participation, and (2) whenever the consent auditor determines that a subject is incapable of consenting, the subject may not participate without the authorization of an "advocate."]

(5) Adequate provisions are made to assure that no child will participate in the research unless:

(i) The subject assents (if capable) and the subject's parent(s) or guardian(s) give permission, as provided in section 46.409 of this part; or

(ii) If the subject objects to participation, the intervention or monitoring procedure is available only in the context of the research, the subject's parent(s) or guardian(s) give permission, and the subject's participation is authorized by a court of competent jurisdiction.

(b) Where appropriate, the Institutional Review Board shall appoint a consent auditor to ensure the adequacy of the consent process and determine whether each subject consents, or is incapable of consent but assents, or objects to participation. [This paragraph will be deleted if a consent auditor is required in all cases.]

§ 46.507 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subjects' disorder or condition.

(a) Biomedical or behavioral research in which more than minimal risk to subjects who are institutionalized as mentally disabled is presented by an intervention that does not hold out the prospect of direct benefit for the individual subjects, or by a monitoring procedure that is not likely to contribute to the well-being of the subjects, may be conducted or supported provided an Institutional Review Board has determined that:

(1) The conditions of section 46.504 are met;

(2) The risk represents a minor increase over minimal risk;

(3) The anticipated knowledge (i) is of vital importance for the understanding or amelioration of the type of disorder or condition of the subjects, or (ii) may reasonably be expected to benefit the subjects in the future;

(4) Adequate provisions are made to assure that no adult will participate in the research unless the following conditions are met:

(i) The subject gives informed consent to participation;

(ii) If the subject lacks the capacity to give informed consent, the subject assents to participation, and the subject's legally authorized representative consents to the subject's participation; or

(iii) If the subject lacks the capacity to assent but does not object, the subject's legally authorized representative and a court of competent jurisdiction consent to the subject's participation.

[The Department is considering the following additions to the above provisions:

In § 46.507(a)(4)(B), with respect to subjects capable of consenting: (i) Adding the requirement that inclusion of each subject be approved by the Secretary based upon the advice of a panel of experts, or (ii) requiring the approval of an "advocate."

In § 46.507(a)(4)(C), with respect to subjects incapable of assenting: (i) Prohibiting use of such subjects on the theory that there is no research which can be performed only with these subjects, (ii) requiring approval by the Secretary based upon the advice of a panel of experts, or (iii) requiring the approval of an "advocate."]

(5) If the subject is a child, the requirements of §§ 46.407 and 409 of subpart D (relating to research involving children) are satisfied.

(b) No subject may be involved in the research over his or her objection.

(c) The Institutional Review Board shall appoint a consent auditor to ensure the adequacy of the consent process and determine whether each subject consents, or is incapable of consenting but assents, or is incapable of assenting but does not object, or objects to participation. [This paragraph will be deleted if a consent auditor is required for all research covered by this subpart.]

§ 46.508 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of individuals institutionalized as mentally disabled.

Biomedical or behavioral research that the Insitutional Review Board does not believe meets the requirements of §§ 46.505, 46.506, or 46.507 may nevertheless be conducted or supported by DHEW provided:

(a) The Instituional Review Board has determined the following:

(1) The conditions of § 46.504 are met; and

(2) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of individuals institutionalized as mentally disabled; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (e.g., science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either (1) that the research in fact satisfies the conditions of §§ 46.505, 46.506, or § 46.507, as applicable, or (2) the following:

(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of individuals institutionalized as mentally disabled;

(ii) The conduct of the research will be in accord with basic ethical principles of beneficence, justice, and respect for persons, that should underlie the conduct of research involving human subjects; and

(iii) Adequate provisions are made for obtaining consent of those subjects capable of giving fully informed consent, the assent of other subjects and the consent of their legally authorized representatives, and, where appropriate, the authorization of a court of competent jurisdiction [and if §§ 46.505, 46.506, 46.507 require an advocate, the authorization of that advocate].

[FR Doc. 78-31822 Filed 11-16-78; 8:45 am]

federal register

FRIDAY, NOVEMBER 17, 1978
PART III



DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27-M]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

NEW GENERAL WAGE DETERMINATION DECISIONS

Maine.—ME78-2178 and ME78-2159.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

California:	
CA78-5007	Jan. 27, 1978.
Florida:	
FL77-1141	Nov. 25, 1977.
FL78-1064	Aug. 4, 1978.
FL78-1065	Aug. 11, 1978.
FL78-1070	Aug. 25, 1978.
Louisiana:	
LA78-4099	Oct. 6, 1978.
LA78-4113	Oct. 13, 1978.
Maryland:	
MD78-3046	May 19, 1978.
Michigan:	
MI78-2001	Feb. 3, 1978.
Minnesota:	
MN78-2150	Oct. 27, 1978.
Pennsylvania:	
PA77-3122; PA77-3124	Sept. 9, 1978.
PA77-3012	Apr. 28, 1978.
PA78-3016	Apr. 14, 1978.
PA78-3017	May 5, 1978.
PA78-3045	May 12, 1978.
PA78-3064; PA78-3066; PA78-3067	Sept. 22, 1978.
PA78-3068; PA78-3070	Sept. 29, 1978.
PA78-3069	Oct. 6, 1978.
Texas:	
TX78-4078	Aug. 11, 1978.
TX78-4082; TX78-4084; TX78-4087	Aug. 25, 1978.
TX78-4096	Sept. 22, 1978.

SUPERESEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISION

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Colorado:	
CO78-5108(CO78-5132)	July 14, 1978.

CANCELLATION OF GENERAL WAGE DETERMINATION

General Wage Determination No. GA77-1093, Glynn County, Ga., is hereby cancelled. Agencies with building construction projects contemplated in the county should utilize the project determination procedure by submitting form SF-308 (see 29 CFR Part 1, Section 1.5). Contracts for which bids have been opened shall not be affected by this notice. Consistent with 29 CFR Part 1, Section 1.7 (b)(2), inclusion of the above decision in contracts which the bid opening is within ten (10) days of this notice need not be affected.

Signed at Washington, D.C., this 9th day of November 1978.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

[FR Doc. 78-32082 Filed 11-16-78; 8:45 am]

NEW DECISION

STATE: MAINE
DECISION NUMBER: ME78-2158
DESCRIPTION OF WORK: BUILDING CONSTRUCTION.

COUNTY: CUMBERLAND
DATE: DATE OF PUBLICATION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	8.80	.40	.50		.02
Carpenters	6.86				
Cement Masons	8.80	.40	.50		.02
Electricians	10.30	.65	3%+.25		.02
Ironworkers, Structural, Ornamental and Reinforcing	9.65	.70	1.00		.04
Laborers	6.20	.60	.75		.10
Plumbers & Pipefitters	9.80	.55	.90		.02
Roofers	7.85				
Sheet Metal Workers	7.98	.52	.165		.05
Sheetrockers	7.85				
Tapers	7.85				
Power Equipment Operators:					
Crane	6.92				

NEW DECISION

STATE: MAINE
DECISION NUMBER: ME78-2159
DESCRIPTION OF WORK: BUILDING CONSTRUCTION

COUNTY: YORK
DATE: DATE OF PUBLICATION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	11.36	1.10	.95		.01
Bricklayers	8.83				
Carpenters	8.62	.65	.50		.01
Cement Mason	7.10				
Electricians	10.85	.75	3%+.25		.02
Ironworkers, Structural, Ornamental, and Reinforcing	10.35	1.10	1.10		.02
Laborers	7.27	.60	.75		.10
Millwrights	7.94	.45	.30		.01
Painters	6.08				
Plumbers:					
North Berwick to Ogunquit, Maine, thence southerly along coastline to Atlantic Ocean to Portsmouth, N.H.	10.75	.68	.55		.02
Remainder of County:	9.80	.55	.90		.02
Roofers	6.58				
Sheet Metal Workers	9.92	.60	.60		.02
Steamfitters	10.20	.53	.45		.02
Truck Drivers:					
2 Axle	3.70				
3 Axle	4.00				
Power Equipment Operators:					
Crane	9.63				

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. CA78-5007 - Mod. #1 (43 FR 3863 - January 27, 1978) San Diego County, California					
Change:					
PAINTERS:					
Brush	$11.58	1.23	1.28	.75	.07
Spray; Swing Stage, Brush	11.83	1.23	1.28	.75	
Paperhangers; Spray, Swing Stage; Sandblaster	12.08	1.23	1.28	.75	.07
DECISION No. FL77-1141 - Mod. #5 (42 FR 60552 - November 25, 1977) Volusia County (except Cape Kennedy, Kenndey Space Flight Center, Cape Canaveral Air Force Station), Florida					
Change:					
Carpenters	7.70	.50	.50		.05
Piledrivers	8.00	.50	.50		.05
DECISION No. FL78-1064 - Mod #1 (43 FR 34661 - August 4, 1978) Brevard, Hillsborough, Indian River, Monatee, Martin, Orange, Osceola, Pinellas, Polk, St Lucie, Sarasota, Seminole, and Volusia Counties, Florida					
Omit:					
Brevard and Volusia Counties					
Add:					
Brevard and Volusia Counties (excluding Cape Canaveral, Kennedy Space Flight Center, Patrick Air Force Base, and Melabar Radar Site, Florida).					

MODIFICATIONS P. 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION No. FL78-1065 - Mod. #1 (43 FR 35809 - August 11, 1978) Brevard, Lake, Orange, Osceola, Polk, Seminole, and Volusia Counties, Florida					
Omit:					
Brevard and Volusia Counties					
Add:					
Brevard and Volusia Counties (excluding Cape Canaveral, Kennedy Space Flight Center, Patrick Air Force Base, and Melabar Radar Site, Florida).					
DECISION NO. FL78-1070 - Mod. #1 (43 FR 38277 - August 25, 1978) Pinellas County, Florida					
Change:					
Cement Masons	$6.30				
Electricians	6.27				
Ironworkers	6.36				
Laborers	4.26				
Painters	5.26				
Plasterers	7.66				
Sheet Metal Workers	5.81				
Roofers	4.32				
Tile Setters	6.79				
Power Equipment Operators:					
Grader	4.79				

DECISION #LA78-4099 - Mod. #2 (43 FR 46449 - October 6, 1978) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians:					
Zone 1 - Electricians	$13.04	5%	8%		3/10%
Cable splicers	13.29	5%	8%		3/10%
Zone 5 - Electricians	11.90	.35	3%+.40		.03
Cable splicers	11.90	.35	3%+.40		.03
Lathers - Zone 8	11.35				
Line construction:					
Zone 1 - Group 1	11.90	.35	3%+.40		.03
Group 2	75%JR	.35	3%+.40		.03
Group 3	65%JR	.35	3%+.40		.03
Group 4	45%JR	.35	3%+.40		.03
Group 5	50%JR	.35	3%+.40		.03
Zone 2:					
Linemen, line equipment & line truck operators	13.04	5%	8%		3/10%
Cable splicers	13.29	5%	8%		3/10%
Plumbers & pipefitters - Zone 3	10.80	.80	.80		.10
Power Equipment Ops. (Bldg Const):					
Zone 1 - Group 1	7.69	.65	.63		.05
Group 2	8.05	.65	.63		.05
Group 3	8.38	.65	.63		.05
Group 4	8.47	.65	.63		.05
Group 5	8.79	.65	.63		.05
Group 6	10.27	.65	.63		.05
Zone 5 - Group 1	7.98	.65	.75		.05
Group 2	7.66	.65	.75		.05
Group 3	7.45	.65	.75		.05
Group 4	8.26	.65	.75		.05
Group 5	10.65	.65	.75		.05
Group 6	8.67	.65	.75		.05
Group 7	9.35	.65	.75		.05
Zone 6 - Group 1	8.20	.65	.75		.05
Group 2	7.57	.65	.75		.05
Group 3	7.35	.65	.75		.05
Group 4	7.89	.65	.75		.05
Group 5	8.66	.65	.75		.05
Group 6	9.89	.65	.75		.05
Group 7	11.06	.65	.75		.05
Group 8	11.31	.65	.75		.05
Group 9	11.56	.65	.75		.05
Group 10	11.81	.65	.75		.05

DECISION #LA78-4113 - Mod. #2 (43 FR 47429 - October 13, 1978) Bossier, Caddo & Calcasieu Parishes, Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Lathers (Bossier & Caddo Parish)	$11.35				
Power Equipment Operators:					
Calcasieu Parish:					
Group 1	7.98	.65	.75		.05
Group 2	7.66	.65	.75		.05
Group 3	7.45	.65	.75		.05
Group 4	8.26	.65	.75		.05
Group 5	10.65	.65	.75		.05
Group 6	8.67	.65	.75		.05
Group 7	9.35	.65	.75		.05
DECISION #MD78-3046 - Mod. #2 (42 FR 21813 - May 19, 1978) Baltimore City, Maryland					
Change:					
Ironworkers:					
Structural & Reinforcing	10.24	.90	1.91		.06
Fence Erectors	9.89	.90	1.91		.06

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION MI78-2001 - MOD. #4 (43 FR 4817 - February 3, 1978) Kent County, Michigan					
CHANGE:					
Sheet Metal Workers	$10.55	.77	.80	.67	.02
DECISION MN78-2150 - MOD. #1 (43 FR 50332 - October 27, 1978) Blue Earth, Fairbault, Freeborn & Mower Counties, Minnesota					
CHANGE:					
Bricklayers:					
Blue Earth County					
Bricklayers, Stonemasons & Blocklayers	10.405	.65	.51	.61	
Mower County & that part of Freeborn Co., east of a line running north & south from Geneva to Cordon & the City of Blooming Prarie:					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Caulkers & Cleaners	11.075	.70	.25		
Fairbault & Remainder of Freeborn County					
Bricklayers, Stonemasons, Tuckpointers & Blocklayers	10.50	.70	.50		
Carpenters:					
Building Construction:					
Freeborn & Fairbault Counties					
Carpenters, Millwrights & Piledrivermen	10.82				
Mower County					
Carpenters & Piledrivermen	10.82				

DECISION #PA77-3122 - Mod. #9
(42 FR 45614 - September 9, 1977)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Sheet Metal Workers	10.47	1.40	1.18		.13
Ironworkers:					
Structural, Ornamental	12.105	1.14	1.36		.03
Reinforcing	12.105	1.14	1.36		.03
Painters:					
Brush	9.15	.32	.30		.02
Structural Steel	9.60	.32	.30		.02
Spray	9.90	.32	.30		.02
Tanks, Bridges, Stacks	10.40	.32	.30		.02
Asbestos Workers	11.21	.87	.90		.01

DECISION #PA77-3124 - Mod. #8
(42 FR 45618 - September 9, 1977)
Northampton County, Pennsylvania

Change:					
Sheet Metal Workers	10.47	1.40	1.18		.13
Carpenters	10.70	.64	.72		.01
Millwrights	11.10	.64	.72		.01
Asbestos Workers	11.21	.87	.90		.01

DECISION #PA78-3012 - Mod. #8
(43 FR 18476 - April 28, 1978)
Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers Zone 2	11.21	.87	.90		.01

DECISION #PA78-3016 - Mod. #4
(43 FR 16106 - April 14, 1978)
Lehigh County, Pennsylvania

Change:					
Sheet Metal Workers	10.47	1.40	1.18		.13
Carpenters	10.70	.64	.72		.01
Millwrights	11.10	.64	.72		.01
Asbestos Workers	11.21	.87	.90		.01

DECISION #PA78-3017 - Mod. #5
(43 FR 19574 - May 5, 1978)
Carbon, Monroe County including Tobyhanna Army Depot, and Pike County, Pennsylvania

Change:					
Glaziers Zone 2	10.00	.65	.85		
Carpenters Zone 1	10.70	.64	.72		.01
Millwrights Zone 2	11.10	.64	.72		.01

DECISION #PA78-3045 - Mod. #5
(43 FR 20714 - May 12,1978)
Lackawanna, Susquehanna, Wayne, and Wyoming Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Cement Masons: Wyoming, Wayne, Susquehanna Counties, Scraton in Lackawanna County	11.55				

DECISION #PA78-3064 - Mod. #1
(43 FR 43224 - September 22, 1978)
Schuylkill County, Pennsylvania

Change:					
Asbestos Workers	11.21	.87	.90		.01
Add:					
Millwrights	11.45	.50	.55		.05

DECISION #PA78-3066 - Mod. #2
(43 FR 43228 - September 22, 1978)
Columbia, Montour & Snyder Counties, Pennsylvania

Change:					
Ironworkers Zone 1	12.105	1.14	1.36		.03
Asbestos Workers Zone 2	11.21	.87	.90		.01

DECISION #PA78-3067 - Mod #2
(43 FR 43232 - September 22, 1978)
Adams & York Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	11.21	.87	.90		.01
Bricklayers & Stonemasons	9.65	.60	.45		
Marble, Tile & Terrazzo Workers	8.70	.45	.45		

DECISION #PA78-3068 - Mod. #1
(43 FR 45160 - September 29, 1978)
Lebanon County, Pennsylvania

Change:					
Sheet Metal Workers	10.47	1.40	1.18		.13
Ironworkers	12.105	1.14	1.36		.03
Painters:					
(West of Route 72)					
Brush	9.15	.32	.30		.02
Structural Steel	9.60	.32	.30		.02
Spray	9.90	.32	.30		.02
Asbestos Workers	11.21	.87	.90		.01

DECISION #PA78-3069 - Mod. #1
(43 Fr 46475 October 6, 1978)
Berks County, Pennsylvania

Change:					
Asbestos Workers	11.21	.87	.90		.01

DECISION #PA78-3070 - Mod. #2
(43 FR 45162 - Spetember 29, 1978)
Lancaster County, Penrsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers	12.105	1.14	1.36		.03
Painters:					
Elizabeth Dowetal Twp.					
Brush	9.15	.32	.30		.02
Steel	9.60	.32	.30		.02
Spray	9.90	.32	.30		.02
Asbestos Workers	11.21	.87	.90		.01
Bricklayers & Stonemasons	9.65	.60	.45		
Marble Setters	8.70	.45	.45		
Tile Setters	8.70	.45	.45		
Terrazzo Workers	8.70	.45	.45		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4078 - Mod. #6 (43 FR 35881 - August 11, 1978) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
Change:					
Bricklayers & stonemasons:					
Zone 1	$ 9.60				
DECISION #TX78-4082 - Mod. #3 (43 FR 38278 - August 25, 1978) Brazos County, Texas					
Change:					
Plumbers	12.37	.75	.75		.12
DECISION #TX78-4084 - Mod. #4 (43 FR 38281 - August 25, 1978) Galveston & Harris Cos., Texas					
Change:					
Marble masons' finishers	8.45				
Painters:					
East Harris Co. - Group 1	12.13				
Group 2	12.485				
Group 3	12.225				
Group 4	12.38				
Group 5	12.525				
Group 6	12.79				
Pipefitters:					
That part of Galveston Co. east of the Trinity River	11.935	.645	.70		.11
Plumbers:					
Galveston County	11.935	.645	.70		.11
Harris County	12.37	.75	.75		.12
Terrazzo workers' finishers:					
Terrazzo workers' finishers	8.45				
Terrazzo floor machinemen	8.60				
Terrazzo base machinemen	8.75				
Tile setters' finishers	8.45				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4087 - Mod. #3 (43 FR 38285 - August 25, 1978) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
Change:					
Painters - Group 1	$ 9.30		.50		
Group 2	9.42		.50		
Group 3	10.05		.50		
Group 4	9.55		.50		
DECISION #TX78-4096 - Mod. #4 (43 FR 43242 - September 22, 1978) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
Change:					
Building Construction:					
Painters - Group 1	8.15				.04
Group 2	8.65				.04
Group 3	8.75				.04
Group 4	8.90				.04
Group 5	9.25				.04

SUPERSEDEAS DECISION

STATE: Colorado
COUNTY: Statewide
DECISION NUMBER: CO78-5132
DATE : Date of Publication
Supersedes Decision No. CO78-5108 dated July 14, 1978, in 43 FR 30431
DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Carpenters					
*Zone 1	$ 9.32	.80	.90	.75	.07
*Zone II	9.82	.80	.90	.75	.07
Underground Carpenters					
*Zone I	9.52	.80	.90	.75	.07
*Zone II	10.02	.80	.90	.75	.07
Working on Creosoted coated lumber or other toxic materials					
Sawmen continuously assigned to 1½ HP saw at job site.	9.62	.80	.90	.75	.07
High work 35' above ground or above permanent floor or deck	9.67	.80	.90	.75	.07
CEMENT MASONS:					
*Zone I	9.40	.52	1.15	.30	.11
*Zone II	9.90	.52	1.15	.30	.11
ELECTRICIANS:					
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Gilpin, Grand, Jefferson, Lake, Larimer, Logan, Morgan, Phillips, Sedgwick, Summit, Washington, Weld and Yuma Counties					
Electricians	11.69	.70	3%+.75		.02
Cable Splicers	11.94	.70	3%+.75		.02
Delta, Dolores, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkins, Rio Blanco, Routt, San Juan and San Miguel Counties					
Electricians	11.89	.72	3%+.25		1½%
Cable Splicers	12.14	.72	3%+.25		1½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Alamosa, Archuleta, Baca, Bent, Chaffee, Crowley, Custer, Fremont, Huerfano, Kiowa, La Animas, Mineral, Otero, Prowers, Pueblo and Rio Grande Counties					
Zone I (Within 12 miles from Pueblo Main Post Office)					
Electricians	$ 11.40	.72	3%+.80		1½%
Cable Splicers	12.54	.72	3%+.80		1½%
Zone II (12 to 20 miles from Pueblo Main Post Office)					
Electricians	11.80	.72	3%+.80		1½%
Cable Splicers	12.94	.72	3%+.80		1½%
Zone 3 (30 to 40 miles from Pueblo Main Post Office)					
Electricians	12.15	.72	3%+.80		1½%
Cable Splicers	13.29	.72	3%+.80		1½%
Zone 4 (40 miles and over from Pueblo Main Post Office)					
Electricians	13.28	.72	3%+.80		1½%
Cable Splicers	14.42	.72	3%+.80		1½%
Electricians on electrical contracts less than $20,000 in Zones 3 and 4	9.65	.72	3%+.80		1½%
Cheyenne, Elbert, El Paso, Kit Carson, Lincoln, Park, and Teller Counties					
Electricians	11.50	.72	3%+.50		.015
IRONWORKERS:					
Structural, Ornamental, and reinforcing	10.95	.94	1.25		.12
LINE CONSTRUCTION:					
Cable Splicers	11.78	.45	3%+.35		3/4%
Lineman Cableman	11.04	.45	3%+.35		3/4%
Lineman (Journeyman)	10.97	.45	3%+.35		3/4%
Line Equipment Operators	9.34	.45	3%+.35		3/4%
Line Equipment Maintenance Man	9.34	.45	3%+.35		3/4%
Groundman	7.70	.45	3%+.35		3/4%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Adams, Arapahoe, Boulder, Clear Creek, Delta, Denver, Douglas, Eagle, Elbert, Garfield, Gilpin, Grand, Gunnison, Jackson, Jefferson, Lake, Larimer, Logan, Mesa, Moffat, Montrose, Morgan, Park (Northern half), Phillips, Pitkin, Rio Blanco, Routt, Sedgwick, Summit, Washington, and Weld Counties					
Brush	$ 10.38	.70	.85		.07
Spray, Swing Stage	10.98	.70	.85		.07
Baca, Bent, Crowley, Custer, Heurfano, Kiowa, Las Animas, Otero, Prowers and Pueblo Cos.					
Brush	8.07	.50	.50		.04
Steel Painters	8.57	.50	.50		.04
Spray Painters	9.07	.50	.50		.04
Steel Spray	9.57	.50	.50		.04
Archuleta, Chaffee, Cheyenne, Dolores, El Paso, Fremont, Hinsdale, Kit Carson, La Plata, Lincoln, Mineral, Montezuma, Ouray, Park (Southern half), Rio Grande, Saguache, San Juan, San Miguel and Teller Counties					
Brush	8.94	.70	.50		.04
Spray	9.69	.70	.50		.04
Steel	9.44	.70	.50		.04
Steel Spray	10.19	.70	.50		.04

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS	Zone 1	Zone 2				
Group 1	$ 7.57	$ 8.07	.52	.60		.05
Group 2	7.67	8.17	.52	.60		.05
Group 3	7.97	8.47	.52	.60		.05
Group 4	8.12	8.62	.52	.60		.05
Group 5	8.32	8.82	.52	.60		.05
LABORERS (Tunnels)						
Group 1	7.57	8.07	.52	.60		.05
Group 2	8.47	8.97	.52	.60		.05
Group 3	8.57	9.07	.52	.60		.05
Group 4	8.65	9.15	.52	.60		.05
Group 5	8.72	9.22	.52	.60		.05
Group 6	9.12	9.62	.52	.60		.05
(Shafts, Raises, Missile Silos and all underground work other than Tunnels)						
Group 1	8.57	9.07	.52	.60		.05
Group 2	8.72	9.22	.52	.60		.05
Group 3	8.82	9.32	.52	.60		.05
Group 4	9.10	9.60	.52	.60		.05
Group 5	9.15	9.65	.52	.60		.05
Group 6	9.25	9.75	.52	.60		.05

LABORERS

Group 1: Minimum Labor, including Caissons to 8'; Carrying Reinforcing Rods; Work on Cross Culverts, connections and side drains in connection with highway work, whether corrugated metal or concrete pipe; Fence Erectors; Metal Mesh; Dowel Bars; Tie Bars and Chairs in concrete paving; Flagman; Nursery Man including seeding, mulching and planting of trees, shrubs and flowers; Stake Chaser; Gabion Baskets and Reno Mattressess; Pipe plants and yards, stringing of pipe or skids, handling and signaling on pipe line work

Group 2: Chuck Tenders, Nippers, Core and Diamond Drill Helpers, Powdermen Helepr; Hot Asphalt Labor, Rakers, Boxtenders, Asphalt Curb Machines, Potmen (not mechanical); Multi-plate Culvert Pipe; Air, gas and electrical tool operators; Barco Hammers; Spaders, electric hammers; Air Tampers; Cutting Torches on demolition work; Caissons 8' to 12'; Cofferdams; Power operated Concrete Buggies; Operators of concrete saws on pavement (other than gang saws); Timber and Chain Saws; Stresser or Stretcherman on Post Tension or Prestressed Concrete on or off jobsite; Tool Room Man and Checkers; Cement Finisher Helper; Sand Blaster; Sand Blaster Helper; Concrete processing material; Monitor; Spotters; Signalmen; Dumpmen; Transverse Concrete Conveyor Operator; Mechanical Grouters; Boring Machine (air hydraulic); Automatic Concrete Power Curbing Machine; Jack Hammer; Vibrators; Paving Breakers; Frostproofing; Any laborer performing bridge work over 40' above the ground or above a floor and working from a Bos'n Chair; Swing Stage, Life Belt or Block and Tackle as safety requirement. (All lines and safety belts used shall be of a type approved by State and Federal laws); Gunniting and Shotcrete Helpers; Caissons over 12'; Scalers; Timbermen, underpinning and shoring; Form-setters and/or stringmen on roads, highways, streets and airport runways; Distribution, placing and hooking of landing mats; Bull Float (hand operated) and Center Expansion Machines; Grade Checkers if required by employer; Pipe Wrappers; Dopers; Jeep Holiday Detector Men, Bandage Makers; Laborers working in trenches on all pipe lines, sewer, water, gas, oil, telephone conduit, Pen Stock, Siphons, drainage lines, Caulkers, Yarners, Fine Graders, air, gas, electric and hydraulic tools, Boring Machines, Hydraulic Jacks, Drills, Tampers, and similar operated tools; Wiping of Joint Concrete Pipe, inside and out; Labor, applicable to pipe coating or wrapping, plants and yards; Enamelers of pipe, inside and out

LABORERS (Cont'd)

Group 3: Powdermen and Blasters; Gunnite Nozzlemen; Shotcrete Operator; Pipe Layer on truck pipe lines in connection with highway work; Relining Pipe; Mixer Man; Pipelayer; Hydro-broom

Group 4: Wagon Drills and Air Tracks; Jack Hammer Operators in Caissons over 12'; Bellers and Stemmen; Licensed Powdermen; Diamond and Core Drills powered by air

Group 5: Any work, other than on bridges, performed by Laborers working from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. All lines and safety belts used shall be of a type approved by State and Federal laws; Pugs and Galleys in Dams

LABORERS
(Tunnels)

Group 1: Outside Labor

Group 2: Minimum Tunnel Labor, Dry Houseman

Group 3: Cable or Hose Tenders, Chuck Tenders, Concrete Laborers, Dumpmen, Whirley Pump Operators

Group 4: Helpers on Shotcrete, Gunniting and Sand Blasting; Helpers, Core and Diamond Drills; Pot Tenders

Group 5: Cement Finisher Helper, applying or concrete processing materials

Group 6: Collapsible from movers and setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Tunnel Liner Plate Setters; Vibrator Men, internal and external; Unloading, stopping and starting of Moran Agitator Cars; Diamond and Core Drill Operators; Cement Finisher (underground); Shotcrete Operator; Gunnite Nozzlemen, Sand Blasters, Pump Concrete placement Men

LABORERS (Cont'd)
(Shafts, Raises, Missile Silos and all Underground Work other than Tunnels)

Group 1: Laborers, Topmen, Bottommen and Cagers

Group 2: Chucktenders, Concrete Laborers, Whirley Pump Operators

Group 3: Helpers in Shotcrete Gunniting and Sand Blasting; Helpers on Core and Diamond Drills; Pot Tenders; Cement Finisher Helpers; applying of Concrete processing material

Group 4: Collapsible form movers and setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Liner plate Setters; Vibrator Men, internal and external

Group 5: Diamond and Core Drill Operators; Cement Finisher (underground); Gunnite Nozzlemen; Shotcrete Operators; Sand Blasters and Pump Concrete Placement Men

Group 6: Any employee performing work underground from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. (All lines and safety belts used shall be of a type approved by State and Federal laws)

POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises)	Basic Hourly Rates ZONE 1*	Basic Hourly Rates ZONE 2*	Fringe Benefits Payments H & W	Pensions	Vocation	Education and/or Appr. Tr.
Group 1	$ 8.75	$9.50	.74	.90	.35	.06
Group 2	9.10	9.85	.74	.90	.35	.06
Group 3	9.45	10.20	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	9.90	10.65	.74	.90	.35	.06
(For work in Tunnels, Shafts, and Raises)						
Group 1	8.90	9.65	.74	.90	.35	.06
Group 2	9.25	10.00	.74	.90	.35	.06
Group 3	9.35	10.10	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	10.15	10.90	.74	.90	.35	.06

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Rodman, Chainman; Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tnnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.15	$ 8.65	.74	.40	.46	
Group 2	8.25	8.75	.74	.40	.46	
Group 3	8.35	8.85	.74	.40	.46	
Group 4	8.40	8.90	.74	.40	.46	
Group 5	8.45	8.95	.74	.40	.46	
Group 6	8.50	9.00	.74	.40	.46	
Group 7	8.55	9.05	.74	.40	.46	
Group 8	8.60	9.10	.74	.40	.46	
Group 9	8.70	9.20	.74	.40	.46	
Group 10	8.75	9.25	.74	.40	.46	
Group 11	8.85	9.35	.74	.40	.46	
Group 12	9.00	9.50	.74	.40	.46	
Group 13	9.05	9.55	.74	.40	.46	
Group 14	9.15	9.65	.74	.40	.46	
Group 15	9.25	9.75	.74	.40	.46	
Group 16	9.35	9.85	.74	.40	.46	
Group 17	9.45	9.95	.74	.40	.46	
Group 18	9.65	10.15	.74	.40	.46	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and inlcuding 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers; Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanics, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 75 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

ZONE DESCRIPTION
For
CARPENTERS

Counties entirely within Zone 1:

Adams	Crowley	Gilpin	Morgan
Alamosa	Custer	Huerfano	Otero
Arapahoe	Delta	Jefferson	Phillips
Archuleta	Denver	La Plata	Prowers
Bent	Douglas	Lake	Pueblo
Boulder	Eagle	Larimer	Rio Grande
Chaffee	El Paso	Las Animas	Sedgwick
Clear Creek	Elbert	Logan	Teller
Conejos	Fremont	Mesa	Weld
Costilla	Garfield	Montezuma	

Counties entirely within Zone 2:

Baca	Jackson	Moffat	Routt
Cheyenne	Kiowa	Ouray	San Juan
Dolores	Kit Carson	Park	San Miguel
Grand	Lincoln	Pitkin	Summit
Gunnison	Mineral	Rio Blanco	Yuma
Hinsdale			

Legal description of the portions of Montrose, Saguache and Washington Counties which are included within Zone 1, as follows:

All of Montrose County lying Northerly of the North Line of Ouray County and said North Line extended West to the Township Line between R11W and R12W, said part lying East of said Township Line of the New Mexico Principal Meridian, and the Eastern portion of Saguache County; from Highway 285 to the town of Saguache, and Highway 114 to the County Line, and all of Washington County lying North of the 40°00'00" Latitude base line.

Legal description of the portions of Montrose, Saguache and Washington Counties which are included within Zone 2, as follows:

All of Montrose County except that part lying Northerly of the North Line of Ouray County and said North Line extended West to the Township Line between R11W, and R12W, said point being East of said Township Line of the New Mexico Principal Meridian and the Western portion of Saguache County; from Highway 285 to Town of Saguache and Highway 114 to County Line, and all of Washington County lying South of the 40°00'00" Latitude base line.

LABORERS - Zone Descriptions

Zone 1: The area encompassed by 15 driving miles from the main Post Office at Craig, Steamboat Springs, and Meeker. Also included are all other Counties not outlined in Zone 2.

Zone 2: The Counties of Jackson, Moffat, Rio Blanco and Routt.

ZONE DESCRIPTIONS
Cement Masons, Power Equipment Operators
and Truck Drivers

A. Counties entirely within Zone 1:

Alamosa	Custer	Huerfano	Otero
Archuleta	Delta	Jefferson	Phillips
Bent	Denver	La Plata	Prowers
Boulder	Douglas	Larimer	Pueblo
Chaffee	El Paso	Logan	Rio Grande
Clear Creek	Fremont	Mesa	Sedgwick
Conejos	Garfield	Montezuma	Teller
Costilla	Gilpin	Morgan	Weld
Crowley			

B. Counties entirely within Zone 2:

Baca	Jackson	Moffat	Saguache
Cheyenne	Kiowa	Ouray	San Juan
Dolores	Kit Carson	Park	San Miguel
Grand	Lake	Pitkin	Summit
Gunnison	Lincoln	Rio Blanco	Yuma
Hinsdale	Mineral	Routt	

C. Legal description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington Counties which are included within Zone 1, as follows:

All of Adams, Arapahoe, Elbert and Las Animas Counties lying west of the Township line between R59W and R60W of the 7th Guide Meridian West; and all of Eagle County lying west of the Township line between R80W and R81W of the 10th Guide Meridian West of all of Montrose County lying East of said Township line of the New Mexico Principal Meridian, and all of Washington County lying North of the 40°00'00" Latitude Base Line.

B. Legal description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington Counties which are included within Zone 2, as follows:

All of Adams, Arapahoe, Elbert and Las Animas lying East of the Township Line between R59W and R60W of the 7th Guide Meridian West, and all of Eagle County lying East of the Township Line between R80W and R81W of the 9th Guide Meridian West and all of Montrose County except that part lying Northerly of the North line of Ouray County and said North line extended West of the Township line between R11W and R21 W, said point being East of said Township line of the New Mexico Principal Meridian and all of Washington County lying South of the 40°00'00" Latitude Base Line.

Federal Register

FRIDAY, NOVEMBER 17, 1978
PART IV



DEPARTMENT OF ENERGY

Economic Regulatory Administration

■

POWERPLANT AND INDUSTRIAL FUEL USE ACT

Proposed Rules For Implementation

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 500, 501, 502, 503, and 505]

[Docket No. ERA-R-78-19]

PROPOSED RULES TO IMPLEMENT THE POWERPLANT AND INDUSTRIAL FUEL USE ACT

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing rules to implement provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) which prohibits the use of petroleum and natural gas by certain electric powerplants and industrial major fuel burning installations. In general, FUA will become effective on May 8, 1979, 180 days after the date of enactment. These rules establish procedures and criteria upon which users may petition for exemption from the prohibitions of the Act. These rules also establish a requirement for a Fuels Decision Report which must be submitted as part of any petition for exemption.

DATES: Comments by February 2, 1979, 4:30 p.m. Hearing dates: To be announced.

ADDRESS: All comments to: Public Hearing Management, Docket No. ERA-R-78-19, Department of Energy, Room 2313, 2000 M Street NW, Washington, D.C. 20461. Hearing locations: To be announced.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, Room B-110, 2000 M Street NW., Washington, D.C. 20461, 202-634-2170.

Stephen M. Stern (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, Room 6010, 2000 M Street NW., Washington, D.C. 20461, 202-254-9766.

Barton House (Fuels Regulation—Program Office), Economic Regulatory Administration, Department of Energy, Room 6128I, 2000 M Street NW., Washington, D.C. 20461, 202-254-3905.

James Heffernan (Office of General-Counsel), Department of Energy, Room 6114, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9296.

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APPENDIX: DRAFT REGULATORY ANALYSIS

I. *Background*

The Fuel Use Act (FUA) renews a national commitment to restrain the unnecessary use of our dwindling oil and natural gas resources and to check our growing dependence on foreign energy supplies. Efforts to encourage greater coal and alternate fuel use in place of oil and gas began with enactment of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), Public Law 93-317, in June 1974. ESECA authorized DOE to prohibit certain existing powerplants and installations from burning petroleum and natural gas and to order certain powerplants and installations in the "early planning process" to be built with coal burning capability. Before DOE could issue any order under ESECA, it had to make detailed technical findings. The burden of proving these findings for each order was placed upon DOE. In addition, the order was not effective under ESECA until DOE had completed a three-stage administrative process.

Under FUA, DOE can establish a more effective and comprehensive program. In contrast with the provisions of ESECA, FUA itself prohibits the use of petroleum and natural gas by certain powerplants. FUA also authorizes DOE to prohibit by rule or by individual order the use of natural gas or petroleum by certain other powerplants and installations. FUA also establishes a process by which DOE may exempt a powerplant or installation from any prohibition if certain criteria are met. The burden of proof of demonstrating that an exemption is warranted rests on the petitioner requesting the exemption and not on DOE.

II. *Coverage of FUA*

The prohibitions and exemptions provided for in FUA apply to four major categories of users: new powerplants, new installations, existing powerplants, and existing installations. ERA will therefore organize its rules to include in separate parts all applicable rules relating to the prohibitions and exemptions for each user category. A part common to all will describe a Fuels Decision Report which must accompany petitions for exemption and other common parts containing various procedural and other provisions.

FUA addresses the major user categories as follows:

A. *New powerplants* (Part 503). A new powerplant is prohibited from using petroleum or natural gas as a primary energy source, and is prohibited from being constructed without the capability to use an alternate fuel as a primary energy source, unless we grant an exemption from such prohibitions. We may grant a temporary or permanent exemption from these prohibitions if a petitioner demonstrates that certain physical, economic, environmental, legal, or other factors preclude compliance as enumerated in these proposed rules. We may grant a temporary exemption, generally for a period of up to 5 years. if compliance with a prohibition cannot be accomplished immediately. A permanent exemption may be granted in those instances in which compliance with the prohibitions will not be possible.

B. *Existing powerplants* (Part 504). Regulations with respect to existing

powerplants will be set forth in a subsequent Notice of Proposed Rulemaking, which is scheduled to be issued in the near future.

C. *New installations* (Part 505). A new installation consisting of a boiler is prohibited from using petroleum or natural gas as a primary energy source unless we grant the installation an exemption from the prohibition. We are also authorized to prohibit by rule the use of petroleum or natural gas by new installations other than boilers where it is apparent that an exemption would not otherwise be warranted. We may grant a temporary or permanent exemption from the prohibitions, whether imposed by statute or rule, if a petitioner demonstrates that certain physical, economic, environmental, legal, or other factors preclude compliance as enumerated in these proposed rules. We may grant a temporary exemption generally for a period of up to 5 years, if compliance with a prohibition cannot be achieved immediately. A permanent exemption may be granted in those instances in which compliance with a prohibition will not be possible.

D. *Existing installations* (Part 506). Regulations with respect to existing installations will be set forth in the same subsequent Notice of Proposed Rulemaking reference with respect to powerplants.

III. *Other Related Rules*

A. *Proposed rules for system compliance option* (Part 507). These proposed rules do not include rules relating to the system compliance option (Part 507). We intend to issue those proposed rules at the same time as we issue proposed rules with respect to prohibitions and exemptions for existing powerplants and installations, as stated above. The preamble of that notice of proposed rulemaking will address the issues and alternate proposals associated with those proposed rules.

B. *Transitional facilitities and other matters.* Prior to publication of final rules implementing FUA, we may propose separate rules for, and receive, consider and take action on:

1. Criteria and procedures by which owners of powerplants and installations, which were acquired or for which substantial construciton was undertaken between April 20, 1977, and November 9, 1978, may petition for those units to be defined as "existing" rather than "new" units under FUA. (Part 515 "Transitional Facilities");

2. Petitions for exemption filed by certain powerplants as provided for in section 902(a) of FUA;

3. Petitions for exemptions under section 211(d) of FUA (Temporary Exemptions for the Use of Petroleum by Certain Installations) filed by installations as provided for in section 902(b) of FUA; and

4. Provide notice in the FEDERAL REGISTER on the procedures to be followed by certain installations previously issued prohibition orders to elect coverage under FUA as provided in section 762(a) of FUA.

C. *Forms.* The proposed forms which must be submitted as part of a petition for exemption from any of the prohibitions and any other forms will be published in the FEDERAL REGISTER and public comments solicited at a later date.

D. *Guidelines.* From time to time, ERA will develop, as necessary, formal guidelines in support of regulations promulagated under FUA, and may publish them in the *Federal Register* for public review and comment.

IV. *Fuels Decision Report (Part 502)*

As part of this notice we are publishing for public comment rules for a Fuels Decision Report which is required to be submitted as part of any petition for exemption. The purpose of the Fuels Decision Report is to provide petitioners with the opportunity to demonstrate to ERA their good faith efforts to comply with the prohibitions of the Act by avoiding the use of natural gas and petroleum.

V. *Specific Comments Requested*

We have issued these proposed rules promptly in order to focus public attention and discussion on the provisions of FUA, and to expedite implementation of this program. In some instances, we have proposed alternatives for your consideration. In all cases, we solicit your comments on any issue before we reach a final decision on these regulations, not only on the specific issues and alternative proposals we enumerate below.

A. *Competition.* Regulatory schemes may tend to build in advantages for existing and large firms and to stifle competition for new entries and expanding firms. We solicit comments on whether these proposed regulations, or sections thereof, are likely to have adverse, beneficial, or neutral impacts on competition. We also welcome comments and suggestions concerning alternatives which enhance competition.

B. *Urban policy.* We solicit comments on whether any part of these proposed regulations advance or set back the goal of preserving and revitalizing towns and cities throughout the country. We also solicit comments concerning ways we might consider indirect increases in oil consumption attributable to granting an exemption.

C. *Filing fees—Part 501, Subpart B.* The purpose of the proposed fees are to recover, to the extent practicable, the costs incurred by the Government in performing the analysis necessary to grant or deny a petition for an exemption. Analysis of each exemption petition will require us to analyze one or more of the following components:

- Environmental data,
- Financial data,
- Engineering data,
- Fuel supply/transportation data.

Based upon the experience gained in administering the ESECA program, we anticipate that, at a minimum, the cost of each of the analytical components will be as follows:

- Environmental analysis—2 man-years @ $30,000 equals $60,000;
- Financial analysis—75 man-days or ⅓ man-years equals $10,000;
- Engineering analysis—75 man-days or ⅓ man-years equals $10,000;
- Fuel supply and transportation; 35 man-days or ⅛ man-years equals $5,000.

We propose that the fees will be levied only once irrespective of the number of alternative fuels analyzed by the applicant. The basis data and methodology required to perform the requisite analyses for one alternate fuel will generally be applicable to any additional alternate fuels analyzed by the applicant in his Fuels Decision Report.

We solicit comments on the amounts of the proposed fees, on whether they should be calculated on the number of units at a proposed site, and on the number or type of exemptions to which fees pertain. Further, we invite comment on whether the fees should be based on other factors, such as the size or cost of the unit.

D. *Definitions.* We note that the definitions also will apply to existing facilities, rules, which we have not yet proposed. Therefore, we particularly invite your early analysis of our proposed definitions as they would apply to both new and existing facilities, as well as opportunities we may have overlooked in furnishing the objectives of the Act.

E. *Natural gas definition § 500.2(d).* We have proposed that natural gas produced from wells with a maximum efficient production rate (MPR) of less than 250 million Btu's per day which were acquired on or after July 18, 1977, be classified as "natural gas" rather than as an alternate fuel. The purpose of this proposed definition is to preclude users from escaping the statutory prohibitions on natural gas use simply by purchasing wells which meet the MPR criteria. As an alternate approach, we are also considering a permit system whereby ERA would evaluate the wells acquired on or after July 18, 1977, on a case-by-case or geographic basis prior to determining the definition of the gas. Possible factors we would consider in making this determination would include the circum-

stances under which ownership of the wells was acquired, the size of the reservoir in which the well is located, the alternative uses of the gas, and the geographic location (i.e., region of the country) of the well. We request your comments on these or other alternative approaches.

In addition, we are evaluating the merit of limiting the amount of natural gas burned from wells acquired prior to July 18, 1977, which have an MPR of less than 250 million Btu's/day. Under this approach, ERA would exclude from the definition of natural gas only the percentage of the gas produced which corresponds to the user's net working interest (i.e., 100 percent less the basic landowner's royalty and other interests). ERA would consider the percentage of gas produced from the well which represents the landowner's royalty and other interests as "purchased gas" subject to the prohibitions of the Act. ERA will publish the procedures for making the demonstrations required by the "natural gas" definition at a later date.

We are also considering permanently excluding from the definition of natural gas geopressurized methane produced from wells drilled before 1990, thus making it an alternate fuel for the purposes of these regulations. This approach is based on the premise that the production of geopressurized methane has not crossed the technological threshold necessary to permit extensive production by 1990. We believe this would provide an incentive for the development of this valuable resource. We invite comments on whether geopressurized methane should be excluded from the definition of natural gas; what other exotic gases, such as methane from coal seams, should be excluded; and whether this exclusion should be restricted to use in existing units, thus precluding the availability of temporary exemptions for use of these gases by new units. We are interested in suggestions and comments concerning other administrative means for providing incentives for the development and use of these gases.

F. *Petroleum definition—§ 500.2(e).* We are considering excluding from the definition of petroleum those byproducts from refinery operations which a refinery user could demonstrate are both commercially unmarketable and could be used elsewhere in the plant to replace petroleum or natural gas. We request comments on this interpretation of the petroleum definition and the appropriate means by which a refiner could make this demonstration to ERA. We will publish for comment proposed procedures for making this and other required demonstrations for the petroleum definition at a later date.

G. *Definition of units within aggregations—§ 500.2(a).* A powerplant or installation is defined as a unit which has a design firing rate of 100 million Btu's per hour (MMBtu/hr) or greater, or is in a combination of two or more such units which are located at the same site and which in the aggregate have a design firing rate of 250 MMBtu/hr or greater. Within the aggregations, we propose to define as "new" only those units whose construction cause the aggregated design firing rate at the site to exceed 250 MMBtu/hr. In such a case, the units contributing to the aggregation of 250 MMBtu/hr would be defined as existing once the "new" unit was constructed. Thus if three 80 MMBtu/hr units were constructed at a new site in 1979 (subsequent to enactment of FUA), and a fourth 80 MMBtu/hr unit were constructed in 1980, at the time of the construction of the fourth unit, the three units constructed in 1979 would be defined as "existing" and only the fourth unit would be defined as "new" for the purposes of these regulations. We solicit comments on this proposal.

H. *Reconstruction or refurbishment of powerplants and installations—§ 500.2(a).* We propose to treat any powerplant or installation as new which has been reconstructed or refurbished or added to since April 20, 1977, to the extent that the cost of such reconstruction, refurbishment, or addition equals or exceeds 50 percent of the price of a replacement unit. We invite public comment on whether 50 percent of the replacement unit cost is the appropriate criteria.

I. *Fuels decision report—Part 502.* We call your attention to the requirement that a Fuels Decision Report accompany all requests for exemption. We expect to base much of our regulatory review on this document. We solicit your comments on this proposed rule.

We are particularly interested in comments and suggestions relating to how a petitioner can demonstrate that he made a good faith, competent effort to avoid using petroleum and natural gas. As a general rule, we would expect a petitioner to consider all reasonable alternatives, including alternate fuels, combinations of two or more alternate fuels, and mixtures of one or more alternate fuels with petroleum or natural gas. We ask to focus on a broad range of alternate fuels, including the following: coal, solar, municipal waste, wood chips, low and medium Btu gas from coal, byproduct fuels such as black liquor, petroleum coke, industrial waste byproducts, biomass, synthetic fuels derived from coal and other alternate fuels.

In addition, we solicit comments relating to the number and kinds of fuels a petitioner must examine in preparing the Environmental Impacts Analysis chapter (§ 502.16) of his Fuels Decision Report in order to aid us in our review of the environmental impacts of the grant or denial of the petition. We also solicit comments on whether petitioners requesting temporary exemptions should be required to submit a complete Fuels Decision Report as part of their petition.

J. *Cost calculations § 503.5 and § 505.5.* Section 212 of the Act provides that ERA must grant an exemption from the prohibitions due to lack of alternate fuel supply at a reasonable cost if the cost of using an alternate fuel substantially exceeds the cost of using imported oil. We have proposed rules which provide the criteria, methodology, and evidence requirements for making this cost comparison. In all cases, we have determined that this cost comparison must include the capital, operation and maintenance, and fuel costs associated with any particular fuel choice, and that these costs must be expressed in real terms discounted to present value. The following sections address specific components of the cost calculation, and solicit comments on the alternate proposals and issues associated with the cost calculations.

1. *Alternative cost comparison methodologies.* We are proposing to use a cost comparison test based on a ration index. Under this methodology, a petitioner must construct a ratio comparing the present value of using an alternate fuel to the present value of using imported oil. If the ratio obtained is higher than some specific ratio designated by ERA in the final rules, ERA would determine that the cost of using coal substantially exceeds the cost of using imported oil, and would grant the exemption. If, however, the ratio obtained is less than the ratio designated as the decision point, ERA would deny the exemption. Sections 503.5 and 505.5 of the proposed rules describe this methodology in detail. We welcome comments on the proposed methodology.

The alternative ERA is considering employs a methodology based on the concept of a specific dollar or percentage amount added to the price of imported oil. ERA would use this "direct increment" methodology to determine when the cost of using coal or another alternate fuel substantially exceeds the cost of using imported oil. Under this alternative, the petitioner would calculate the cost, discounted to the present, of using an alternate fuel, including the associated capital and operation and maintenance costs. He would then calculate these costs using the equations specified in §§ 503.5 and 505.5 with the single exception that the price of oil would be obtained by adding the price of imported oil and

some constant increment or percentage specified by ERA [1]. If the present value cost of using an alternate fuel is greater than the cost of using oil priced in this manner, we would conclude that the cost of using an alternate fuel substantially exceeds the cost of using imported oil, and would grant an exemption. We invite comment on the direct increment methodology for the cost comparision as well as on what specific increment or percentage should be used.

2. *Substantially exceeds index.* We propose to designate a specific index as the decision point for the substantially exceeds test. If we choose to use this method, the specific ratio selected as the index will probably be between 1.3 and 1.8, but a higher ratio may finally be selected. We are using a ratio of 1.6 in these proposed regulations for illustrative purposes. We are considering a specific value for the alternative direct increment test which would have comparable effect. We intend to update the index periodically. We invite comments on the magnitude of the index and on whether the same index should be used for powerplants, installations, purchased electric power, and for the general and special cost tests.

3. *Specification of discount rates.* The cost calculation procedures in §§ 503.5 and 505.5 require that real uninflated discount rates be used. We have tentatively set discount rates for new powerplants at 3.5 percent per annum (over and above the annual rate of inflation) and have estimated the discount rate at 7 percent per annum (over and above the annual rate of inflation) for new major fuel burning installations. We are also considering setting separate discount rates for categories of powerplants and major fuel burning installations by regulatory jurisdiction or industrial grouping. We well also consider administratively feasible ways of using a specific discount rate for each firm or industry based upon their financial factors. We welcome comments on the desirability and administrative practicality of these alternatives.

4. *Capital outlays.* We solicit comments on whether the capital outlays considered under the cost comparison test should be restricted to boiler and pollution control equipment only, or whether they should include other specified depreciable assests, land, and working capital. We also solicit comments on the appropriate treatment of salvage value for assests with useful lives that differ from the main useful life of the powerplant or installation under consideration.

[1] Note: For powerplants, cost would be calculated according to equations 2 and 7 of § 503.5 of these regulations. For installations, cost would be calculated according to equations 2 and 7 of § 505.5 of these regulations.

5. *Investment tax credit and accelerated depreciation.* Consistent with the provisions of the Energy Tax Act of 1978, we propose that petitioners for exemptions for powerplants and installations not be allowed to take into consideration investment tax credits for oil and gas fired units in computing cost for the purpose of the comparative cost calculation. In addition, we propose that petitioners requesting exemptions for installations not be allowed to use accelerated depreciation in computing the costs of oil or gas fired units. By the same token, we propose to require that petitioners deduct from the cost of the alternate fuel unit the maximum investment tax credit available and the present value of the maximum accelerated depreciation rate allowed by law. In other words the proposed rules assume that the petitioner will realize the benefits of the investment tax credit and accelerated depreciation immediately for alternate fuel fired units. We welcome comments on these proposals.

6. *Powerplant annual capacity factor.* We have proposed that 70 percent be used for the annual capacity factor for new powerplants for the purpose of computing cost. We are considering an alternative approach which permits the petitioner to rebut this 70 percent annual capacity factor assumption by considering the impact upon the unit under consideration of changes in the use of existing powerplants in his electrical region.

To rebut the 70 percent assumption, you would have to demonstrate that the powerplant under consideration would operate at an average annual capacity factor significantly different than 70 percent over the life of the unit. The average annual capacity factor for this unit would have to be greater than 80 percent or less than 60 percent to constitute a significant difference. You would have to calculate the annual capacity factor for the unit under consideration on the basis that that unit would be economically dispatched with all other powerplants in your electrical region, as if that electrical region were one large utility. We also would require that the oil/gas fired unit which is compared with the alternate fuel fired unit for cost calculation purposes be sized to achieve comparable levels of system reliability for the electrical region.

We invite your comments on the administrative and technical feasibility of, as well as necessity for, this alternative approach, as well as comments on other alternative approaches which would address the impact of existing powerplants in a petitioner's electrical region upon the cost of the powerplant under consideration. We also invite comment on whether the average annual capacity factor for the powerplant under consideration should be a simple average of the yearly annual capacity factors or a weighted average—weighted by the annual discount factor used to compute cost.

7. *Fuel and other price projections.* (a) *Fuel prices.* We are considering a variety of methods for selecting, incorporating and revising projected fuel prices for oil, coal, and other alternate fuels, in the comparative cost calculation. In the proposed rule, we calculate the price of imported oil by adjusting the fuel price by a factor which is the ratio of the average price of recent imported crude oil receipts to the average price of recent total receipts of domestic and imported crude oil. The alternatives under consideration include, but are not limited to: (1) The use of current fuel prices over the life of the facility; (2) the use of a specific set of fuel price projections such as those developed by the Energy Information Administration or some other recognized source; and (3) the use of an annually revised margin incorporating refinery and transportation costs added to the most recent refiner acquisition cost of imported petroleum available in the DOE Monthly Energy Review at the time the petition is submitted.

We invite comments on the proposals and alternatives, and on methods for correctly addressing the problem of estimating fuel price levels in future years.

(b) *Other prices.* The proposed rule requires that all estimated expenditures, except natural gas and petrolium products, be expressed in real (uninflated) terms using the prices in effect at the time the petition is submitted. We also invite public comment on the use of real (uninflated) prices versus the use of nominal, projected prices in the cost comparison calculations.

8. *Other factors for powerplants.* The proposed comparative cost calculation for powerplants does not provide special treatment for:

- Cost of work in progress;
- Allowance for funds used in construction;
- Tax normalizations versus flow through; or
- Public, cooperative, or investor ownership.

We solicit public comment on the need for special treatment for any of the above in the case of oil fired powerplants or in the case of alternate fuel fired powerplants.

K. *Use of fluidized bed combustion not feasible—General requirements for permanent exemptions—§§ 503.10 and 404.8.* We propose that a petitioner for most permanent exemptions be required to consider the use of a method of fluidized bed combustion of an al-

ternate fuel, and to demonstrate that use of such a method is not technically or economically feasible. We further propose that if we make a generic or site-specific finding that use of such a method is technically and economically feasible, we will deny a petitioner's request for a permanent exemption unless he demonstrates that he would be eligible for one of several permanent exemptions if the use of a method of fluidized bed combustion were required. We solicit comments and suggestions regarding the criteria we should use to make a site-specific or a generic finding that use of a method of fluidized bed combustion is technically and economically feasible. Such criteria could include:

- One year's demonstrated reliable operation of the 100 MMBtu/hr Georgetown University unit sponsored by DOE (which is scheduled to begin operation in 1979);
- An engineering report prepared by a reputable consulting engineering firm or boiler manufacturer recommending the use of a fluidized bed unit for an application covered by these regulations;
- The first sale of a unit of the size covered by these regulations to a utility or industrial concern by a boiler manufacturer offering a standard boiler warranty of operation; or
- A sample number (three, five, or ten) of sales by manufacturers of fluidized bed units of the size covered by these regulations to domestic utilities or industrial concerns.

We also solicit comments and general information on the availability, cost, reliability, and current use of methods of fluidized bed combustion of alternate fuels.

We are also considering requiring that petitioners for exemption, including for temporary exemptions, make preliminary investments in fluidized bed combustion units which use oil or gas in order to lay the groundwork for ultimate perfection of the technology and ultimate use of alternate fuels. We solicit comments concerning when, and in what context, we might institute such requirements, and what the likely impact of such a requirement would be.

L. *Alternative powerplant site—general requirement for permanent exemption—§ 503.11.* Section 212 of FUA requires that prior to obtaining specified permanent exemptions for new powerplants, the petitioner must demonstrate an inability to comply with the prohibitions of the act by locating the new powerplant at reasonable alternative sites. We propose to use the cost calculation for new powerplants, § 503.5, as a determinant of whether an alternative site is feasible. We welcome your comments on whether we should use this approach. We expect you to consider alternative sites beyond a given electric utility's service area, and, indeed, beyond the electrical regions defined in § 500.2(b). We also solicit your suggestions on alternative criteria which could be used (e.g., a set geographic distance beyond which the petitioner would not be required to examine alternative sites), comments on the evidence requirements for the proposed criteria and for any alternatives suggested, and comments on the means of utilizing the evidence to definitively measure the criteria.

M. *Terms and conditions—§§ 503.12 and 505.9.* The act makes us responsible for imposing such terms and conditions on an exemption that we determine appropriate, including "requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of the act". The kinds of terms and conditions we may impose go beyond various conservation measures, to include a variety of other restraints and limitations. We have proposed that a temporary exemption be conditioned on the use of a mixture, if feasible, during the exemption period. We are considering conditioning an exemption which allows a petitioner to use oil on a requirement that the petitioner use no more than a specified minimum amount of oil, or possibly use no oil at all, in the exempt unit in the event of national emergency such as an interruption of foreign supplies which results in the reimposition of oil allocation controls. We solicit comments on these and other terms and conditions we could impose on both temporary and permanent exemptions to further the objectives of the Act.

N. *Environmental requirements exemption—§§ 503.33 and § 505.24.* ERA is considering two alternatives with respect to this exemption. Under the first, any person who plans to request a permanent exemption on the grounds that use of an alternate fuel will violate environmental requirements must first apply for the necessary environmental permits and receive a final determination from EPA or the State on these permits.

This will be our general policy in implementing the environmental exemption. Under the second alternative a petitioner could apply for a permanent environmental exemption at any time prior to a final decision by the relevant environmental permitting agency. Under this alternative, reviews of a petition by ERA would not require preliminary review by EPA or state environmental authority. In this case, we would specify criteria which a petitioner must meet for such early filing. We would also retain the right to return without prejudice any early submission we deem premature and require that the environmental permitting process be completed. We are seeking comments on (1) the usefulness of the proposed and the alternative approaches, and (2) on the criteria to be used if the alternative approach were adopted.

O. *Capital availability exemption—§§ 503.34 and 505.24.* Section 212 of the act states that we must grant a permanent exemption from the prohibitions whenever the use of an alternate fuel would not allow the petitioner to obtain adequate capital. We are considering several alternatives for implementing this "capital availability" test for powerplants and installations. We invite comments on the proposals and alternatives outlined here as well as on the general problem of assessing when lack of adequate capital might preclude compliance with FUA.

1. *Powerplants—§ 503.24. Small Utilities.* We are considering, as an alternative to the provisions of the proposed regulation, establishing separate criteria for large utilities and small utilities. Under this alternative we would apply the criteria proposed in the regulation to large utilities, and would establish separate criteria for small cooperative, municipal, and privately owned utilities. We solicit comments on what criteria are appropriate for small utilities, and on which utilities should be subject to the separate test.

2. *Installations—§ 505.24.* The proposed rule for installations stipulates that to qualify for an exemption, the incremental amount of capital needed to use an alternate fuel rather than oil or natural gas must be 25 percent or more than the annual capital budget of the parent firm averaged over the last 3 years. In this context, when a firm is applying for exemption for one or more facilities we may evaluate the availability of capital for all facilities at the same time. Once a firm has passed this test, we intend to examine the firm's capital financing problem on a case-by-case basis. The proposed rule does not require a new firm, which is not a subsidiary or division of another corporation, to make the initial 25 percent showing, but does require that firm to demonstrate that it qualifies for the exemption on a case-by-case basis.

We are considering an alternative which would require a firm petitioning for an inadequate capital exemption to present documentation of diligent yet unproductive attempts to obtain the necessary additional captial for alternate fuel use from some combination of private and public sources. We are considering requiring the firm to make a diligent effort to obtain the additional capital from at least two recognized private sources and from any of several public sources such as the Economic Development Administration.

We solicit your comments on both the proposed rule and the alternative. We also solicit your comments concerning the impact these proposals could have on competition.

P. *Cogeneration exemption—§§ 503.27 and 505.27.* We propose not to grant exemptions permitting cogeneration using oil or natural gas if cogeneration using alternate fuel is feasible. Once a petitioner has demonstrated that alternate fuel use is not feasible, we would review his petition for a cogeneration exemption on a case-by-case basis.

Within the case-by-case approach, and alternative we are considering is to specify the criteria that we will use in our review. We would grant an exemption for cogeneration with oil or gas if the petitioner can demonstrate net oil/gas savings over the life of the facility after all opportunities for using alternate fuels have been exhausted. A net oil savings occurs if the cogeneration project results in less total use of oil and gas by the beneficiaries of the project, including utility participants and any other affected parties, than would be used under the best non-cogeneration alternative.

A limited number of exemptions could be also granted to cogeneration projects that do not satisfy the oil saving criterion. For example, exemptions could be granted on a case-by-case basis where the petitioner can show the proposed project would result in the first commercial use of technology which, after it is commercially proven, could be used in other facilities that burn alternative fuels or that the project would result in other special benefits or public interest advantages, including urban area impacts.

Under an alternative approach we would grant exemptions to cogeneration projects that result in increased oil of gas use, provided the incremental oil or gas consumption is compensated by some combination of larger total energy savings and by large cost savings to all parties affected by the project. We seek comments on these approaches, as well as specific examples of congeneration situations where an exemption should be granted even if net oil or gas savings cannot be demonstrated.

Q. *Fuel mixtures exemption—§§ 503.38 and 505.28.* Section 212(d) of the Act requires that we grant a permanent exemption for certain fuel mixtures if we find that the amount of petroleum or natural gas used in the mixture will not exceed the minimum percentage of the total Btu heat input needed to maintain reliability of operation consistent with maintaining a reasonable level of fuel efficiency, as determined by rule. It further states that we cannot require the percentage for an installation to be less than 25 percent. We are not proposing such a rule at this time, because we do not yet have adequate information to determine the minimum percentages of petroleum or natural gas needed in various mixtures. We welcome your thoughts on this matter.

Under the proposed rules, we will review the percentages proposed in petitions for exemption case be case. The same approach will be used in reviewing the percentages of petroleum or natural gas to be used in mixtures proposed in response to the general mixtures requirement for temporary and premanent exemptions contained in §§ 503.8 and 505.6, and §§ 503.9 and 505.7, respectively, of these proposed regulations.

We invite comments on the methodology we should use to assess the percentages proposed in petitions for exemption, and on the kinds of engineering and technical data we need to develop a rule pertaining to such percentages. We also solicit comments and general information pertaining to use of a varity of mixtures, including:

- Coal-oil mixes,
- Coal-gas mixes,
- Mixes of oil or gas and biomass,
- Mixes of oil or gas and municipal, industrial, or agricultural wastes,
- Mixes of oil or gas and solar energy, and
- Mixes of oil or gas and other alternate fuels.

R. *Solar energy—§§ 503.38 and 505.28.* FUA and these proposed regulations define solar energy (including wind, tide and other intermittent sources) as an alternate fuel. In many cases, such as continuous operation of large commercial complexes, a solar facility will need to utilize back up fuels. In the interest of encouraging the development and increased use of solar energy sources, we will allow petroleum or natural gas to be used as the back up in a solar powered facility.

We propose to handle the use of backup fuels in a solar facility under the permanent mixtures exemption. (§§ 503.38 and 505.28). Although we are not proposing rules for percentages of oil or gas allowed in mixtures at this time, we solicit your comments on the percentage of natural gas or petroleum we should allow in a solar mixture.

We are considering an alternative approach in which petitioners requesting exemptions for solar mixtures would not be required to prepare and submit a Fuels Decision Report, although they would be required to certify that use of 100 percent alternate fuel is not feasible. We solicit your comments on whether petitioners for solar mixtures exemptions should receive preferential treatment through elimination of the Fuels Decision Report requirement. We also welcome comments and suggestions concerning other ways of encouraging the development and increased use of solar energy under these regulations.

S. *Reliability of service exemption—§ 503.40.* Section 212 of the Act provides for a permanent exemption for a new powerplant to prevent an impairment of reliability of service. We propose to take into consideration the type of unit the petitioner proposes to use in our evaluation of his request for a reliability exemption. We propose to favor the use of combustion turbines over other types of units in order to limit oil consumption over the life of the powerplant.

An alternative approach would be to restrict the hours of operation of the exempt unit to 1500 hours per year after the period of reliability need is over. In this case no particular type of facility would be favored. We are futher considering relaxing the 1500 hour restriction to the extent that a utility accelerates its reduction of use of less efficient existing oil and natural gas fired units. We seek comments on the proposal and alternatives. We also solicit comments on the loss of load probability (LOLP) criteria specified in the proposed rule.

We also propose to express a policy that reliability exemptions will be judged in terms of areas at least as large as the 29 electrical regions specified in § 500.2(b). We solicit comments on this proposal.

T. *Intermediate load exemption—§ 503.42.* Section 212 of the Act provides for a permanent, but terminable exemption for new intermediate load powerplants which are constructed and operated to replace existing powerplants of equivalent capacity or less which use petroleum or natural gas as a primary energy source. The act further provides that the petitioner must demonstrate that, if coal were used in the powerplants being replaced, they would cause or contribute to a concentration, in an air quality region or area, of a pollutant for which national ambient air quality standards are or would be exceeded. We propose to grant this exemption only to intermediate load powerplants which replace coal capable petroleum or gas fired powerplants. We feel that this is a reasonable interpretation of the Act since there would be no reason to evaluate the resultant pollution concentration of burning coal if in fact the plant being replaced could not burn coal.

An alternative approach would be to allow any petroleum or natural gas consuming powerplant to qualify under the replacement provision. We seek comments on the proposal and the alternative.

U. *Temporary exemption for future use of synthetic fuels — §§ 503.24 and 505.14.* We have chosen at this time not to define synthetic fuels in any way other than as synthetic fuels derived from alternate fuels and not derived from petroleum or natural gas. We solicit comments on whether synthetic fuels should be defined only as fuels derived from other fuels. We further solicit comments and information identifying the fuels which should be considered synthetic fuels for the purposes of these regulations, including information pertaining to the availability, reliability, and use of those fuels. We also invite comments regarding the kinds and level of financial commitments needed to develop and use synthetic fuels.

V. *Product/process requirements exemption—§ 505.29.* ERA proposes to restrict its consideration of petitions for this exemption to non-boilers, the rules for which will be published at a later date. ERA is also considering establishing a general presumption against granting this exemption for boilers, but accepting petitions for review on a case-by-case basis. ERA solicits comments identifying potential grounds upon which the owners of a boiler might file for this exemption, and means by which such petition claims could be verified.

W. *Environmental planning.* We expect that firms petitioning for exemptions to the prohibitions will include in their analysis of all reasonable alternative fuels a discussion of the assumed pollution control measures that would be necessary for compliance with environmental requirements. Furthermore, we anticipate that potential petitioner will consult early in their fuels planning process with us and with appropriate EPA and State Environmental agencies to determine with the greatest degree of specificity the environmental requirements that would apply to each of the fuel options under consideration. Such guidance from the environmental agencies is important for petitioner's cost calculations as well as for other steps in the exemption process. We may, at some later date, provide more detailed guidance on appropriate prepetition environmental consultations. We solicit comments and suggestions regarding prepetition environmental consultation procedures.

X. *Regulatory efficiency and interagency coordination.* We solicit comments on how to mesh the FUA regulatory program sufficiently with other federal and state programs so as to realize the potential for efficieny, professional calibre of the outputs, minimal paperwork, and timely resolution of conflicts. In this connection we note that most new facilities subject to ERA review under FUA will also be reviewed under federal and state environmental law. We have therefore initiated discussions with EPA on this subject. We have a similar challenge in the case of electric utilities to mesh administration of the powerplant provisions of FUA with the utility conservation service provisions of NECPA (the National Energy Conservation Policy Act of 1978) and PURPA (the Public Utility Regulatory Policy Act of 1978).

VI. *Comment Procedures.*

A. *Written comments.*. You are invited to participate in this Rulemaking by submitting data, views or arguments with respect to the issues set forth in this Notice. Comments should be submitted to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside envelope and on documents submitted with the designation "Powerplant and Industrial Fuel Use Act" Docket No. ERA-R-78-19. You should submit 15 copies. All comments received will be available for public inspection in the DOE Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. We will consider all comments received by February 2, 1979, 4:30 p.m.

You should identify separately any information or data you consider to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. *Public hearings.* Procedures for the public hearings to be held on these proposed regulations will be set forth at the time that dates and locations for the public hearings are announced in the FEDERAL REGISTER.

A draft regulatory analysis of the proposed regulations, as contemplated by Executive Order No. 12044, is attached as an appendix to these proposed rules. Copies may also be obtained from the ERA, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, 202-634-2170. In addition, a draft Environmental Impact Statement (EIS) has been prepared pursuant to the National Environmental Policy Act (NEPA) and is available for review in Room B-110, 2000 M Street, NW., Washington, D.C.

(Department of Energy Organization Act, Pub. L. 95-91, Powerplant and Industrial Fuel Use Act of 1978; Executive Order 12009, 42 FR 46267).

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended by adding new Parts 500, 501, 502, 503, 505, 506, 507 in a new Subchapter E, as set forth below.

Issued in Washington, D.C. on November 9, 1978.

DAVID J. BARDIN,
Administrator, Ecomonic Regulatory Administration.

10 CFR, Chapter II is amended by adding Subchapter E consisting of Parts 500-507, to read as follows:

Subchapter E—Alternate Fuels

PART 500—POLICY AND DEFINITIONS

Sec.
500.1 Policy.
500.2 Definitions.
(a) General definitions.
(b) Electric region.
(c) Design capacity.
(d) Natural Gas.
(e) Petroleum.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart A—General Provisions

501.1 Purpose and scope.
501.2 Appearance before ERA.
501.3 Filing of documents.
501.4 Computation of time.
501.5 Extension of time.
501.6 Service.
501.7 General filing requirements.
501.8 Filing fees.
501.9 Effective date of orders or rules.
501.10 Order of precedence.
501.11 Address for filing documents with DOE.
501.12 Freedom of information reading room/docket room.
501.13 Appeal.

Subpart B—Filing Fees

501.20 Purpose.
501.21 Scope.
501.22 General exceptions; waiver.
501.23 Payment of fees.
501.24 Fee schedule.

Subpart C—Written Comments, Conferences and Public Hearings

501.30 Purpose and scope.
501.31 Written comments.
501.32 Requests for an opportunity to be heard.
501.33 Conferences.
501.34 Public hearings.
501.35 Public file.

Subpart D—Subpoenas; Witness Fees

501.40 Issuance.
501.41 Witness Attendance; Production of documents.
501.42 Service.
501.43 Fees.
501.44 Petition to quash or modify.
501.45 Enforcement.

Subpart E—Prohibition Orders

501.50 Purpose and scope.
501.51 What to file.
501.52 Where to file.
501.53 Notice.
501.54 Contents.
501.55 ERA evaluation.
501.56 Public participation.
501.57 Decision and order.

Subpart F—Exemptions

Sec.
501.60 Purpose and scope.
501.61 Labeling of petition.
501.62 What to file.
501.63 Attestation.
501.64 Fees.
501.65 Where to file.
501.66 When to file.
501.67 Contents.
501.68 Adequacy of petition.
501.69 Notice of petition.
501.70 Hearing.
501.71 ERA evaluation.
501.72 Retained Authority.
501.73 Decision and Order.
501.74 Judicial review.

Subpart H—Requests for Modification and Rescission of Orders and Rules Issued Under FUA

501.100 Purpose and scope.
501.101 What to file.
501.102 Where to file.
501.103 When to file.
501.104 Notice.
501.105 Contents.
501.106 ERA evaluation.
501.107 Decision and order.
501.108 Timeliness.

Subpart I—Requests for Stay

501.120 Purpose and scope.
501.121 What to file.
501.122 Where to file.
501.123 Notice.
501.124 Contents.
501.125 DOE evaluation.
501.126 Decision and order.

Subpart J—Requests for Interpretations

501.130 Purpose and scope.
501.131 What to file.
501.132 Where to file.
501.133 Notice.
501.134 Contents.
501.135 DOE evaluation.
501.136 Decision and order.

Subpart K—Rulings

501.140 Purpose and scope.
501.141 Criteria for issuance.
501.142 Modification or rescission.
501.143 Comments.

Subpart L—Petitions for Rulemaking

501.150 Purpose and scope.
501.151 Petition for rulemaking.
501.152 Comments in connection with rulemaking.
501.153 Where to file.

Subpart M—Complaints

501.160 Purpose and scope.
501.161 What to file.
501.162 Where to file.
501.163 Contents.
501.164 ERA evaluation.
501.165 Decision.

Subpart N—Notice of Violation and Remedial Order

501.170 Purpose and scope.
501.171 Notice of violation.
501.172 Hearings and Conferences.
501.173 Remedial order.

Subpart O—Investigations, Violations, Sanctions, and Judicial Actions

501.180 Investigations.
501.181 Violations.
501.182 Sanctions (FUA).
501.183 Injunctions.
501.184 Citizen suits.

PART 502—FUELS DECISION REPORT

502.1 Purpose and scope.
502.2 General instructions.
502.3 Contents.
502.4 Introduction.
502.5 Fuels considered.
502.6 Alternative sites considered.
502.7 Technical and engineering considerations.
502.8 Availability considerations.
502.9 Economic considerations.
502.10 Site considerations.
502.11 Environmental regulatory considerations.
502.12 Operational considerations.
502.13 Other considerations.
502.14 Petroleum and natural gas consumption.
502.15 Conservation measures.
502.16 Environmental impacts analysis.
502.17 ERA evaluation.

PART 503—NEW ELECTRIC POWERPLANTS

Subpart A—Statutory Prohibitions

503.1 Purpose and scope.
503.2 Statutory Prohibitions.

Subpart B—General Requirements for Exemptions

503.3 Purpose and scope.
503.4 Fuels Decision Report.
503.5 Cost calculations for new powerplants.
503.6 State approval.
503.7 No alternative power supply—Permanent exemptions.
503.8 Use of mixtures—General requirement for temporary exemptions.
503.9 Use of mixtures—General requirement for permanent exemptions.
503.10 Use of fluidized bed not feasible—General requsirement for permanent exemption.
503.11 Alternative sites—General requirement for permanent exemptions.
503.12 Terms and conditions; Compliance plans.

Subpart C—Temporary Exemptions for new Powerplants

503.20 Purpose and scope.
503.21 Lack of alternate fuel supply.
503.22 Site limitations.
503.23 Inability to comply with applicable environmental requirements.
503.24 Future use of synthetic fuels.
503.25 Public interest exemption.

Subpart D—Permanent exemptions for new Powerplants

503.30 Purpose and scope.
503.31 Lack of alternate fuel supply for the first ten years of useful life.
503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.
503.33 Site limitations.
503.34 Inability to comply with applicable environmental requirements.
503.35 Inability to obtain adequate capital.
503.36 State or local requirements.
503.37 Cogeneration.
503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.
503.39 Emergency purposes.
503.40 Permanent exemption for powerplants necessary to maintain reliability of service.
503.41 Peakload powerplants.
503.42 Intermediate load powerplants.

PART 504—EXISTING ELECTRIC POWERPLANTS [RESERVED]

PART 505—NEW MAJOR FUEL BURNING INSTALLATIONS

Subpart A—Statutory Prohibitions

505.1 Purpose and scope.
505.2 Statutory prohibitions. (a) Petroleum and natural gas use by boilers. (b) Petroleum and/or natural gas use by non-boilers covered by a rule or order.

Subpart B—General Requirements for Exemptions

505.3 Purpose and scope.
505.4 Fuels Decision Report.
505.5 Cost calculation for new MFBI's
505.6 Use of mixtures—General requirement for temporary exemptions.
505.7 Use of mixtures—General requirement for permanent exemptions.
505.8 Use of fluidized bed combustion not feasible-General requirement for permanent exemption.
505.9 Terms and conditions; Compliance plans.
505.10 Purpose and scope.
505.11 Lack of alternate fuel supply.
505.12 Site limitations.
505.13 Inability to comply with applicable environmental requirements.
505.14 Future use of synthetic fuels.
505.15 Public interest exemption.
505.16 The use of petroleum.

Subpart D—Permanent exemptions for new MFBI's

505.20 Purpose and scope.
505.21 Lack of alternate fuel supply for the first 10 years of useful life.
505.22 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using petroleum.
505.23 Site limitations.
505.24 Inability to comply with applicable environmental requirement.
505.25 Inability to obtain adequate capital.
505.26 State or local requirements.
505.27 Cogeneration.
505.28 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.
505.29 Emergency purposes.
505.30 Product of process requirements.
505.31 Scheduled equipment outages.

PART 506—EXISTING MAJOR FUEL BURNING INSTALLATION [RESERVED]

PART 507—SYSTEM COMPLIANCE [RESERVED]

PART 500—POLICY AND DEFINITIONS

§ 500.1 General policy

(a) *Fuel Use Act (FUA).*

(1) The primary purpose of the Powerplant and Industrial Fuel Use Act of 1978 (Fuel Use Act) is to minimize the use of petroleum and natural gas in industrial and electric utility boilers. The Act challenges American industry and government. It sets forth the following prohibitions applicable to electric powerplants and major fuel burning installations:

(i) Prohibition of the use of petroleum or natural gas in new powerplants and installations;

(ii) Prohibition of the construction of new powerplants without the capability to use coal or other alternate fuels;

(iii) Prohibition of natural gas use by existing powerplants unless that fuel was used during 1977;

(iv) Prohibition of increased use of natural gas by existing powerplants over historical use levels;

(v) Prohibition of natural gas use by existing powerplants after January 1, 1990;

(vi) Discretionary authority for DOE to issue rules or orders prohibiting existing powerplants and installations from using petroleum or natural gas and from using excessive amounts of petroleum and natural gas in mixtures.

(2) The Act requires American industry to apply its ingenuity and full competence to avoid use of petroleum and natural gas:

(i) By use of alternate fuels, and

(ii) By use of innovative technologies and conservation measures.

(3) The Act requires us to face up to the long term economic impacts of dependence on petroleum and natural gas to meet future needs. It requires the leaders of American industry to analyze their future energy needs comprehensively from the standpoint of national interest as well as corporate interet. It requires the Federal Government to protect the overall public interest for future generations as well as our own. It challenges all parts of the Department, and of State and Federal Government, to work with American industry to secure a coordinated, directed effort towards realizing environmentally sound alternatives to the use of petroleum and natural gas.

(4) These rules decribe procedures and criteria the Department of Energy proposes to use in implementing the provisions of the Act. the Secretary of the Department of Energy has delegated the responsibility to implement and enforce the provisions of the Act to the Administrator of the Economic Regulatory Administration (ERA).

(b) *Availability of exemptions.* If you believe you are entitled to any exemption from the prohibitions of the Act you must deomonstrate to the satisfaction of the ERA that you warrant the exemption. In order to demonstrate this contention, you must provide convincing and substantial evidence that you made a good faith, competent effort to carry out the policies of the Act (including your attempts to overcome any obstacles to comply with the Act) in accordance with the criteria established in these regulations. We intend to review each exemption petition carefully and will dismiss any which does not fully meet the standards set forth in these regulations.

(c) *Fuels decision report: A showing of technological excellence.* A petition for exemption must include a Fuels Decision Report to demonstrate your competent, good faith efforts to avoid the use of petroleum and natural gas. The Fuels Decision Report provides the opportunity to demonstrate the technological excellence of well engineered solutions which accurately reflect your ingenuity and best professional judgment. It should show the calibre of your response to a fundamental technological challenge.

(d) *Fuel switching capability.* In the interest of maintaining fuel flexibility and an ability to cope with supply disruptions, we recommend that you build in fuel switching capabilities in your powerplants and installations. Such capability would allow your units to be switched from alternate fuels to oil or gas, from oil or gas to alternate fuels or even from oil to gas or vice versa.

(e) *Fuel use objectives.* We interpret the primary objectives of the act to be first, to prohibit or minimize oil and gas consumption, and second, where oil or gas must be used, to insure that it is used efficiently. We have structured the eligibility criteria of the exemptions accordingly. The exemptions relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, and State or local requirements, cover the primary reasons why it may not be feasible to burn an alternate fuel. Many of the other exemptions deal with a particular end use application that is not necessarily incompatible with alternate fuel use. Therefore ERA will require you to show why your particular end use need could not be met by using an alternate fuel. Examples of this treatment include the permanent exemptions for emergencies, scheduled equipment outages, cogeneration, and mixtures.

(f) *Temporary versus permanent exemptions.* In cases where both temporary and permanent exemption are available, we will grant a temporary exemption rather than a permanent one if possible. Petitions for temporary exemptions must demonstrate that you *cannot* use an alternate fuel. Further, where possible, we intend to condition the granting of a temporary exemption on the use of a mixture of alternate fuel with oil or natural gas during the period of the exemption. We also shall condition the granting of a temporary exemption on your submission of an acceptable compliance plan which provides a certainty that you will be in compliance with the prohibitions of the Act upon the expiration of the exemption.

(g) *Terms and conditions.* (1) We reserve the right to impose conditions when granting a temporary or permanent exemption, consistent with the purposes of the act, including use of effective conservation measures and use of mixtures. The types of conservation measures or mixtures which might be required would include the use of fuel efficient equipment and technologies, the adoption of fuel efficient operating practices, the use of mixtures of natural gas or petroleum and alternate energy sources such as coal, biomass or solar. We also reserve the right, upon granting an exemption, to specify which fuel (natural gas or petroleum) you must use. We may revoke your exemption if your fail to meet the appropriate terms and conditions of the exemption, including the compliance plan. If you operate your powerlant or installation in violation of the Act or in excess of that authorized in an exemption, we intend to impose the penalties authorized by the statute.

(2) We believe that any penalties imposed under the Act on electric powerplant use should not be used as the basis for computing fuel costs for the purpose of any automatic fuel adjustment (or similar) clause in determining electricity rates.

(h) *Treatment of costs in exemption requests.* (1) We will consider *all* constraints to alternate fuel use associated with the cost of using an alternate fuel under the exemption for lack of alternate fuel supply at a reasonable cost. This will allow us to comprehensively evaluate all cost considerations, including equipment costs, site costs, fuel costs, and transportation costs, and thus determine possible tradeoffs between such items as quality of fuel consumed versus type of pollution control equipment required. Since the rules require that costs be treated under one exemption only, they do not establish cost criteria for each separate exemption. If you base your petition on cost as the obstacle to using an alternate fuel, you should apply for the lack of alternate fuel supply exemption and perform the comparative cost calculation, rather than for an exemption relating to specific physical or technological constraints on fuel use such as site limitations, environmental requirements, or State or local requirements.

(2) You may not be able to determine whether to request an exemption due to physical or technological constraints, or due to the cost of using an alternate fuel, until you have completed your analysis of that fuel. For example, you may determine that you cannot burn one of the alternate fuels you considered without violating applicable environmental requirements. To arrive at this conclusion, you would have to have made a good faith effort to comply with environmental requirements. A good faith effort means that you have examined reasonable environmental compliance measures and have consulted with competent engineering advisors, EPA or the State concerning the best proposal for using control technology and taking other steps, such as purchasing offsets, to meet environmental requirements. If you determine that all of the options that are available to you are insufficient to meet environmental requirements, and EPA or the State has denied the environmental permit application you submitted, you should apply for an environmental exemption. If, however, you determined that options are available which would allow compliance with environmental regulations, but the cost of using an alternate fuel and complying with environmental regulations substantially exceeds the cost of using imported oil, you should apply for a lack of alternate fuel supply exemption (which contains the cost test) and not an environmental exemption.

(i) *Geographic considerations for new electric powerplants.* (1) Utilities have a great deal of flexibility in where they site powerplants to serve customer demand. This flexibility is due to extensive transmission systems, interconnections, and agreements to buy power from other utilities. Consequently, the Act requires that for many permanent exemptions you must demonstrate that you are unable to comply with a prohibition, not only at your proposed site, but also at any reasonable alternative sites. You must examine reasonable alternative sites with respect to the following permanent exemptions: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, and intermediate load electric powerplants.

(2) Except in the case of the peakload or cogeneration exemption, the Act also requires that you show that there is no alternate supply of electric power to the one you are proposing. This means that you must demonstrate to us that you could not purchase electricity, or construct and operate an alternate fuel supply powerplant, at a cost which does not substantially exceed the cost of using imported oil to meet your customer demand.

(3) Therefore, to prepare a petition for most permanent exemptions adequate for our review you must examine all geographic areas where a plant could be sited within the cost criteria of these regulations, and you must provide information on the capacity construction plants of your electrical region and beyond. You may not arbitrarily limit your examination to sites within your own utility service area. By coordinated planning on an electrical region basis you can generally carry out the policy of the statutory prohibitions. In appropriate instances, however, you may have to evaluate alternative sites in other electrical regions.

(4) We intend to evaluate reliability on the basis of electrical regions. We intend to treat powerplant operations within an electrical region as if they were part of one large utility system.

(j) *Suitability of equipment.* (1) We plan to limit the amount of oil and gas consumed as the result of any exemption for an electric powerplant to the minimum consistent with the purpose of the exemption and the overall thrust of the Act. The construction of a particular type of fuel burning equipment leads to a generally known level of use based upon the economics of operating that equipment. Therefore, ERA may take into consideration the type of equipment proposed by the applicant in evaluating an exemption request.

(2) For both the peakload and reliability exemption, we will favor construction of combustion turbines as opposed to other types of generating equipment. Combustion turbines have historically been used to serve peakload demand and would generally be the most economic units within the 1500 hours per year operation restriction of the Act.

(3) Although the reliability exemption is a permanent exemption, its purpose is to cover a temporary condition. It is important that generation capacity be adequate to avoid brownouts, but at the same time it is important that new oil or gas fired units not be constructed if they will operate at high capacity factors throughout their entire useful lives. Combustion turbines can be constructed in a relatively short period of time and thereby meet generating capacity requirements.

(4) In addition, we expect that construction of combustion turbines will reduce the long run use of oil or gas. Although combustion turbines have higher heat rates than combined cycle or steam plants, their higher operational costs will probably limit the hours of their operation and therefore result in a net oil savings. Combustion turbines are generally the last units to be dispatched whereas combined cycle units could serve both intermediate and base load requirements.

(k) *Solar energy.* In the interests of encouraging the development and increased use of solar energy, we will allow scarce fuel resources (natural gas and petroleum) to be used, at reasonable levels, as the back up fuels in solar powered facilities. We will review the use of mixtures of solar energy and pertroleum or natural gas under the permanent mixtures exemption.

(l) *NEPA compliance.* (1) We will support our decision with respect to the grant or denial of a petition for most permanent exemptions with appropriate NEPA documentation. These documents may be (i) an Environmental Impact Statement (EIS), where the proposed action is deemed a major Federal action significantly affecting the quality of the human environment; (ii) an environmental assessment (EA), where it is unclear whether an EIS is required; or (iii) an internal ERA memorandum where, prior to preparing an EA, it is clear, in our view, that no EIS is required. An EA would be followed by either preparation of an EIS or a finding that the proposed action is not a major Federal action significantly affecting the quality of the human environment.

(2) We will require petitioners for most permanent exemptions to prepare an environmental impact analysis pursuant to § 502.16 of these regulations (the Environmental Impact Analysis Chapter of the Fuels Decision Report). We intend to independently verify, to the extent feasible and appropriate, any information in the petitioner's Fuels Decision Report which is used or relied on in an EA or EIS.

§ 500.2 Definitions.

This section defines certain terms utilized throughout these regulations unless otherwise expressly provided for or demanded by the regulations. The use of the male gender is to include female; the use of singular to include plural.

(a) *General definitions.* For purposes of this Part and Parts 501, 502, 503, 504, 505, and 506 the terms listed:

(1) "Acquisition" means physical receipt of an item at the facility site and does not include mere transfer of title or ownership.

(2) "The Act" and "FUA" mean the Powerplant and Industrial Fuel Use Act of 1978.

(3) "Action" means a prohibition, by rule or order, in accordance with sections 202, 301(b) and (c), 302(a) and (b), 401, 402, and 405 of the Act; an order granting or denying an exemption in accordance with sections 211, 212, 311, and 312 of the Act; a modification or rescission of any such order,

or rule; an interpretation; a notice of violation; a remedial order; a ruling issued; or a rulemaking undertaken by DOE.

(4) "Affiliate", when used in relation to person, means another person who controls, is controlled by, or is under common control with, such person.

(5) "Aggrieved", for purposes of administrative proceedings, describes and means a person [with an interest sought to be protected under the DEOA, or the Act] who is adversely affected by an action proposed or undertaken by DOE.

(6) "Air pollution control agency" means any of the following:

(i) A single State agency designated by the Governor of that State as the official State air pollution control agency,

(ii) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution,

(iii) A city, county, or other local government, health authority, or, in the case of any city, county, in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency, or

(iv) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(7) "Alternate fuel" means electricity or any fuel, other than natural gas or petroleum. The term includes—

(i) Coal;

(ii) Solar energy;

(iii) Petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood and renewable and geothermal energy sources;

(iv) Liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity,

(v) Any fuel derived from an alternate fuel; and

(vi) Waste gases from industrial operations.

(8) "Applicable environmental requirements" includes—(i) Any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(ii) Any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Clean Water Act, the resource Conservation and Recovery Act, or the National Environmental Policy Act of 1969. Such term does not include, however, local laws, ordinances, or regulations of whatever kind or purpose unless they are explicitly based upon or part of pertinent Federal or State laws, standards, limitations, or other environmental requirements.

(9) "Base load powerplant" means a powerplant the electric generation of which in Kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(10) "Btu" means British thermal unit.

(11) "Clean Air Act" means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (1970), as amended by Pub. L. 93-319, 88 Stat. 246, and Pub. L. 95-91, 91 Stat. 685.

(12) "Coal" means anthracite, bituminous and sub-bituminous coal, lignite, and any fuel derivative thereof.

(13) "Cogeneration facility" means an electric powerplant or a major fuel burning installation which produces (i) electric power and (ii) any other form of useful energy (such as steam, gas or heat) which is, or will be, used for industrial, commerial, or space heating purposes.

(14) "Combined cycle unit" means an electric power generating unit that consists of a combination of one or more combustion gas turbine units and one or more steam turbine units with the required energy input of the steam turbine(s) provided by the approximately matched to the energy in the exhaust gas from the combustion turbine unit(s). Use of small amounts of supplemental firing for the steam turbine does not preclude the unit from being a combined cycle unit.

(15) "Conference" means an informal meeting, incident to any proceeding, between DOE and any interested person.

(16) "Construction" means substantial physical onsite construction or reconstruction of an electric powerplant or major fuel burning installation which constitutes more than clearance of a site or installation of foundation pilings.

(17) "Costs" means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant or major fuel burning installation, discounted to the present pursuant to rules established in parts 503, 504, 505, and 506 of these regulations.

(18) "Delayed compliance order" means an order issued by the Administrator of EPA in accordance with section 113(d)(5) of the Clean Air Act allowing for delayed compliance with any air pollution requirement under any applicable implementation plan for an initial period not extending beyond December 31, 1980 and an additional period not extending beyond December 31, 1985.

(19) "Design capacity or capability" is a defined in subsection (c) of this section.

(20) "DOE" or "the Department" means the United States Department of Energy, as defined in sections 201 and 301(a) of the Department of Energy Organization Act, including the Secretary of Energy of his designee.

(21) "DEOA" means the Department of Energy Organization Act (Pub. L. 95-91) (42 U.S.C. 7101 et seq.), as implemented by E.O. 12009 (42 F.R. 46267).

(22) "Document" includes any petition, application or part thereof.

(23) "Discount rate" means—

(i) After tax cost of capital for installations;

(ii) Before tax cost of capital for powerplants.

(24) "Duly authorized representative" means a person who has been designated to appear before DOE in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. The appearance may consist of the submission of applications, petitions, requests, statements, memoranda of law, other documents, or of a personal appearance, oral communication, or any other participation in the proceeding.

(25) "Electric powerplant" and "powerplant" man any stationary electric generating unit, consisting of a boiler, a combustion turbine unit, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) Has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) Is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(26) "Electric generating unit" does not include—

(i) Any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) Any cogeneration facility, less than half of the annual electric power

generation of which is sold or exchanged for resale.

(27) "Electric region" is a defined in subsection (b) of this section.

(28) "Electric utility" means any person, including any affiliate, or Federal agency, who sells electric power.

(29) "EPA" means the Environmental Protection Agency.

(30) "ERA" means the Economic Regulatory Administration of the Department of Energy.

(31) "Existing boiler" means any boiler other than a new boiler.

(32) "Existing powerplant or MFBI" means any powerplant or MFBI other than a new powerplant or MFBI.

(33) "FERC" means the Federal Energy Regulatory Commission.

(34) "Fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

(35) "FTC" means the Federal Trade Commission.

(36) "High-priority user," for purposes of section 312(j) of the Act means any residential user of natural gas, or any commercial user whose consumption of natual gas on a peak day is less than 50 Mcf.

(37) "Installation" means "major fuel burning installation."

(38) "Intermediate load powerplant" means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(39) "Internal combustion engine" means a heat engine in which the combustion that generates the heat takes place inside the engine proper.

(40) "Interpretation" means a written statement issued by the DOE General Counsel, or his delegate, in response to a written request, that applies the regulations, rulings and other precedents previously issued by the FEA or DOE to the particular facts of a prospective or completed act or transaction.

(41) "Local distribution company," for the purposes of section 401 of the Act, means any person engaged in the business of transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

(42) "Loss of load" means the number of hours per year during which the total demand for electricity within the region could exceed the available supply of generation capacity to the region. See § 503.39.

(43) "Major fuel burning installation," "installation" and "MFBI" mean a stationary unit consisting of a boiler, combustion turbine unit, combined cycle unit, or internal combustion engine, including an internal combustion engine used for generation of electricity, which—

(i) (A) Has a design capability of consuming any fuel, or mixture thereof, at a fuel heat input rate of 100 million Btu's per hour or greater; or

(B) Is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel, or mixture thereof, at a fuel heat input rate of 250 million Btu's per hour or greater.

(ii) In determining whether units are at the same site for purposes of defining "new major fuel burning installations," ERA will presume that units within 10 miles of each other are located at the same site.

(iii) "Major fuel burning installation," "installation," and MFBI do not include—

(A) Any electric powerplant; or

(B) Any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to ERA of such use.

(44) "Mcf" means 1,000 cubic feet of natural gas.

(45) "MFBI" means "major fuel burning installation."

(46) "Minimum peakload requirement for any calendar year" means, for purposes of section 501 of the Act, and section 507 of these regulations governing the System Compliance Option, the total kilowatt hours generated during the calendar year by natural gas on the applicant electric utility company system divided by the aggregate capacity of all the electric powerplants in such system but not to exceed 1,500 full-load hours per year.

(47) "Mixture" when used in relation to fuels used in a unit, means a mixture of petroleum or natural gas and an alternate fuel, or a combination of such fuels used simultaneously or alternately in such unit.

(48) "Natural gas" is as defined in paragraph (d) of this section.

(49) "NEPA" means the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

(50) "New boiler" means any boiler for which there was not a commitment for construction or acquisition as of the date of the publication under section 701(b) of the Act of the proposed rule or order establishing the prohibition.

(51) "New electric powerplant" means a stationary unit consisting of a boiler, combustion turbine unit or combined cycle unit which—

(i) (A) Has a design capacity of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(B) Has in combination with all other units at the same site, whether new or existing, an aggregate design capability of consuming any fuel (or mixture thereof) at a fuel heat rate input rate of 250 million Btu's an hour or greater. For purposes of this clause, there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 50 million Btu's per hour, and

(ii) (A) Which was not operational as of April 20, 1977; or

(B) Which since April 20, 1977, has been reconstructed or refurbished or added to, to the extent that the cost of such reconstruction, refurbishment, or addition equals or exceeds 50 percent of the price of replacement unit; or

(C) Which has been moved from one site to another since November 9, 1978.

(iii) The term "new electric powerplant" does not include any unit deemed existing under part 515 of this title.

(52) "New major fuel burning installation" means a stationary unit consisting of a boiler, combustion turbine unit, combined cycle unit, or internal combustion engine, including an internal combustion engine, used for the generation of electricity which—

(i) (A) Has a design capacity of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(B) Has in combination with all other units at the same site, whether new or existing, an aggregate design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's an hour or greater. For purposes of this clause, there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 50 million Btu's per hour, and

(ii) (A) Which was not operational as of April 20, 1977; or

(B) Which since April 20, 1977, has been reconstructed or refurbished or added to, to the extent that the cost of such reconstruction, refurbishment, or addition equals or exceeds 50 percent of the price of a replacement unit; or

(C) Which has been moved from one site to another since November 9, 1978.

(iii) The term "new major fuel burning installation" does not include any unit deemed existing under part 515 of this Title.

(53) "Non-boiler" means any stationary unit which is not a boiler and which consist of either a combustion turbine unit, combined cycle unit, or internal combustion engine.

(54) "Notice of violation" means a written statement issued to a person by ERA that states on or more alleged violations of the provisions of parts 500, 501, 502, 503, 504, 505, 506, and

515 of this Chapter or any order or rulemaking issued pursuant thereto.

(55) "Offset" means an emission reduction obtained from existing sources by new or modified major sources. These emission reductions are greater than the SIP requirements for existing sources. In areas where the National Ambient Air Quality Standards (NAAQS) are not being met (Non-Attainment Areas), new or modified sources, after the application of Lowest Achievable Emission Requirements (LAER), must obtain emission reductions from existing sources so that no pollutant for which a NAAQS is being violated will be emitted. In areas where the NAAQS is being met (Prevention of Significant Deterioration Areas), a new or modified major source, after the application of Best Available Control Technology (BACT) may obtain emission reductions from existing sources where an allowable increment for emissions is less than needed for constructing a new plant or modifying an existing plant.

(56) "Order" means a written directive issued by ERA pursuant to Parts 500, 501, 502, 503, 504, 505, 506, and 515 of this Chapter.

(57) "Outdoor lighting", for the purpose of section 501 of the Act, means lighting by any stationary source which is not located inside a building.

(58) "Peakload powerplant" means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

(59) "Person" means any—

(i) Individual corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company;

(ii) Any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States,

(iii) Any agency or instrumentality (including any municipality) thereof, or

(iv) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(60) "Petroleum" is as defined in subsection (e) of this section.

(61) "Petition" means the formal request for an exemption submitted to ERA under parts 503, 504, 505, and 506 of these regulations, which includes the Fuels Decision Report, appropriate forms, and other information pertaining to eligibility and evidentiary requirements as stated in these regulations.

(62) "Pipeline", for purposed of section 103(b) of the Act, means any interstate pipeline or local distribution company.

(63) "Pipeline company", for the purposes of section 401 of the Act, means any person engaged in the business of transporting natural gas by pipeline other than as a local distribution company.

(64) "Powerplant" means "electric powerplant."

(65) "Product or process requirements" means that product or process for which the use of an alternate fuel is not technically feasible due to the necessity to maintain satisfactory control of product quality and for which the substitution of steam is not technically feasible due to process requirements.

(66) "Primary energy source" means the fuel or fuels used for normal operation by any existing or new electric powerplant or major fuel required for unit ignition startup, testing, flame stabilization and control uses, and

(i) Minimum amounts of fuel required for unit ignition startup, testing, flame stabilization and control uses, and

(ii) Minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting health, safety or welfare which would result from electric power outages.

(67) "Proceeding" means a process and activity, and any part thereof, instituted by DOE, either on its own initiative or in response to an application, complaint, petition or request submitted by the owner or operator of a powerplant, major fuel burning installation, or any other person that may lead to an action by DOE.

(68) "Prohibition order" means—

(i) An order issued pursuant to sections 202(b), 301 (b) and (c), 302 (a) and (b), and 401 of the Act that prohibits a powerplant or major fuel-burning installation or a boiler used for space-heating purposes from burning natural gas or petroleum products as its primary energy source; or

(ii) An order issued pursuant to section 301(c) and 302(b) of the Act that prohibit excessive use of natural gas or petroleum in mixtures burned by a powerplant or major fuel-burning installation as its primary energy source.

(69) "Remedial order" means a directive issued by ERA requiring a person to cease a violation or to eliminate or to compensate for the effects of a violation or both.

(70) "Residence", for the purposes of section 402 of the Act, means any single or multiple family dwelling unit, including commonly held areas associated with any such unit.

(71) "SIP" means State Implementation Plan as required by section 110 of the Clean Air Act to insure that National Ambient Air Quality Standards will be attained and maintained.

(72) "Site limitation", when used with respect to any powerplant or installation, means a specific physical limitation associated with a particular site which relates to the use of an alternate fuel as a primary energy source for the powerplant or installation, such as—

(i) Inaccessibility to alternate fuels;

(ii) Lack of transportation facilities for alternate fuels;

(iii) Lack of adequate facilities for the handling, use, and storage of alternate fuels;

(iv) Lack of adequate land or facilites for the control or disposal of wastes from such powerplant or installation, including lack of pollution control equipment or devices necessary to assure compliance with applicable envirnomental requirements; and

(v) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental regulations.

(73) "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electricity by any State-regulated electric utility.

(74) "Statement of general policy" means a written statement issued by ERA and published in the FEDERAL REGISTER in a form to be codified in section 500.

(75) "Synthetic fuel" means any synthetic fuel derived from an alternate fuel and does not include synthetic fuels derived from petroleum or natural gas.

(76) "Turbine or combustion turbine" means an electric power generating unit that is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of any fuel, with an electric power generator driven by the engine.

(77) "Wetlands areas" means, for purposes of section 103(a)(12) of the Act, those geographical areas designated as wetlands areas by State or local environmental regulatory authorities, or in the absence of any such geographic designation, those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetation or aquatic life that requires saturated, seasonally saturated or tidally saturated soil conditions for growth or reproduction.

(b) *Electric region—Electric region groupings for reliability measurements with regard to the Powerplant and Industrial Fuel Use Act of 1978.* (1) The following is a list of electric regions for use with regard to the Powerplant and Industrial Fuel Use Act of 1978. The regions are identified by FERC (DOE) power supply areas as authorized by section 202(a) of the Federal Power Act except where noted. They will be reviewed annually by the Economic Regulatory Administration. Each grouping meets one or more of the following criteria:

(i) Existing centrally dispatched pools and hourly power brokers;

(ii) Systems with joint planning and construction agreements;

(iii) Systems with coordination agreements in the areas of—

(A) Generation reseve and system reliability criteria

(B) Capacity and energy exchange policies

(C) Maintenance scheduling

(D) Emergency procedures for dealing with capacity or fuel shortages;

(iv) Systems within the same National Electric Reliability Council (NERC) region with historical coordination policies.

The Power Supply Areas (PSA's), referred to in the definition of electric regions, were first defined by the Federal Power Commission in 1936. The most recent reference to them is given in the 1970 National Power Survey, Vol. I, Pg. I-3-16. In cases where an petitioner finds an ambiguity in a regional assignment he shall consult with ERA for an official determination.

(2) ELECTRIC REGION GROUPINGS

	DOE (FERC) power supply areas
(i) Allegheny Power System (APS).	7, except Duquesne Light Co.
(ii) American Electric Power System (AEP).	Entire AEP System.
(iii) New England Planning Pool (NEPOOL).	1, 2.
(iv) New York Planning Pool (NYPP).	3, 4.
(v) Pennsylvania-New Jersey-Maryland Interconnection (PJM).	5, 6.
(vi) Commonwealth Edison Co.	14.
(vii) Florida Coordination Group (FCG).	24.
(viii) Middle South Utilities.	25.
(ix) Southern Co.	22, 23.
(x) Gulf States Group	35.
(xi) Tennessee Valley Authority (TVA).	20.
(xii) Virginia-Carolina Group (VACAR).	18, 21.
(xiii) Central Area Power Coordination Group (CAPCO).	Cleveland Electric Illuminating Co., Toledo Edison Co., Ohio Edison Co., Duquesne Light Co.
(xiv) Cincinnati, Columbus, Dayton Group (CCD).	Cincinnati Gas & Electric Co., Columbus & Southern Ohio Electric Co., Dayton Power & Light Co.
(xv) Kentucky Group	19.
(xvi) Indiana Group	Indiana utilities except AEP.
(xvii) Illinois-Missouri Group/(ILLMO).	15, 40.
(xviii) Michigan Electric Coordinated Systems (MECS).	11.
(xix) Wisconsin-Upper Michigan Group (WUMS).	13.
(xx) Mid-Continent Area Power Pool (MAPP).	16, 17, 26, 27, 28.
(xxi) Missouri-Kansas Group (MOKAN).	29, 24.
(xxii) Oklahoma Group	33, 36.
(xxiii) Texas Interconnected Systems (TIS).	37, 38.
(xxiv) Rocky Mountain Power Pool (RMPP).	31, 32.
(xxv) Northwest Power Pool (NWPP).	30, 41, 42, 43, 44, 45.
(xxvi) Arizona-New Mexico Group.	39, 48 within Arizona.
(xxvii) Southern California-Nevada.	47, 48 in Nevada and California.
(xxviii) Northern California-Nevada.	46.
(xxix) Alaska	49.

(c) *Design capacity.* [Reserved for FERC promulgation of rules]

(d) *Natural gas.* "Natural gas" means any fuel consisting in whole or in part of natural gas; liquid petroleum gas; synthetic gas derived from petroleum or natural gas liquids; or any mixture of natural gas and synthetic gas, except as designated in subparagraph (1)(iv) below.

(1) Natural gas does not include—

(i) Natural gas which is commercially unmarketable either by reason of quality or quantity. Gas in commercially unmarketable when production from the well(s) does not provide adequate revenue to pay the operating expenses of production and distribution.

(ii) Natural gas produced by the user from a well acquired by the user prior to July 18, 1977 [1] the maximum efficient rate production rate of which is less than 250 million Btu's per day. For purposes of this subparagraph—

(A) "Produced by the user" means that the user must own a working (mineral) interest in the gas being produced from the subject well(s).

(B) "Maximum efficient production rate" means that rate at which production may be sustained without damage to the reservoir or the rate which may be sustained without damage to the ultimate recovery of gas through the well.

(iii) Synthetic gas, derived from an alternate fuel which is not mixed with natural gas; or

(iv) Natural gas for which the person proposing to use the gas certifies to ERA that:

(A) Such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) The Btu content of such synthetic gas is equal to or greater than the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) Such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) All necessary permits, licenses, or approval from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved, except that for purposes of the prohibition under Section 201(2) of the Act against powerplants being constructed without the capability of using coal or the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented.

(2) The application of subparagraph (1)(iv) with respect to the use of natural gas by any powerplant or major fuel burning installation is conditioned on the person using such natural gas submitting to ERA a report not later than 1 year after certification is made under subparagraph (1)(iv) and annual thereafter, containing the following information:

(i) The source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which subparagraph (1)(iv) applied during the annual period ending with the calendar month preceding the date of such report; and

(ii) The amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by subparagraph (1)(iv) which is used by such person during such annual period.

(3) In the case of any boiler subject to a prohibition under section 401 of the Act, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.

(e) *Petroleum.* "Petroleum" means crude oil and products delivered from crude oil, other than—

(1) Synthetic gas derived from crude oil and its derivatives;

(2) Liquid petroleum gas;

(3) Petroleum coke or waste gases from nonrefinery industrial operations; and

(4) Liquid, solid, or gaseous byproducts of refinery operations which are commercially unmarketable by reason of—

(i) Quality, where the byproducts, including components such as butane and propane which can be extracted from the byproducts, could not—

(A) Reasonably be expected to be used in nonrefinery operations; and

(B) Be produced and distributed at a price which would provide adequate revenue to pay the operating expenses of this production and distribution; or

(ii) Quantity, where—

(A) Insufficient or sporadic quantities of the byproduct, including components such as butane and propane

[1] NOTE.—July 18, 1977, is the date which the House of Representatives pased the provision introducing the maximum efficient production rate of 250 million Btu's per day into the proposed legislation.

which can be extracted from the byproducts, are produced to maintain an adequate and reliable supply to a potential user; and

(B) No dependable market exists for these byproducts, or components of the byproducts, which can support a price which will provide adequate revenue to pay the operating expenses of the production and distribution of the byproduct or its components.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart A—General Provisions

§ 501.1 Purpose and scope.

Part 501 establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Department of Energy and the Economic Regulatory Administration under Parts 501-506 of this Chapter.

§ 501.2 Appearance before ERA.

(a) If you are authorized to appear and participate in any proceeding relating to an order, rule, or petition for exemption, you may appear personally, or a duly authorized representative may appear on your behalf.

(b) Any petition, request or complaint filed by your duly authorized representative, must state that he is your duly authorized representative.

(c) ERA may deny, temporarily or permanently, your privilege of participating in ERA proceedings, including oral presentation, if ERA finds that you—

(1) Have made false or misleading statements, either orally or in writing;

(2) Have filed false affidavits or other writings;

(3) Lack the specific authority to represent the person seeking an ERA action; or

(4) Have disrupted or are disrupting a proceeding.

§ 501.3 Filing of documents.

(a) You have filed a document (for example, any application, request, complaint, or petition) with ERA when it has been accepted for filing. ERA will return any petition or document which is deemed incomplete. All documents and exhibits which are accepted for filing become part of the ERA file and will not be returned.

(b) Documents to be filed should be sent by mail or hand delivered. Documents sent by wire or facsimile should be confirmed in writing, sent by mail, or hand delivered.

(c) ERA will consider documents received after regular business hours to have been filed on the next business day. Regular business hours are 8 a.m. to 4:30 p.m., Eastern time.

(d) Address documents: Economic Regulatory Administration, Department of Energy, Code FUA, 2000 M Street NW., Washington, D.C. 20461

§ 501.4 Computation of time.

(a) *Days.* (1) When ERA computes time in days under these regulations, ERA will not include the day of the act (or default) from which a period of time begins to run. ERA will include the last day of the period, unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next weekday that is not a Federal legal holiday.

(2) ERA shall exclude Saturdays, Sundays or intervening Federal legal holidays from its computation of time when the period of time allowed or prescribed in the regulations is 7 days or less.

(b) *Additional time after service by mail.* Whenever DOE serves by mail an order, notice, interpretation or other document, specifying a time period for you to perform an act, refrain from performing an act, or commence a proceeding, you may add 3 days to the period prescribed.

§ 501.5 Extension of time.

ERA may provide for an extension of time to file if you can show good cause for the extension.

§ 501.6 Service.

(a) DOE will serve all orders, notices, interpretations or other documents which it is required to serve, personally or by certified mail unless otherwise provided in these regulations.

(b) ERA will consider service upon your duly authorized representative to be service upon you.

(c) Service by certified mail is effective upon mailing. ERA will consider official United States Postal receipts from certified mailing as prima facie evidence of service.

§ 501.7 General filing requirements.

(a) *Purpose and scope.* This section applies to all documents you file with DOE.

(b) *Signing.* (1) You or your duly authorized representative must sign and verify any petition, or other documents that are required to be signed by these regulations.

(2) If your authorized representative files any petition or other document, he must certify in the document that he is your duly authorized representative.

(c) *Labeling.* You should clearly label any petition or other document that you file with ERA, both on the document and on the outside of the envelope, according to the nature of the action involved (e.g., "Application for Exemption").

(d) *Obligation to supply information.* You are under a continuing obligation during any ERA proceeding in which you are involved to provide ERA with any new or newly discovered information that is relevant to that proceeding, including information relating to any document you file with any DOE or ERA office, relevant to the proceeding before ERA.

(e) *The same or related matters.* If you file a petition, or other document requesting ERA action you must state whether, to the best of your knowledge, the same or a related issue, act or transaction has been or presently is being considered or investigated by any DOE office, other Federal agency, department or instrumentality; or a State municipal agency. You must also state whether you, or someone acting for you, have made contact with any employee of DOE regarding the same issue, act or transaction. If you have made contact, you must provide ERA with the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Confidential information/number of copies to submit.* (1)(i) If an individual or firm wishes to claim that some or all of the information contained in any document or application filed with the DOE is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 (1970), as amended, or is information referred to in 18 U.S.C. 1905 (1970), or is otherwise exempt by law from public disclosure, and wishes to request that DOE not disclose this information, he must file together with the document two copies of the document from which he has deleted the information claimed to be confidential. These two non-confidential copies must be clearly labeled as "confidential information deleted" copies. In addition, the individual or firm which claims confidentiality must indicate in the original document that it is confidential or contains confidential information, and must file a concise statement of the justification for non-disclosure. If, for example, a claim is made that the information comes within the exemption in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information or is covered by 18 U.S.C. 1905, there must be a concise statement specifying why the information is privileged or confidential.

(ii) If an individual or firm filing any document or application does not wish to claim confidentiality pursuant to subparagraph (1)(i) above he must submit in addition to the original, one copy of the document or application, except as provided elsewhere, and indicate on the original and the copy that there is nothing confidential in the document.

(2) DOE retains the right to make its own determination with regard to claim of confidentiality. In the event DOE makes a preliminary determination that certain of the information claimed to be confidential should be released to the public, it shall send notice to the individual submitting the document of DOE's preliminary decision to deny a claim of confidentiality in whole or in part, and provide five days for responding to that notice. In the event the DOE determines, after considering any response to its preliminary determination, to release information which an applicant continues to claim is confidential, the DOE will provide notice of such determination, no less than 48 hours prior to public disclosure of the information.

(3) Paragraph (f) does not apply where you submit a DOE or ERA form which contains its own instructions on requests for confidential treatment of information.

(g) *Separate applications, petitions or requests.* If you are requesting an ERA action, you should submit a separate document for each action sought, utilizing the forms provided in these regulations, even if the application, petition, or request pertains to the same or a related issue, act or transaction. For purposes of this subsection, each exemption requested is a request for a separate action.

§ 501.8 Filing fees.

If you are submitting a petition which requires a filing fee, a check payable to the order of the United States Treasurer must accompany the petition before it will be accepted for filing.

§ 501.9 Effective date of orders or rules.

When ERA issues a rule or order under the Act, the rule or order will be effective as against all persons having notice of the rule or order, 60 calendar days after publication in the FEDERAL REGISTER, unless it is stayed, modified, suspended, or rescinded. The rule or order is deemed to be issued on the date, on which it is signed by an authorized representative or ERA, unless the rule or order provides otherwise.

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions of Parts 2002-2010 of this Chapter, the provisions of this part will control with respect to procedure.

§ 501.11 Addresses for filing documents.

(a)(1) This section provides you with the addresses for all petitions, forms, written communication and other documents that you file.

(2) The DOE National Office has facilities for the receipt of transmissions via TWX and FAX to its offices at 12th and Pennsylvania Avenue NW., and 2000 M Street NW. (The FAX machines are 3M full duplex 4- or 6-minute (automatic) and Dex 4100 Graphic Science full duplex 3- or 6-minute (automatic).) For purposes of Parts 500, 501, 502, 503, 504, and 505 of this Chapter, all your transmissions should be to the machines at 2000 M Street NW., except those to be sent to the Office of General Counsel which you should transmit to the machines at 12th and Pennsylvania Avenue NW.

FAX NUMBERS

202-566-9304	(3M) (12th and Penn.)
202-566-9864	(Dex) (12th and Penn.)
202-254-6175	(3M) (2000 M Street)
202-254-6461	(3M) (2000 M Street)
202-254-8906	(Dex) (2000 M Street)

TWX NUMBERS

710-822-1912	(12th and Penn.)
710-822-9454	(2000 M Street)
710-822-9459	(2000 M Street)

(b) You should address documents to be filed with ERA as follows: Economic Regulatory Administration, Department of Energy, Code FUA, Attn: (name of office to receive document, if known, and/or labeling as specified in Section 501.7), Washington, D.C. 20461.

§ 501.12 ERA Public Information Office.

(a) DOE will make available at Room B-110, 2000 M Street NW., Washington, D.C., for public inspection and copying—

(1) Each decision and order along with a statement setting forth the relevant facts and legal basis of an order, with confidential information deleted, issued in response to each petition or request for a public hearing.

(2) The written comments received from interested persons in connection with issuance of prohibition orders, the modification or rescission of prohibition orders, and a verbatim transcript of any oral comments made at a public hearing held prior to issuance of an order;

(3) The comments received during each rulemaking proceeding, with a verbatim transcript of the public hearing, if such a public hearing was held; and

(4) Any other information required by statute to be made available for public inspection and copying, and any information that ERA determines should be made available to the public through display in the ERA Public Information Office.

§ 501.13 Appeal.

Except as provided otherwise, you may not administratively appeal any action covered by this Part.

Subpart B Filing Fees

§ 501.20 Purpose.

This subpart provides you with the procedures for submission of fees charged for services rendered by ERA in the evaluation of certain petitions.

§ 501.21 Scope.

You must pay a filing fee when you file a petition for—

(a) An exemption, either permanent or temporary;

(b) An extension of a temporary exemption; or

(c) A modification or rescission of a prohibition imposed by rule or order.

§ 501.22 General exceptions; waiver.

(a) You are not required to pay a filing fee when you file—

(1) A petition for a prohibition by rule or order;

(2) A petition for a stay;

(3) A petition for an interpretation;

(4) A petition for any type of rulemaking involving general policy or a declaratory order; or

(5) A petition or request for any other type of administrative action not specifically covered by § 501.2 (a), (b) and (c) above.

(b) ERA may, upon application by any interested person, or upon its own initiative, waive the requirements of this subpart if ERA determines such waiver is authorized by law and is in the public interest.

§ 501.23 Payment of fees.

(a) *Time of payment.* You must include with the petition the full amount of the fee. ERA will not accept and will return any petition which does not include the total fee amount.

(b) *Fees not refundable.* You will be charged a petition fee irrespective of ERA's disposition of the petition or your withdrawal of the petition. If your petition is returned as incomplete the fee will be returned.

(c) *Method of payment.* You must pay the fee by check, draft, or money order payable to the U.S. Treasury.

§ 501.24 Fee schedule.

This schedule applies to all petitions for exemption except those which request exemption for peakload powerplants. This proposed schedule would include multiple petitions regarding a number of units at a single site or requests for multiple types of exemption regarding any unit. ERA reserves the discretion to impose on a case-by-case basis higher fees where the size or complexity of a particular petition require exceptional expenditures of administrative time and resources. ERA also intends to review the adequacy of these fees during the initial implementation of this new regulatory program

and, where appropriate, amend and refine them over time. DOE also reserves the right to reduce fees in response to a request made at a prepetition conference, at which evidence of overlapping costs may be presented.

Peakload exemption	$1,000
Solar mixtures exemption	5,000
Temporary or permanent exemption	25,000
Exemptions which require environmental analysis	85,000

Subpart C—Written Comments, Conferences and Public Hearings

§ 501.30 Purpose and scope.

This subpart establishes the procedures for requesting an ERA conference or a public hearing and for submitting written comments. Conferences and hearings shall be convened at the discretion of ERA consistent with requirements of the DEOA and FUA.

§ 501.31 Written comments.

ERA shall provide a period of 45 days for submission of written comments concerning a proposed prohibition rule or order or a petition for an exemption or permit. This period may be extended at the discretion of ERA. Written comments shall be filed in accordance with Subpart A of this part.

§ 501.32 Written comments and requests for an opportunity to be heard.

Within 21 days after the publication of a proposed prohibition rule or order or of a notice of the filing of a petition for an exemption or permit, any interested person may submit to ERA a written request for an opportunity to be heard at a conference or a public hearing. This time may be extended at the discretion of ERA.

§ 501.33 Conferences.

(a) Your request for a conference shall be in writing and include a showing as to why the conference will materially advance the proceeding. You must address the request to the ERA office that is conducting the proceeding.

(b) Actual notice of the time, place, and nature of the conference will be provided to the person who requested the conference. ERA will determine who may attend a conference, but a conference will generally include only the representative of the person requesting the conference, Government representatives, and other persons requested by the person requesting the conference.

(c) When ERA convenes a conference in accordance with this section, any person invited may present views as to the issue or issues involved. You may submit documentary evidence at the conference. Such evidence will be treated as if submitted in the regular course of a hearing. ERA will not normally have a transcript of the conference prepared but may do so at its discretion.

(d) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings by ERA unless ERA in its discretion determines that it would be advisable. ERA will, however, record for the public file the occurrence of any conference.

§ 501.34 Public Hearings.

A public hearing under this subsection is not intended to be an adjudicatory hearing and the adjudicatory provisions of sections 554 and 556 of the Administrative Procedure Act (5 U.S.C. 554, 556) do not apply.

(a) *Hearing request and attendance.* (1) If you are an interested person you may request and ERA will convene a public hearing on any proposed prohibition rule or order, or on any petition for an exemption or permit. Any interested person may file a request to participate in the public hearing. A request for a hearing or to participate in a hearing shall be in writing and signed by you. It shall include a description of your interest in the issue or issues involved and of the anticipated content of your presentation. When applicable, you must also provide a statement explaining why you would be an appropriate spokesperson for the particular view expressed.

(2) Participants at the public hearing will be afforded the opportunity for presentation of data and material, oral and documentary. Participants at the public hearing shall identify all witnesses and provide a copy of each exhibit to be presented to ERA not later than 10 days prior to the hearing date.

(b) *Presiding Officer.* ERA will appoint a Presiding Officer to conduct the public hearing and a panel to assist him. An agenda will be prepared to provide, to the extent practicable, for the presentation of all relevant views by competent spokespersons.

(c) *Notice.* ERA will convene a public hearing only after publishing a notice in the FEDERAL REGISTER which states the time, place, and nature of the public hearing.

(d) *Hearing Rules*—(1) *Order of presentation*—(i) *Opening statements.* For a proposed prohibition by rule or order, ERA may make an opening statement and, for a petition, the petitioner may make an opening statement. The length of statements will be within the discretion of the presiding officer.

(ii) *Principal presentation.* Following opening statements for a proposed prohibition by rule or order, those persons subject to such proposed prohibition, or in the case of an exemption petition, the petitioner, may resent his data and materials oral or documentary.

(iii) *Other presentations.* Following the principal presentation other persons, in the order of appearance in the hearing agenda, may present their data and materials, oral or documentary. Following presentations by all persons appearing on the hearing agenda, the Presiding Officer, solely within his discretion, may permit other persons to make presentations.

(iv) *Summary statements.* After all of the above presentations have been concluded, the participants in their order of appearance may make short and concise summary statements reviewing their positions.

(2) *Questioning.* At the public hearing ERA will provide any interested person with an opportunity to question—

(i) Other interested persons who make oral presentations;

(ii) Employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of the petition for an exemption or permit; and

(iii) Experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation. You may ask questions of those persons listed in paragraph (ii) by submitting the question in writing to the Presiding Officer. You are to submit questions to be asked of ERA employees or contractors 10 days in advance of the hearing. The Presiding Officer will determine if the question involves a material fact which is in dispute. He shall also restrict questioning which may be duplicative or not likely to result in a timely or effective resolution of the issues.

(3) *Witnesses.* The obtaining and use of witnesses is the responsibility of the participants. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant, the Presiding Officer, or the panel. The refusal of a witness to answer questions will be considered by ERA in determining the weight to be accorded the testimony of the witness. Witnesses will not be sworn.

(4) *Evidence.* The Presiding Officer shall have the authority to exclude data or materials which he deems to be improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation and filing and copies shall be provided for each participant. While large exhibits may be used

during the hearing, copies of such exhibits shall be provided in reduced size for submission as evidence. Two copies shall be furnished to the Presiding Officer and one copy to each participant. The Presiding Officer will be responsible for the exclusion of evidence which is irrelevant, immaterial or unduly repetitious.

(5) *Procedural Questions.* The Presiding Officer shall determine all procedural questions not governed by this subpart. The Presiding Officer shall have the authority to limit the number of witnesses to be used by any participant and to impose such time limitations as he shall deem reasonable.

(6) *Transcript.* ERA will have a verbatim transcript made of the public hearing. The transcript, together with any written comments submitted in the course of the proceeding, will be made available for public inspection and copying at the Freedom of Information Reading Room as provided in section 501.12.

(7) *ERA's Decision.* ERA's decision will be based on the public file, evidence presented at the public hearing together with the written comments submitted and other relevant information developed during the course of a proceeding.

§ 501.35 Public file.

(a) *Contents.* The public file in each case shall consist of the rule, order, or petition with supporting data and supplemental information, with the exception of material deemed by ERA to be exempt from disclosure under the Freedom of Information Act. In addition, the public file shall contain all data and information submitted by interested persons in favor of or in opposition to such rule, order or petition, excluding any material ERA deems to be exempt from disclosure under the Freedom of Information Act.

(b) *Availability.* The public file shall be available for inspection upon written request from any interested person. Documents in the public file may be removed only by ERA staff. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

(c) *Closing of the public file.* The public file shall remain open for 15 days following the public hearing during which time the interested persons may submit additional written statements.

Subpart D–Subpoenas; Witness Fees

§ 501.40 Issuance.

The Administrator of ERA, or his duly authorized agent, may sign and issue subpoenas either on his own initiative or upon your request, where your are a participant in that hearing. You must support your request for a subpoena by an adequate showing that the information you seek will materially advance the proceeding.

§ 501.41 Witness attendance; production of documents.

A subpoena may require the attendance of a witness, and/or the production of documentary or other tangible evidence in the possession or under the control of the person served, or both.

§ 501.42 Service.

(a) A subpoena may be served personally or by registered or certified mail. If a subpoena is served personally, it may only be served by a person who is not an interested person in the proceeding and is not less than 18 years of age. For purposes of this paragraph, you are an "interested person" if you are participating directly in the proceeding with respect to which the subpoena is issued.

(b) (1) ERA will serve a subpoena by delivering a copy of it to the person named in the subpoena.

(2) ERA will tender fees for one day's attendance and mileage, as specified in 501.43 of this subpart, with the subpoena. If ERA issues the subpoena at the request of any officer or agency of the United States, however, ERA will not tender the fees and mileage at the time of service.

(3) ERA will deliver a copy of the subpoena and any fees to a natural person by—

(i) Handing them to the person;

(ii) Leaving them at the person's office with the person in charge of the office;

(iii) Leaving them at the person's dwelling or the usual place of abode with a person of suitable age and discretion who resides there;

(iv) Mailing them to the person by registered mail, to his last known address; or

((v) Any method that provides the person with actual notice.

(4) ERA will deliver a copy of the subpoena and any fees to a person, other than a natural person, by—

(i) Handing them to a registered agent of the person;

(ii) Handing them to any officer, director, or agent in charge of any office of such person;

(iii) Mailing them to the last known address of any registered agent, officer, director, or agent in harge of any office of the person by registered or certified mail; or

(iv) Any method that provides any registered agent, officer, director, or agent in charge of any office of the person with actual notice and the fees are made available prior to the return date.

(5) If you have offices and operations in more then one jurisdiction, you may notify ERA in writing if you wish to designate one address to which any subpoena may be served.

(c) The ERA office with the responsibility for the proceeding in which the subpoena was issued will retain the original subpoena together with a certificate of service.

§ 501.43 Fees.

If you are subpoened by ERA, you will be paid the same fees and mileage as would be paid to a witness in a proceeding in the District Courts of the United States. The person requesting the subpoena will pay these fees and mileage, except that ERA may pay the fees and mileage when, in its judgment—

(1) The presence of the subpoenaed witness will materially advance the proceeding; and

(2) The person who requested the subpoena would suffer a serious hardship if required to pay the fees and mileage.

§ 501.44 Petition to quash or modify.

(a) If you are a person to whom a subpoena is directed, you may apply prior to the time specified for compliance in the subpoena, but not more than 10 days after the date of service of the subpoena, to the Administrator of ERA, to quash or modify the subpoena. You must include in your petition a brief statement of the reasons you rely on.

(b) The Administrator of ERA, or his duly authorized representative may—

(1) Summarily deny your application;

(2) Quash or modify the subpoena; or

(3) Condition the denial or grant of your petition upon the satisfaction of certain just and reasonable requirements.

(c) While the Administrator of ERA or his duly authorized representative is considering your petition to quash or modify a subpoena, you may petition for ERA to issue a stay of the obligation to comply with the subpoena in accordance with Subpart I.

§ 501.45 Enforcement.

If you refuse to obey a subpoena, ERA may request the Attorney General to seek the aid of the District Court of the United States for any district in which you are found to compel you, after notice, to appear and give testimony, and/or to appear and produce any subpoenaed documents before ERA.

Subpart E—Prohibition Orders

§ 501.50 Purpose and scope.

Section 301 of the Act authorizes ERA to prohibit by rule or order the use of petroleum or natural gas, or both in existing facilities if certain findings are made. Section 202 of the Act authorizes ERA to prohibit by rule or order the use of natural gas or petroleum, or both, in new non-boiler major fuel burning installations.

(a) This subpart establishes the procedures for the filing by existing powerplants or installations and by new non-boiler MFBI's of petitions for a rule or order prohibiting the use of petroleum and/or natural gas either in toto or, in the case of existing facilities, in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of the resulting mixture.

(b) A proceeding for issuance of a prohibition by order or rule may be commenced by ERA on its initiative or in response to a petition.

§ 501.51 What to file.

(a) You must file either a "Petition for a Prohibition Order" or "Petition for Prohibition by Rule", as appropriate, which should be clearly labeled as such. Your petition must comply with the general filing requirements stated in § 501.7 in addition to the requirements stated in this subpart, must be in writing and must be signed by a responsible authorized official.

(b) You may petition for a prohibition by order for an individual powerplant or installation or for combinations thereof at a single site. The petition should specify the applicable units. Petitions may be made for a prohibition by rule covering units which are not at the same site, but such rule may only cover individual powerplants or MFBI's and not combinations thereof.

(c) If you wish to claim confidential treatment for any information contained in the petition or other documnents submitted under this subpart, you must comply with the procedures set out in section 501.7.

§ 501.53 Where to file.

Petitions shall be filed at the address provided in § 501.11.

§ 501.52 Notice.

ERA shall publish your petition and a proposed order or rule in the FEDERAL REGISTER and shall serve a copy on the owner of each powerplant or installation that would be affected by the proposed rule or order. The notice shall describe the proposed action, state the content of the proposed order or rule and provide a period of no less than 45 days from the date or its publication in which interested persons may file written data, views or arguments, and request a public hearing in accordance with the provisions governing hearings set out in this part. In the case of a rule, the notice shall also contain a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the operator of any powerplant or MFBI required to be specifically identified in such rule.

§ 501.54 Contents.

(a) You shall state the type of order or rule requested. You shall make a full and complete statement of all relevant facts pertaining to the subjects of the petition and to the ERA action sought. You shall include a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the petition. You shall include the following information for all units to be covered by the rule or order:

(1) *Prohibitions on petroleum and/or natural gas use for existing powerplants or installations.* (i) Description of the facility, including, but not limited to, location, electric power and/or energy output, fuels utilized and rate of use thereof, and, in the case of a powerplant, the identification of the electric power dispatching systems with which the powerplant is interconnected.

(ii) Information regarding the powerplant or installation's capability to burn alternate fuels and an identification and description of any plant equipment or facilities necessary to the burning of an alternate fuel that you would have to acquire or refurbish to render the powerplant or installation fully capable of burning an alternate fuel.

(iii) Identify the type of fuel you intend to use; the source from which you now or will obtain the fuel; and the means you intend to use to transport the fuel.

(iv) Identify the maximum and minimum characteristics of other alternate fuels which are compatible with the facility's design tolerances; the source from which you could obtain such fuel; and the means of transporting the fuel to the facility.

(v) Identify any anticipated acquisition or refurbishing of alternate fuel handling and firing equipment (such as unloaders, conveyors, crushers, pulverizers, scales, burners, feeders, air heaters, soot blowers, instrumentation and controls, and waste disposal, that would be required to institute alternate fuel burning capability. Also include current copies of detailed plot plans and elevation drawings that are relevant to alternate fuel burning, and any information relevant to the adequacy of storage facilities for the alternate fuel.

(vi) Identify the expenditures associated with the procurement of the above new equipment or the refurbishing of existing equipment needed to institute alternate fuel firing capability, stating this information on a component by component basis, and also provide an estimate of the operating and maintenance expenditure differential (including the fuel expenditure differential) associated with the necessary changes.

(vii) Estimate any changes in capacity foreseen as a result of fuel conversion. Include any nameplate ratings assigned by the boiler manufacturer, and net dependable rating in the case of a powerplant. Describe the methodology employed in estimating changes in rated capacity.

(viii) Provide an estimate of the lead time necessary to institute alternate fuel firing capability (including the time associated with actions required to meet air pollution control regulations). Specify the estimated time for the acquisition or

(ix) Identify any State or local laws or policies that might limit the utilization of alternate fuel by the applicant.

(x) With respect to powerplants, information regarding the potential for the impairment of the reliability of service, if any, in the area served by the powerplant were a prohibition rule or order to be issued.

(xi) An estimate of the anticipated effect that the denial of the petition would have on your operation.

(xii) Any other information that you believe is pertinent to ERA's evaluation of the petition.

(xiii) A certification by your chief executive officer or his duly authorized representative of the accuracy of the information stated in the petition.

(2) *Prohibitions on petroleum and/or natural gas use by new non-boiler MFBI's.* (i) Description of the facility, including but not limited to, type of facility, location, energy output, fuels to be utilized and rate of use thereof, uses to be made of energy output (list Standard Industrial Code classification of products produced using the energy output of the facility), and the state of design and construction that the installation has reached at the time of the petition.

(ii) A description of the modifications to the design and construction of the installation, if any, required to render it capable of using alternate fuel as its primary energy source, if the capability currently is not planned.

(iii) The identification of the type of alternate fuel that is or will be the installation's design specification fuel, the source from which the petitioner

anticipates that it will be able to obtain the fuel and the supply's susceptibility to interruption and the method by which the fuel would be transported to the installation.

(iv) An identification and description of any contractual commitments for the design and/or construction of the installation and an analysis of the impact, if any, of the requirement that the installation be prohibited from using petroleum or natural gas as its primary energy source.

(v) An estimate of the anticipated effect that denial of the petition would have on your proposed operation.

(vi) Any other information that you believe would be pertinent to ERA's evaluation of the petition.

(vii) A certification by your chief executive officer or his duly authorized representative of the accuracy of the information stated in the petition.

(3) *Conference.* You may request a conference regarding the petition. If your request is not made at the time the petition is filed, you must make it as soon after as possible. Your request and ERA's determination concerning it shall be made in accordance with the subpart concerning conferences and public hearings.

§ 501.55 ERA evaluation.

(a) *Processing.* (1) ERA may investigate any statement in your petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. ERA may solicit or accept submissions from third persons relevant to your petition or other document. You will be afforded an opportunity to respond to all relevant third person submissions.

(2) ERA may conduct its own investigation and consider any other source of information in evaluating a petition or other document. ERA on its initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the petition.

(3) ERA may dismiss the petition without prejudice if it determines that there is not sufficient information upon which to base a decision, and if upon request the necessary additional information is not submitted by you.

(b) *Criteria.* ERA's decision with respect to a petition and the decision with respect to an ERA initiated proceeding shall depend on whether ERA can make the required findings.

§ 501.56 Public participation.

(a) Prior to the issuance of a rule or order, ERA shall publish a proposal to issue the rule or order in the FEDERAL REGISTER, together with a statement of the reasons for the rule or order.

(b) ERA shall take the actions described in 10 CFR 208 dealing with consideration of environmental impact.

(c) ERA shall provide an opportunity to petition for an exemption and shall process the petition in accordance with Subpart E.

(d) ERA shall provide all interested persons an opportunity to present oral data, views and arguments at a public hearing held in accordance with Subpart M.

(e) A copy of the proposed rule or order shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request the agency to comment thereon within the period provided to the public. In any case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons.

(f) A copy of the proposed rule or order, if to an installation, shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request the Commission to comment thereon within the period provided to the public. In any case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons.

§ 501.57 Decision and order.

(a) After consideration of a petition and other relevant information received or obtained during the proceeding, ERA may issue either a Prohibition Order or Rule or an order denying the petition for a rule or order.

(b) ERA shall include in the order a written statement of the pertinent facts, a statement of the legal basis upon which the order is issued, and, when a prohibition is issued, a recitation of the conclusions regarding the findings to be made by ERA and a summary of the rationale for each. The order shall provide that the prohibitions stated therein shall become effective on the date stated in the order.

(c) Enclosed with the order may be a schedule of events that should take place by a stated date (compliance schedule) to insure that any affected unit will be able to comply with the prohibitions stated in the order by the date stated. The compliance schedule may require actions by the affected unit 60 days subsequent to service of rule or order.

(d) ERA shall serve a copy of the order upon the petitioner or, if the action was initiated by ERA, upon the owner and operator of the affected unit(s) and upon any other person who participated in the proceeding by filing written comments or making oral presentation. Notice of issuance of the order shall be published in the FEDERAL REGISTER.

Subpart F—Exemptions

§ 501.60 Purpose and scope.

(a) If you own or control—

(1) A new powerplant or installation consisting of a boiler, this subpart provides you with the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA;

(2) A new installation other than a boiler this subpart provides you with the procedures for filing a petition requesting a temporary or permanent exemption under respectively, sections 211 and 212 of FUA, or for filing a petition which demonstrates that you would have been granted an exemption from a prohibition under section 202(b) of FUA;

(3) An existing powerplant or installation this subpart provides you with the procedures for filing a petition for temporary or permanent exemption under, respectively, sections 311 and 312 of FUA, or for filing of a petition which demonstrates that you would have been granted an exemption from a prohibition under section 303(a) of FUA;

(4) A new powerplant or installation this subpart provides you with the procedures for filing a petition requesting extension of a temporary exemption granted under section 211 of FUA for—

(i) Lack of alternate fuel supply, site limitations or environmental requirements;

(ii) Future use of synthetic fuels;

(iii) Public interest; or

(iv) Use of petroleum by certain installations.

(5) An existing powerplant or installation this subpart provides you with the procedures for filing a petition for extension of a temporary exemption granted under section 311 of FUA for—

(i) Lack of alternate fuel supply, site limitations, or environmental requirements;

(ii) Future use of synthetic fuels;

(iii) Use of innovative technologies;

(iv) Units to be retired;

(v) Public interest;

(vi) Peakload powerplants; or

(vii) Powerplants where necessary to maintain reliability of service; and

(b) If you are a petitioner for an exemption or extension of exemption under this subpart you must comply with the general filing requirements stated in Subpart A, in addition to the requirements stated in this subpart.

§ 501.61 Labeling of petition.

(a) If you are filing for a temporary exemption for a new or existing powerplant or installation under this subpart you must file a written "Petition for Temporary Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

(b) If you are filing for a permanent exemption for a new or existing powerplant or installation under this subpart you must file a written "Petition for Permanent Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

(c) If you are filing for extension of a temporary exemption for a new or existing powerplant or installation under this subpart you must file a written "Petition for Extension (or Renewal) of Temporary Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

§ 501.62 What to file.

If you are filing a petition under this subpart you must send to ERA your petition, meeting the requirements of this subpart and of Parts 502 and 503 or 505 of this Title including:

(a) A transmittal letter;

(b) A Fuels Decision Report, as required by Part 502; and

(c) The appropriate exemption forms

§ 501.63 Certification.

(a) (1) If you are a corporation filing a petition under this subpart, in addition to any affidavits and certifications required under Parts 500, 501, 502, 503, 504 or 505 of this Title, your chief executive officer, and your chairman of the board shall certify in writing to the truth of all allegations in your petition.

(2) Where you are a wholly-owned subsidiary filing a petition under this subpart, then the requirements of this subsection will apply both to you and to your parent corporation.

(b) If you are other than a corporation, and you file a petition under this subpart in addition to any affidavits and certifications required under Parts 500, 501, 502, 503, 504, and 505 of this Title, your chief managerial officer shall attest in writing to the truth of all allegations in your petition.

(c) You must include the attestations required under this section, together with any petition you file under this subpart.

§ 501.64 Fees.

If you file a petition for exemption or extension under this subpart, you must include any fees required under Subpart B of this Part, together with your petition, unless the fees have been waived by ERA under Subpart B of this Part.

§ 501.65 Where to file.

You must file any petition for exemption or extension of exemption under this subpart with the DOE National Office at the address provided in Section 501.11.

§ 501.66 When to file.

(a) You may file any petition for exemption under this subpart, at any time after May 8, 1979, except for petitions for exemption filed under Section 902 of FUA.

(b) You may file any petition for exemption under Section 902 of FUA at any time after November 9, 1978.

(c) You may file any petition for extension of a temporary exemption under this subpart, at any time during the period of effectiveness of the initial temporary exemption.

§ 501.67 Contents.

(a) In addition to the specific requirements contained in Parts 500, 501, 502, 503, 504, and 505 of this Title, you must include in any petition for exemption or for extension of a temporary exemption under this subpart—

(1) A complete description of the exemption or exemptions you seek;

(2) A complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of your petition, and to the ERA action you seek; and

(3) A full description of the pertinent provision and relevant facts contained in any relevant documents.

(b) You must submit copies of all proposed contracts, agreements, leases, instruments, and other documents determined to be relevant to any petition for exemption or extension of exemption under this subpart to ERA upon its request.

(c) You must submit your petition in the form prescribed in Appendix (to be published at a future date) to these regulations.

(d) If you wish to claim confidential treatment for any information contained in your petition or other document submitted under this subpart, you must comply with the procedures in Section 501.7.

§ 501.68 Adequacy of petition.

(a) ERA will in a timely manner inform you by letter, when ERA determines that your petition for exemption is adequate for filing.

(b) ERA may invite you to participate in a conference to discuss any defects in your petition for exemption or extension where your petition fails to contain necessary, required, or requested information and documentation, or otherwise fails to comply with the requirements of this subpart, or Parts 502 and 503 or 505 of this Title, and where this failure affects the adequacy of your petition under this subpart and Parts 502 and 503 or 505 of this Title.

(c) If you fail to submit necessary or requested information and documentation, in order to perfect your petition, ERA may return your petition without prejudice.

§ 501.69 Notice of petition.

(a) When ERA receives your properly filed petition under this subpart, it will publish a notice in the FEDERAL REGISTER. ERA will include in this notice a summary statement of your reasons for requesting an exemption, or an extension of a temporary exemption. ERA will provide in the notice a period of no less than 45 days for interested persons to file written data, views or arguments.

(b) When ERA receives your porperly filed petition, it will notify appropriate State agencies having primary authority to permit or regulate the construction or operation of a powerplant, or, where appropriate, an installation.

(c) ERA will transmit a copy of your petition to—

(1) The Administrator of the Environmental Protection Agency, and

(2) In the case of installations, the Federal Trade Commission.

(3) These agencies will have the same opportunity for comment that is provided other interested persons under this section.

§ 501.70 Hearing.

(a) Any interested person, within 15 days after publication of your petition under section 501.69, may request a hearing in order to present oral data, views and arguments concerning your petition.

(b) Either on its own initiative or upon receipt of a request for a hearing under this section, ERA will schedule a public hearing and will publish notice of the hearing in the FEDERAL REGISTER.

(c) ERA will hold any public hearing under this section in accordance with the provisions of Subpart C of this Part.

§ 501.71 ERA evaluation.

(a) *Processing.* (1) ERA may initiate an investigation of any statement in your petition or any other document submitted to it. ERA may utilize in its evaluation any relevant facts obtained by this investigation. ERA may request or accept submissions from third

persons relevant to your petition or other document, in which case you shall have an opportunity to respond to all relevant third person submissions. In evaluating your petition, ERA may conduct its own investigation and consider any other source of information. ERA on its initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of your petition.

(2) If ERA determines that there is insufficient information upon which to base a decision and if, upon request, you fail to submit necessary additional information, ERA may dismiss your petition without prejudice.

(b) *Criteria.* ERA's decision on your petition will depend upon whether you have met your burden of proving the necessary elements of the exemption or extension you seek, as provided for in Parts 502, 503, and 504 of this Title.

§ 501.72 Retained authority.

(a) ERA may redesignate a petition for an exemption from one kind of exemption to another or from a permanent exemption to a temporary exemption where pertinent factors and criteria relating to the petition indicate an exemption other than that chosen by you to be appropriate.

(b) ERA may adopt such different procedures as it deems necessary and reasonable in acting upon any particular petition.

§ 501.73 Decision and order.

(a)(1) ERA will issue an order either granting or denying your petition within 6 months after the end of the period for public comment applicable to your petition unless that period is extended by ERA.

(2) The period for public comment shall end—

(i) 45 days after the conclusion of a hearing held under Section 501.70 of this subpart; or

(ii) Where no hearing is held, at the expiration of the 45-day written comment period provided for in Section 501.69 of this subpart.

(3) ERA may on its initiative extend the period for public comment to a date certain by publishing notice in the FEDERAL REGISTER, including a statement of the reasons for the extension.

(b)(1) ERA will serve a copy of the order granting or denying a petition for exemption upon you, and upon any other person who participated in the proceeding by filing written comments or making oral presentation.

(2) ERA will publish any order granting or denying your petition under this subpart in the FEDERAL REGISTER together with a statement of the reasons for the grant or denial.

(c)(1) ERA will base any order granting or denying a petition for exemption upon consideration of the whole record, or those parts of the whole record cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(2) ERA will include in an order granting or denying a petition for exemption under this subpart a written statement of the pertinent facts and a statement of the legal basis upon which the order is issued.

(d)(1) ERA shall include in any order granting a petition for exemption, except for an order granting an exemption under section 401 of FUA, such terms and conditions as ERA determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of FUA.

(2) ERA will design any terms and conditions included in any temporary exemption issued or extended under Sections 211 and 311 of FUA, to insure that upon expiration of the exemption, the persons and powerplant or installation covered by the exemption will comply with the applicable prohibitions under FUA.

(e) Prior to the issuance of a permanent final order granting or denying a petition for exemption, ERA will perform an analysis of the environmental impact of the issuance of such order in accordance with applicable Department regulations implementing the National Environmental Policy Act of 1969.

§ 501.74 Judicial review.

If you are aggrieved by any order issued by ERA under this subpart, within 60 days of publication in the FEDERAL REGISTER of the order, you may file a petition for judicial review. You must file your petition with the United States Court of Appeals for the Circuit wherein you reside, or have your principal place of business.

Subpart H—Requests for Modification and Rescission of Orders and Rules Issued Under FUA

§ 501.100 Purpose and scope.

(a) If you own or operate a powerplant or installation which has received a prohibition rule or order under FUA, this subpart provides you with the procedures for filing a petition for modification or rescission of the order of rule.

(b) ERA may commence a proceeding under this subpart in response to your petition or upon its initiative. A proceeding commenced on ERA's initiative may be commenced by ERA at any time afte ERA has issued a prohibition order or rule under FUA. Sections 501.104, 501.106, 501.107, and 501.109 of this subpart shall be applicable to the proceeding regardless of the manner in which the proceeding was initiated. Other sections of this subpart apply only to a proceeding commenced in response to a petition.

§ 501.101 What to file.

(a) You must file a "Petition for Modification (or Rescission) of Prohibition Order or Rule (FUA)" which should be clearly labelled as such, using the applicable terms, both on the petition and on the outside of the envelope in which the petition is transmitted. The petition must be in writing and signed by you. You must comply with the general filing requirements stated in § 501.7 in addition to the requirements stated in this subpart.

(b) If you wish to claim confidential treatment for any information contained in the petition or other documents submitted under this subpart, you must comply with the procedures stated in § 501.7(f).

§ 501.102 Where to file.

You are to file the petition with the DOE National Office at the address provided in § 501.11.

§ 501.103 When to file.

You may file a petition under this subpart based on significantly changed circumstances at any time after the order is final.

§ 501.104 Notice.

(a) You must send by United States mail a copy of the petition and any subsequent amendments or other documents relating to the petition, from which confidential information has been deleted in accordance with § 501.7 (f), to each person who is reasonably ascertainable as a person who will be aggrieved by the ERA action you seek, including persons who participated in the prior proceeding. You must include with the copy of the petition a statement that the person may, within 10 days, submit comments regarding the petition to the ERA office with which the petition was filed. You shall include with the petition filed with ERA a certification to ERA that you have complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy fo the petition was sent.

(b) If you determine that compliance with paragraph (a) would be impracticable, you must:

(1) Comply with the requirements of paragraph (a) with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the petition a description of the persons or class or

classes of persons to whom notice was not sent.

(3) ERA may require you to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c)(1) ERA will serve notice on any other person readily identifiable by ERA as one who will be aggrieved by the ERA action sought and may serve notice on any other person that written comments regarding the petition will be accepted if filed within 10 days of service of the notice.

(2) If ERA on its initiative commences a proceeding for the modification or rescission of an order it will give notice, either by service of a written notice or by verbal communication, which communication must be promptly confirmed in writing, to each person who was served the order that ERA proposes to modify or rescind. ERA will give a reasonable period of time for each person notified to file a written response or give a verbal communication, if promptly confirmed in writing.

(d) If you are submitting written comments to ERA with respect to a petition filed under this subpart you must send a copy of the comments, or a copy form which confidential information has been deleted in accordance with § 501.7(f), to the petitioner. You must certify to ERA that you have complied with the requirements of this paragraph. ERA may notify other persons participating in the proceeding of the comments and provide an opportunity for the persons to respond.

§ 501.105 Contents.

(a) (1) Your petition must contain a complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of your petition and to the ERA action you seek. The facts must include the names and addresses of all affected persons (if reasonably ascertainable); a description of the acts or transactions that would be affected by the requested action; and a full description of the pertinent provisions and relevant facts contained in any relevant documents. You are also to submit, upon request, copies of all contracts, agreements, leases, instruments, and other documents relevant to your petition. You must include with your petition a copy of the prohibition order or rule of which modification or rescission is sought.

(2) Your petition must fully describe the events, acts, or transactions that comprise the significantly changed circumstances as defined in § 501.106, upon which your petition is based. You must state why, if the significantly changed circumstances are new or newly discovered facts, the facts were not or could not have been presented during the prior proceeding.

(b) You must state whether you request or intend to request that there be a conference regarding your petition. If you did not make a request at the time the petition was filed you must make it as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. Your request and ERA's determination regarding it will be made in accordance with Subpart C of this part, which determination is in ERA's discretion.

(c) You must include in the petition a discussion of all relevant authorities, including but not limited to, DOE or EPA rulings, regulations, interpretations, and decisions on appeals relied upon to support the action you seek.

§ 501.106 ERA evaluation.

(a) *Processing.* (1) ERA may initiate an investigation of any statement in your petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by the investigation. ERA may solicit or accept submissions from third persons relevant to any petition under this subpart. You will be afforded an opportunity to respond to all relevant third person submissions. The affected powerplant, installation, boiler or nonboiler's opportunity to respond to written comments or oral presentations in response to a notice of intention to issue a modification or rescission of an order shall be in accordance with the notice. ERA may conduct its own investigation and consider any other source of information in evaluating your petition. ERA may on its own initiative convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the petition.

(2) ERA may dismiss your petition without prejudice if it determines that there is insufficient information upon which to base a decision and if upon request you did not submit the necessary additional information.

(b) *Criteria.* ERA's decision will be based on a determination that there are significantly changed circumstances. For purposes of this paragraph, the term "significantly changed circumstances" mean—

(1) Your discovery of material facts that were not known or could not have been known to you at the time of the proceeding and action upon which your petition is based;

(2) Your discovery of a law, regulation, interpretation, ruling, order or decision on appeal that was in effect at the time of the proceeding upon which the petition or order is based and which, if it had been made known to ERA would have been relevant to the proceeding and would have substantially altered the outcome; or

(3) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing prohibition order was based, which change occurred during the interval between issuance of the order and the date of filing of the petition under this subpart, and was caused by forces or circumstances beyond your control.

§ 501.107 Decision and order.

(a) ERA shall issue an appropriate order after considering your petition and other relevant information received during the proceeding.

(b) ERA will either modify or rescind the prohibition order or rule or deny your petition for modification or rescission and will include a written statement setting forth the pertinent facts and legal basis of the order.

(c) ERA will serve the order upon you, the petitioner, or, if the action was initiated by ERA, upon the affected powerplant or installation. ERA will publish in the FEDERAL REGISTER a notice of issuance of an order substantially modifying or rescinding a prohibition order or rule.

§ 501.108 Timeliness.

(a) ERA will take action on a petition for modification or rescission of a prohibition order within 90 days of filing.

(b) ERA will issue an order granting or denying the petition within 150 days of the filing of your petition.

(c) For purposes of this section, the term "action" includes service of a "Notice of Intention to Modify (or Rescind) Prohibition Order" on the petitioner.

Subpart I—Requests for Stay

§ 501.120 Purpose and scope.

(a) This subpart provides you with the procedures for the petition for and granting of a stay by DOE. You are not, however, to use this subpart for the mandatory stays provided for in sections 202(b) and 301(a) of FUA.

(b) Your application for stay under this subpart will only be considered—

(1) Incident to a petition for modification or rescission of an order; or

(2) Pending judicial review.

(c) You must comply with all final DOE orders, regulations, rulings, and generally applicable requirements unless a petition for a stay is granted.

§ 501.121 What to file.

(a) You must file a "Petition for Stay (FUA)" which should be clearly labeled as such both on the petition and on the outside of the envelope in

which the petition is transmitted. The petition must be in writing and must be signed by you. You shall comply with the general filing requirements stated in § 501.7, in addition to the requirements stated in this subpart.

(b) If you wish to claim confidential treatment for any information contained in the petition or other documents submitted under this subpart, you are to use the procedures set out in § 501.7(f)

§ 501.122 Where to file.

You are to file your petition for stay of an order under FUA at the address provided in § 501.11.

§ 501.123 Notice.

DOE will publish notice in the FEDERAL REGISTER of receipt of an application for stay under this subpart.

§ 501.124 Contents.

(a) You shall include in your petition a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the petition and to the DOE action sought. The facts shall include, but not be limited to, criteria listed below in § 501.125(b).

(b) You may request a conference regarding the application. If your request is not made at the time the application is filed, you must make it as soon thereafter as possible. Your request and DOE's determination regarding it will be made in accordance with Subpart C of this part.

§ 501.125 DOE evaluation.

(a) *Processing.* (1) DOE may investigate any statement in your petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by the investigation. DOE may solicit or accept submission from third persons relevant to your petition or other document. You will be afforded an opportunity to respond to all relevant third person submissions. DOE may conduct its own investigation and consider any other source of information in evaluating a petition or other document. DOE on its initiative may convene a conference, if, in its discretion, it considers that the conference will advance its evaluation of the petition.

(2) DOE may dismiss the petition without prejudice if it determines that there is not sufficient information upon which to base a decision and if upon request the necessary additional information is not submitted by you.

(3) DOE will process petitions for stay as expeditiously as possible. DOE will grant or deny the petition for stay within 10 business days after receipt of the petition whenever it is administratively feasible to do so.

(b) *Criteria.* DOE will grant a stay if you show that there is a likelihood of success on the merits and you also show one or more of the following:

(1) That irreparable injury will result in the event that the stay is denied;

(2) That denial of the stay will result in a more immediate serious hardship, or gross inequity to you than to the other persons affected by the proceeding;

(3) That it would be desirable for public policy or other reasons to preserve the *status quo ante* pending a decision on the merits of the appeal, petition, modification or rescission; or

(4) That it is impossible for you to fulfill the requirements of the original order.

§ 501.126 Decision and order.

(a) DOE must issue an order granting or denying the petition upon consideration of the petition and other relevant information received or obtained during the proceeding.

(b) DOE will include in the order a written statement setting forth the relevant facts and the basis of the decision, including any terms and conditions of the stay.

Subpart J—Requests for Interpretation

§ 501.130 Purpose and scope.

This subpart provides you with the procedures you must use to file a formal request for an interpretation and with the procedures DOE will use to consider your request. Any response, whether verbal or written, to a general inquiry or to other than a formal written request for interpretation filed with the General Counsel or his delegate is not an interpretation and merely provides general information.

§ 501.131 What to file.

(a) If you are filing under this subpart you must file a "Request for Interpretation (FUA)" which should be clearly labeled as such both on the request and on the outside of the envelope in which the request is transmitted. You must sign your request and it must be in writing. Your request must also comply with the general filing requirements stated in § 501.7.

(b) If you wish to claim confidential treatment for any information contained in the request or other documents submitted under this subpart, the procedures set out in § 501.7(f) will apply.

§ 501.132 Where to file.

You must file a request for interpretation with the DOE General Counsel or his delegate at the address provided in § 501.11.

§ 501.133 Notice.

(a) You must send by U.S. mail a copy of your request and any subsequent amendments or other documents relating to the request, from which confidential information has been deleted in accordance with § 501.7(f) to each person who is reasonably ascertainable as a person who will be aggrieved by the DOE action you seek. You must include with the copy of the request a statement that the person may, within 10 days, submit comments regarding the request to the General Counsel or his delegate with whom the request was filed. You must include with the request filed with DOE a certification to DOE that you have complied with the requirements of this paragraph and you must also include the names and addresses of each person to whom a copy of the request was sent.

(b) If you determine that compliance with paragraph (a) would be impracticable, you must:

(1) Comply with the requirements of paragraph (a) with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the request a description of the persons or class or classes or persons to whom notice was not sent.

(3) DOE may require you to provide additional or alternative notice, may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) DOE will serve notice on any other person readily identifiable by DOE as one who will be aggrieved by the DOE action sought and may serve notice on any other person that written comments regarding the petition will be accepted if filed within 10 days of service of the notice.

(d) If you are submitting written comments to DOE with respect to a request filed under this subpart you must send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 501.7(f), to the requestor. You must certify to DOE that you have complied with the requirements of this paragraph. DOE may notify other persons participating in the proceeding of your comments and provide an opportunity for those persons to respond.

§ 501.134 Contents.

(a) You must include in the request a complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of your request and to the DOE action you seek. The facts must include the names and addresses of all affected persons (if reasonably ascer-

tainable) and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the request. You must submit copies of all relevant contracts, agreements, leases, instruments, and other documents with the request. When your request pertains to only one step in a larger integrated transaction, you must also submit the facts, circumstances, and other relevant information pertaining to the entire transaction.

(b) You must include in your request a discussion of all relevant authorities, including, but not limited to, DOE and EPA rulings, regulations, interpretations, and decisions on appeals relied upon to support the particular interpretation you seek.

§ 501.135 DOE evaluation.

(a) *Processing.* (1) DOE may initiate an investigation of any statement in a request or any other document submitted to it under this subpart, and may utilize in its evaluation any relevant facts obtained by the investigation. DOE may solicit or accept submissions from third persons relevant to your request for interpretation or any other document submitted under this subpart. You will be afforded an opportunity to respond to all relevant third person submissions. DOE may consider any other source of information in evaluating a request for interpretation or any other document submitted under this subpart. DOE on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the request.

(2) DOE will issue its interpretation on the basis of the information provided in your request, unless that information is supplemented by other information brought to the attention of the General Counsel during the proceeding. DOE's interpretation will, therefore, depend for its authority on the accuracy of your factual statements and you may rely upon it only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(3) DOE may refuse to issue you an interpretation, if DOE determines that there is insufficient information upon which to base a decision and if, upon request, you do not submit the necessary additional information.

(b) *Criteria.* (1) DOE will base its interpretations as applicable, on the DEOA, and FUA, and the regulations and published rulings of DOE as applied to the specific actual situation.

(2) DOE will take into consideration previously issued interpretations dealing with the same or a related issue.

§ 501.126 Decision and order.

(a) DOE may issue an interpretation after consideration of the request for interpretation and other relevant information received or obtained during the proceeding.

(b) The interpretation will contain a written statement of the information upon which it is based and a legal analysis of and conclusions regarding the application of rulings, regulations and other precedent to the situation presented in the request.

(c) You may rely on an interpretation only if it is specifically addressed to you or DOE served a copy of the interpretation upon you and you are directly involved in the same transaction or act. If you are entitled to rely upon an interpretation you will not be subject to the civil or criminal penalties stated in Subpart O of this part for any act you made in reliance upon the interpretation, notwithstanding that the interpretation is subsequently declared by judicial or other competent authority to be invalid.

(d) DOE may at any time rescind or modify an interpretation on its own initiative. Rescission or modification may be affected by notifying persons entitled to rely on the interpretation that it is rescinded or modified. This modification will include a statement of the reasons for the rescission or modification and, in the case of a modification, a restatement of the interpretation as modified.

(e) An interpretation is modified by a subsequent amendment to the regulations or ruling to the extent that it is inconsistent with the amended regulation or ruling.

(f) (1) If you are aggrieved by an interpretation you may submit a petition for reconsideration to the General Counsel within 30 days of service of the interpretation. You have not exhausted your administrative remedies until a period of 30 days from the date of service of the interpretation has elapsed without receipt by the General Counsel of a petition for reconsideration or, if you have filed a timely petition for reconsideration of the interpretation, until that petition has been acted on by the General Counsel. However, you may consider the petition as having been denied if the General Counsel does not respond to the petition within 60 days of the date of receipt thereof, or within such extended time as the General Counsel may prescribe by written notice to the petitioner concerned within that 60-day period.

(2) DOE may summarily deny a petition for reconsideration if—

(i) You have not filed it in a timely manner, unless good cause is shown; or

(ii) It is defective on its fact for failure to state, and to present facts and legal argument in support thereof, that the interpretation was erroneous in fact or in law, or that it was arbitrary or capricious.

(3) The General Counsel may deny your petition for reconsideration if you do not establish that—

(i) You are aggrieved by the interpretation;

(ii) The interpretation was erroneous in fact or in law; or

(iii) The interpretation was arbitrary or capricious.

DOE's denial of your petition for reconsideration shall be a final order of which you may seek judicial review.

Subpart K—Rulings

§ 501.140 Purpose and scope.

The General Counsel will issue rulings in accordance with the provisions of this subpart. General Counsel will publish each ruling in the FEDERAL REGISTER. You are entitled to rely upon a ruling to the extent provided in this subpart.

§ 501.141 Criteria for issuance.

(a) The General Counsel may issue a ruling whenever—

(1) There has been a substantial number of inquiries with regard to similar factual situations or a particular section of the regulations; or

(2) It determines that it will be of assistance to the public in applying the regulations to a specific situation.

§ 501.142 Modification or rescission.

(a) The General Counsel may modify or rescind a ruling by—

(1) Publishing the modification or rescission in the FEDERAL REGISTER; or

(2) A rulemaking proceeding in accordance with Subpart L of this part.

(b) You shall not be subject to the sanctions or penalties stated in Subpart O of this part for action taken in reliance upon a ruling, notwithstanding that the ruling is subsequently declared by judicial or other competent authority to be invalid. You may not rely upon a ruling after it has been declared invalid or after it is rescinded or modified as provided in paragraph (a) of this section.

§ 501.143 Comments.

You may file a written comment on or objection to a published ruling at any time with the General Counsel at the address provided in § 501.11.

Subpart L—Petition for Rulemaking

§ 501.150 Purpose and scope.

(a) This subpart provides you with the procedures you must use to request an ERA rulemaking proceeding. This subpart does not apply to a rulemaking to impose a prohibition under Subpart E. ERA may commence a rulemaking proceeding upon its own ini-

tiative or pursuant to a petition filed by any interested person.

(b) ERA will conduct rulemaking proceedings in accordance with the Administrative Procedures Act, the Department of Energy Organization Act, and FUA.

§ 501.151 Petitions for rulemaking.

(a) You may file a written petition for the issuance, amendment or repeal of regulation set out in sections 500-510 at any time. Your petition must be signed by the Chief Executive Officer.

(b) ERA shall consider your petition for a rulemaking and either—

(1) Institute a rulemaking as requested or as modified;

(2) Provide you with written reasons why ERA does not intend to institute a rulemaking as requested; or

(3) Notify you in writing that the matter is under consideration and that a decision cannot be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth in the notice.

§ 501.152 Comments in connection with rulemaking.

Comments filed in connection with a rulemaking must be filed in accordance with the instructions in the notice of proposed rulemaking published in the FEDERAL REGISTER. You must submit your comments in writing and they must be signed.

§ 501.153 Where to file.

You must file your petition with the Economic Regulatory Administration, Assistant Administrator for Regulations and Emergency Planning at the address provided in § 501.11. If you submit comments in connection with a rulemaking, you must submit them in accordance with the instructions in the notice of proposed rulemaking.

Subpart M—Complaints

§ 501.160 Purpose and scope.

This subpart provides the procedures you must use to file complaints alleging violations of any DOE or ERA rule, order, regulation, ruling, or interpretations of FUA.

§ 501.161 What to file.

If you wish to file a complaint under this subpart, clearly label your filing "Complaint", and submit it in writing over your signature in accordance with the general filing requirements stated in § 501.7. ERA will accept verbal complaints that otherwise satisfy the requirements of this subpart, but ERA may request written verification.

§ 501.162 Where to file.

You may file your complaint with the Assistant Administrator for Fuels Regulations Economic Regulatory Administration at the address provided in § 501.11.

§ 501.163 Contents.

You must include in your complaint a complete statement of all relevant facts pertaining to the act or transaction that is subject to your complaint. You must also include the names and addresses of all persons involved (if reasonably ascertainable), a description of the events that led to your complaint, and a statement describing the regulation, ruling, order, rule, or interpretation that allegedly has been violated.

§ 501.164 ERA evaluation.

(a) *Processing.* ERA may investigate any statement in your complaint or any other document submitted, and may utilize in its evaluation any relevant facts obtained by such investigation or from any other source of information. ERA may solicit or accept submissions from third persons relevant to your complaint or other related documents. ERA, on its initiative, may order a conference if it considers a conference will enhance ERA evaluation of your compliant.

(b) *Confidentiality of information.* ERA will treat as confidential information received in any investigation of your complaint, including your identity and the identity of any other person who provides information, to the extent such information is covered by the investigatory file exception to public disclosure contained in 5 U.S.C. 552. However, if ERA determines that disclosures would be in the public interest, ERA may release such information subsequent to notifying you of its intentions and offering you the opportunity to respond.

§ 501.165 Decision.

After considering your complaint and any other relevant information received or obtained during the proceeding, ERA may—

(a) Issue a notice of probable violation in accordance with the provisions of Subpart N of this part;

(b) Determine that no violation has occurred or that a notice of probable violation would not be appropriate; or

(c) Take such other action as it deems appropriate.

Subpart N—Notice of Violation and Remedial Orders

§ 501.170 Purpose and scope.

(a) ERA will determine the nature and extent of violations of any rule, regulation, exemption or order issued by it under the authority of the Act according to the procedures of this subpart. ERA will also issue Notices of Violation and Remedial Orders according to the procedures of this subpart.

(b) ERA will take whatever action is necessary under this subpart and Suppart O of this Part to determine the nature and extent of a violation when it has reason to believe a violation of any provision of any rule, regulation, exemption, permit or order issued by ERA under the authority of the Act has occurred, is continuing to occur, or is about to occur. Where time, the nature of the proceeding, and the public interest permit, ERA will privide alleged violators with a draft Notice of Violation at least 30 days prior to the issuance of a violation. Otherwise ERA will commence a proceeding under this subpart by service of Notice of Violation.

§ 501.171 Notice of violation.

(a) *Notice.* ERA may issue a Notice of Violation if after its investigation it finds, subject to reconsideration as provided in § 501.172 of this subpart, that you have committed, are currently committing or are about to commit a violation.

(b) *Contents.* (1) ERA will set forth in the Notice of Violation the nature of the violation, the relevant facts, the legal basis for the conclusions reached therein and other provisions of the order which are contemplated at that time including the proposed penalty if applicable.

(2) If ERA is proposing to assess a civil penalty, you will be informed in the Notice of Violation of your opportunity for a hearing before an Administrative Law Judge, as set forth in § 501.172(a)(1) below, before any final determination on the violation and penalty are made by ERA. You will also be informed in the notice of your right to elect to have the procedures of § 501.172(a)(2) below apply in lieu of the hearing with respect to a final determination on the assessment of any civil penalty.

(3) If ERA is not proposing to assess a civil penalty, you will be informed in the Notice of Violation of your opportunity for a conference as set forth in § 501.176(b) before a final determination on the violation is made by ERA. ERA may in its discretion also provide you with an opportunity for a hearing pursuant to § 501.172(a)(1).

(c) *Service.* ERA will serve a copy of the Notice of Violation upon you and upon other persons readily identifiable by the ERA as likely to be aggrieved by issuance of a Remedial Order.

(d) *Rescission.* ERA will notify in writing that the notice has been rescinded if it finds no violation has occurred, is continuing to occur, or is about to occur or if for any reason

ERA feels that the issuance of a Remedial Order would not be appropriate.

§ 501.172 Hearings and conferences.

(a) *When civil penalty proposed*—(1) *Hearing alternative.* (i) Unless you have elected to have the provisions of paragraph (2) of this subsection apply, ERA will convene, upon your request, a hearing before an Administrative Law Judge pursuant to section 554 of the Administrative Procedure Act (5 U.S.C. 554), before a final determination on the violation and penalty is made.

(ii) If you have received a Notice of violation you may request, within 30 days of receipt of the notice, an administrative hearing provided in subparagraph (i) above. To make a request you must comply with the instructions set forth in the notice.

(2) *Election alternative.* (i) If you have received a Notice of Violation, in which a penalty has been proposed, you may elect, within 30 days after receipt of the notice, to have ERA make a final determination on the violation and penalty within 45 days after you have notified ERA of your election.

(ii) If you are making an election provided in subparagraph (i) you must comply with the instructions set forth in the Notice of Violation. Your election under this subsection is final except that ERA may, if you request, revoke the election when good cause, as determined by ERA, is demonstrated for the revocation.

(b) *When civil penalty not proposed*—(1) *Conference.* If you have received a Notice of Violation, in which a civil penalty has not been proposed, you may, within 30 days after receipt of the notice, request a conference with ERA to discuss the notice. In order to request a conference, you must comply with the instructions set forth in the notice.

§ 501.173 Remedial order.

(a) *General.* ERA will issue you a Remedial Order if, after considering all the information received during the proceeding, the ERA determines that you have committed, are committing or are about to commit a violation.

(b) *Remedies.* ERA may, in any Remedial Order issued, require you to take such action as ERA determines is necessary to eliminate or to compensate for the effects of a violation.

(c) *Contents.* ERA will, in any Remedial Order issued under this section, set forth the relevant facts and legal basis of the order and where appropriate, the final penalty assessed and the basis therefor. When you have requested an administrative hearing as provided in § 501.172 above, the order will include the findings made by the Administrative Law Judge. The order will be effective upon service, unless otherwise provided in the order, until stayed, suspended, modified or rescinded on judicial review.

(d) *Service.* The ERA will serve a copy of the Remedial Order upon you, any other person who was served a copy of the Notice of Violation, and any other person readily identifiable by the ERA as one who is aggrieved by the order. ERA will place a copy of each final order, modified to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 54 U.S.C. 552, on file in the Public Information Office described in § 501.12.

(e) *Judicial review.* Judicial review of a Remedial Order is provided for in section 723 of the Act.

Subpart O—Investigation, Violations, Sanctions, and Judicial Actions

§ 501.180 Investigations.

(a) *General.* ERA may, in its discretion, initiate investigations to determine compliance by any person with any rule, regulation, exemption, or order issued by ERA under the authority of the Act, any decree of court relating thereto, or any other ageny action. ERA encourages your voluntary cooperation with its investigations. When the circumstances warrant, however, ERA may issue subpoenas as provided in Subpart D of this part. ERA may also conduct investigative conferences in the course of any investigation in accordance with Subpart C of this part.

(b) *Investigators.* Designated representatives of ERA will conduct the investigations. The representatives have the authority to administer oaths and receive affirmations in any matter under investigation by ERA.

(c) *Notification.* If you are under investigation in accordance with this section and are requested to furnish information or documentary evidence ERA will notify you as to the general purpose for which the information or evidence is sought.

(d) *Termination.* ERA may close the investigation file at any time, without prejudice to further investigation by ERA at any time the circumstances so warrant.

(e) *Confidentiality.* ERA will keep confidential any information received in an investigation under this section, including the identity of the person investigated and any other person who provides information during the investigation, unless otherwise determined by ERA, to the extent it is covered under the investigatory file exception to public disclosure contained in 5 U.S.C. 522.

§ 501.181 Violations.

You have committed a violation if you committed an act which results in a circumvention or contravention of the requirements of any provision of the regulations issued under the authority of the Act or any order, rule, exemption, or permit issued pursuant thereto.

§ 501.182 Sanctions.

(a) *General.* (1) If you violate any provision of the regulations issued under the authority of the Act or any order, rule, exemption or permit issued pursuant thereto you will be subject to the penalties and sanctions as provided herein.

(2) Each day that you violate any provision of the regulations issued under the authority of the Act or any order, rule, exemption, or permit issued pursuant thereto constitutes a separate violation within the meaning of the provisions of this section relating to civil penalties.

(b) *Criminal fines.* (1) If you willfully commit a violation under this subsection, except a violation of the provision of section 402 of the Act relating to the use of natural gas for decorative outdoor lighting, you will be subject to a fine of not more than $50,000 or imprisonment of not more than 1 year, or both, for each violation.

(2) The ERA may at any time refer a willful violation to the Department of Justice for criminal prosecution.

(c) *Civil penalties.* (1) If you commit a violation under this subsection you will be subject to the following civil penalties which may be assessed by the ERA:

(i) If you own or operate a facility which exceeds the use of natural gas or petroleum allowed by an exemption granted by ERA, the penalty will not be more than $3 per Mcf of natural gas or $10 per barrel of oil used in excess of that allowed by the exemption.

(ii) If you violate any other provision, the penalty will not be more than $25,000 for each violation.

(2) Either the General Counsel of DOE in consultation with the Department of Justice or, where appropriate, the Department of Justice, upon referral by ERA, will prosecute civil penalties.

(3) ERA may compromise and settle, and collect civil penalties whenever it considers it to be appropriate or advisable.

(d) *Corporate personnel.* (1) If you are a director, officer, or agent of a corporation and you willfully authorize, order or perform any act or practice constituting a violation of any provision of the regulations issued under authority of the Act, or any order, rule, or exemption, or permit issued pursuant thereto, you will be

subject to the penalties specified in paragraphs (b) and (c) of this section without regard to any penalties to which the corporation may be subject. You will not, however, be subject to imprisonment under paragraph (b) unless you also knew, or reasonably should have know of noncompliance by the corporation or had received from the ERA notice of noncompliance by the corporation.

(2) For purposes of this paragraph:

(i) "Agent" includes any employee or other person acting on behalf of the corporation on either a temporary or permanent basis, whether or not he/she has authority to engage in the particular activity involved; and

(ii) "Notice of noncompliance" is a Remedial Order issued under Section 501.173 of this Part.

(e) *Other penalties.* You will be subject to the criminal penalties provided in 18 U.S.C. 1001 (1970) if you willfully conceal a material fact, make a fraudulent statement or representation; or use or attest to any document containing a fraudulent statement pertaining to matters within the scope of the Act or the DEOA.

§ 501.183 Injunctions.

Whenever it appears to ERA that any person has committed, is committing, or is about to commit a violation of any regulation, order, rule or exemption issued under the Act, ERA may in accordance with Section 724 of the Act request the Attorney General to bring a civil action in the appropriate district court of the United States to enjoin such acts or practices. Upon proper showing, a temporary restraining order or a preliminary or permanent injunction will be granted without bond. The relief sought may include a mandatory injunction commanding any person to comply with any provision of such order, regulation, rule, exemption or permit the violation of which is prohibited by Section 724 of the Act and may also include interim equitable relief.

§ 501.184 Citizen suits.

(a) *General.* If you are aggrieved by the failure of ERA to perform any nondiscretionary act or duty under the Act you may file a Petition for Action for ERA to take such action as you may feel to be proper. You must file the petition with the Assistant Administrator for Fuels Regulation at the address provided in Section 501.11 of this Part. Your petition must specify the action requested and set forth the facts and legal arguments that constitute the basis for the request.

(b) *ERA decision.* Within 60 days of receiving the Petition for Action ERA will notify you that it has instituted the action you requested; that other action, as stated, is being taken; or that no action is being taken and state the reasons therefor.

(c) *Judicial relief.* If after you have received notice of ERA's decision you still feel aggrieved you may commence a civil action in the appropriate district court as provided in Section 725 of the Act. You may not commence any action under Section 725 unless you have satisfied the requirements of this section.

PART 502—FUELS DECISION REPORT

§ 502.1 Purpose and scope.

(a) If you petition for a temporary or permanent exemption from the prohibitions of this Title, you must submit as part of your petition a Fuels Decision Report. Your Fuels Decision Report should demonstrate the professional competence, and indeed excellence, of your good faith efforts to avoid using petroleum or natural gas. You can show how you tried to secure and rely on an alternate fuel. You can also show how you tried, at the least, to minimize the amount of oil or gas you use by attempting to substitute a mixture, to employ energy efficient technologies, and to implement other oil and gas conservation measures. The Fuels Decision Report describes the preliminary design analysis performed to make your fuels decision. It should accurately reflect the ingenuity and professional judgment used in attempting to find an energy source other than petroleum or natural gas which can serve your needs. It shows the calibre of your response to a fundamental technological challenge.

(b) We have not stipulated which alternate fuels you must consider. Selection of fuels is your choice, based upon your determination of your needs and supply opportunities. The kinds of fuel you might consider could range from coal to any fuel (or mixture, if appropriate) that is not petroleum or natural gas.

(c) Your Fuels Decision Report must demonstrate that you rigorously explored and objectively evaluated all reasonable alternatives to oil or gas. It must clearly and concisely describe the process and methodology you used to search for, analyze, and evaluate each fuel you considered, including documentation of feasibility reports, experts and sources used. The evidence you provide in support of your evaluation of each fuel considered must be sufficient to demonstrate that you qualify for one or more exemptions, and must meet the eligibility and evidentiary requirements pertaining to the appropriate specific exemptions covered by this Title.

(d) The kinds of information which must be included in your Fuels Decision Report may differ depending on the kind of exemption or the type of unit under consideration. The information required is outlined in the evidentiary requirements of Parts 503, 504, 505 and 506 of these regulations. For example, if you are requesting a permanent exemption, your Report must contain the results of you examination of the feasibility of using fuel mixtures and fluidized bed combustion technologies. If you are requesting a temporary exemption, your report must contain the results of your examination of the feasibility of using an alternate fuel immediately and of using a fuel mixture during the period of the proposed exemption. If you are requesting a permanent exemption for a powerplant, your report must in most cases contain the results of your examination of alternate sources of power and, in some cases, of alternative sites.

(e) The depth of analysis as to a specific alternate fuel will vary by chapter in your Fuels Decision Report. If you concluded that you cannot obtain an adaquate supply of a particular alternate fuel, your analysis and the evidence supporting that conclusion and demonstrating you eligibility for an exemption on those grounds should appear in the Availability Considerations Chapter. If you concluded that use of a second alternate fuel was not feasible due to certain State or local requirements, your analysis and evidence should appear either in the Site Considerations Chapter or in the Other Considerations Chapter. If you concluded that cost of using a third alternate fuel would substantially exceed the cost of using imported oil, taking due account of the costs of pollution control equipment and of purchasing and preparing land for wet sludge disposal, your analysis of the environmental requirements should appear in the Environmental Regulatory Chapter, and your analysis and documentation of the cost of using that fuel compared with using the cost of using imported oil should appear in the Economic Considerations Chapter. When use of a particular fuel is not affected by the considerations addressed in a particular chapter, you should merely include a statement to that effect. For example, if you concluded that there would not be environmental problems associated with use of the second alternate fuel you considered, you would simply state your conclusions and the reasons supporting it in the Environmental Regulatory Considerations chapter.

§ 502.2 General instructions.

(a) *Pre-filing conference for clarification.* You may request an informal pre-filing conference with ERA to discuss your forthcoming Fuels Decision Report and to clarify any questions you may have concerning the information required by this Part.

(b) *Pre-filing conference for waivers.* You may request an informal pre-filing conference with ERA to discuss whether your Fuels Decision Report must contain all of the chapters and information required by this Part. We retain the right to waive some of the requirements for the contents of the Fuels Decision Report if we determine that the purpose of the Act are best achieved by doing so. The grounds upon which we might consider waiving certain requirements could include:

(1) The burden of meeting such requirements could be excessive for a small firm or for a new firm;

(2) The burden of meeting such requirements could be excessive for firm requesting an exemption for an existing facility;

(3) The burden of meeting such requirements could be excessive for a petioner requesting a temporary exemption;

(4) The burden of meeting such requirements could be excessive for a petitioner requesting a certain type of exemption; or

(5) Other reasons as determined by ERA.

After the pre-filing conference, we will prepare a written memorandum of record identifying any requirements of the Fuels Decision Report which we agreed to waive. We will mail a copy of the memorandum of record to you within 10 days of the prefiling conference. If you file a petition for exemption, you must include a copy of the memorandum of record in your Fuels Decision Report. We also reserve the right to request any additional information that may be necessary once you have filed your petition.

(c) *Writing and organization.* Prepare you Fuels Decision Report as follows:

(1) Your Fuels Decision Report should be analytic rather than encyclopedic.

(2) You should discuss impacts in proportion to their significance. There should only be a brief discussion of minor issues.

(3) Your Fuels Decision Report should be concise, and be no longer than necessary to comply with these regulations. It should seriously express the results of professional engineering analysis. It should also convey those results in plain English understandable to the serious lay public.

(d) *Incorporation by Reference.* You may incorporate material into your Fuels Decision Report by reference when to do so will cut down on the bulk without impeding agency and public review of the Report. You must cite the incorporated material in the Report and briefly describe its content. Whenever you are citing material contained in the appropriate forms you have filed, you must indicate the name of the form, its date, and the page and section number that contains the material cited. You may not incorporate any material by reference unless it is submitted with your petition or has been submitted previously to DOE. If it has been previously submitted to DOE, you must identify the office to which it was submitted, and insure that it is reasonably available for inspection by ERA and by potentially interested persons within the time allowed for comment. You may not incorporate by reference any material based on proprietary data which is itself not available for review and comment.

(e) *Corporate responsibility.* (1) The Chief Executive Officer of the petitioner must certify that the information contained in the petitioner's Fuels Decision Report represents the best professional judgment and expertise available to the corporation in making its fuels decision.

(2) The Chief Executive Office shall complete and sign the following sworn statement:

I,———(name and title) of)———(name of firm, corporation, etc.) certify that I have read the following Fuels Decision Report and have personally made reasonable inquiry into the accuracy of its contents; that the Report represents the best professional expertise, knowledge, and judgment available to the———(name of firm, corporation, etc.) in making its fuels decision; and that I do not have knowledge of any inaccuracy in the Report. The steps taken in preparing the Report are described in Attachment A which is incorporated and made a part of this certification.

I cerfify that this statement, including the attached information, is true, complete and correct to the best of my knowledge and belief.

.....
(Signature)

.....
(Date)

(3) In addition to the statement in subparagraph (2), the Chief Executive Officer shall include as Attachment A to the certification:

(i) A description of how the national policies and public interests concerning use of alternate fuels were explained to the professional and management personnel who were involved in the decision to seek an exemption or who prepared any portion of the report, including copies of any corporate policy or other general statements explaining the nature and importance of the fuels decision for national energy and economic goals; a description and the dates of any meetings concerning such matters and identification of the persons who actually attended them;

(ii) A description of the process by which the petitioner has in the past made fuels decisions, including identification of the persons who would ordinarily be responsible for such decisions, and their reporting relationships within the corporation; and

(iii) A description of the process by which the petitioner made the decision to seek an exemption, including any review of the decision that was conducted after preparation of the Fuels Decision Report, identification of the persons primarily responsible for the decision or review and their reporting relationships within the corporation, and a description of the involvement of various levels within the corporation, with specific discussion of the involvement of the Executive Committee and governing body of the corporation, in the decision.

(f) *Professional responsibility methodology and scientific accuracy.* You must insure the professional integrity and competence of the analyses contained in your Fuels Decision Report, including the economic, engineering, and scientific analyses. You must identify any methodologies used, and you must make explicit reference by footnote to the scientific, economic, engineering and other sources relied upon for conclusions in the Report. You must require that the professional engineers, architects, scientists, economists, financial analysts, and other experts who prepared the Report certify to the accuracy and integrity of the portion they prepared. Each professional who was responsible for preparing a portion of the Report shall complete and sign the following sworn statement;

I,———(name and title) of———(name of corporation) having prepared the———portion of the Fuels Decision Report for the———(firm, corporation, etc.) certify that I have read the aforementioned portion of the Report, that such matters set forth therein represent my best professional judgment and are true and correct to the best of my knowledge and belief. I understand that I may be questioned orally or in writing under oath in a court or public administrative hearing concerning the aforementioned section and am willing to be so questioned.

.....
(Signature)

.....
(Date)

(g) *Relationships between Fuels Decision Report and Forms.* The Fuels Decision Report and the appropriate forms will constitute your petition for exemption. Your Fuels Decision Report will contain the analysis, evidence, and documentation required to support your request for exemption. The forms will contain summary data and quantitative information which will be used to screen your petition for eligibility adequacy and accuracy, and to insure that you provide the detailed information needed for analysis. The

forms you submit must reference the appropriate chapters and pages in your Fuels Decision Report where the explanation, justification, and back-up material supporting the information contained in the forms can be found. You may also reference the forms in your Fuels Decision Report, and incorporate then in your Report if appropriate.

§ 502.3 Contents.

Your Fuels Decision Report must contain—

(a) *Cover sheet.* (1) The name of the petitioner.

(2) The name and location of the unit for which an exemption is being requested.

(3) The specific exemption(s) being requested.

(4) The name, address, and telephone number of the person who can supply further information.

(5) The general form may be substituted for the cover sheet.

(b) *Certifications.* Your Fuels Decision Report must contain the certifications required in §§ 502.2(e) and 502.2(f) of this part. Such certifications shall follow the cover sheet of the Fuels Decision Report.

(c) *Summary.* Your Fuels Decision Report must contain a summary which adequately and accurately summarizes the Report. The summary must stress the major conclusions, i.e., the exemptions you are requesting, and the basis for those conclusions. The summary must not be more than 15 pages long. If ERA waived any requirements for your Fuels Decision Report, append to the summary the memorandum of record of the prefiling conference.

(d) *Table of Contents.* Include a Table of Contents representing the contents as follows:

CHAPTERS

(i) Cover sheet
(ii) Certification
(iii) Summary
(1) Introduction
(2) Fuels Considered
(3) Alternative Sites Considered
(4) Technical/Engineering Considerations
(5) Availability Considerations
(6) Economic Considerations
(7) Site Considerations
(8) Environmental Regulatory Considerations
(9) Operational Considerations
(10) Other Considerations
(11) Petroleum/Natural Gas Consumption
(12) Conservation Measures
(13) Environmental Impacts Analysis
(A-1) List of Preparers
(A-2) References
(A-3) Appendices

(e) *List of Preparers.* List the names, together with the qualifications and professional disciplines, of the persons who were primarily responsible for preparing the Report or significant background papers, including basic components of the Report. Identify the specific chapters or portions of the report each person prepared, and the previous experience, if any, of each of the acquisition, handling, or use of alternate fuels at that or a comparable facility.

(f) *References.* (1) List the references which identify the reports, documents, experts, and other sources you consulted in compiling the Report. Cite these sources in accordance with acceptable documentation standards, including references to the part of the Report to which they apply. If the source is unusual or little known, briefly describe its contents. Also, cite the documents enclosed as appendices and their relationships to the report.

(2) Identify at the end of each chapter of the Fuels Decision Report any information or any statement based in whole or in part on information or principles which, to your knowledge, are not in accordance with facts or principles generally accepted by experts in the particular subject matter.

(g) *Appendices.* Include in the appendices material which substantiates any analysis fundamental to the Report, materials prepared in connection with the report, relevant engineering feasibility studies, other studies and memoranda relating to fuel choice decisions prepared during the past 5 years, and any other documents, studies or analyses which are analytic and relevant to the decision to be made. Also include in the appendices copies of the forms you submit as part of your petition.

§ 502.4 Introduction.

This chapter is intended to give ERA a quick overview of your firm, what your firm does, and what the unit for which you are requesting an exemption is like. The purpose of this chapter is to provide a context for the remainder of the Report. You may substitute the general form for this chapter if appropriate.

(a) Brief description of your company;

(b) Description of your operation at the facility under consideration;

(c) Description of the need for the unit under consideration:

(1) Purpose of the unit,

(2) Operational requirements for the unit, including

(i) Size (capacity, input, and output in million Btu's per hour),

(ii) Output in terms of product or service to be supplied,

(iii) Operating mode, including capacity factor, utilization factor, and fluctuations in the load,

(3) For powerplants, for each year for 10 years for your company and your electrical region (reports regularly filed with DOE regarding your electrical region may be incorporated by reference):

(i) Projected demand,

(ii) Projected generation capacity to meet demand (by fuel and size of plant),

(iii) Calculation of reserve margin.

§ 502.5 Fuels considered.

Identify and describe the alternate fuels you considered, including mixtures, petroleum and natural gas. Specify the types of fuels you considered, their fuel characteristics, types of units (boiler, combined cycle, etc.) and equipment needed for each fuel, quality and quantities of fuel, and other relevant considerations. Provide a clear, competent and concise explanation of why you selected each fuel for consideration as well as a brief discussion of why you did not consider other alternate fuels. If you are requesting an exemption for a powerplant (except for cogeneration or peakload), you must also discuss alternate sources of electric power in this chapter.

§ 502.6 Alternative sites considered.

If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, identify and describe the alternative sites you examined for each alternate fuel you considered, as well as for petroleum and natural gas. Provide a clear, competent, and concise explanation of the approach and methodology you used for selecting and evaluating each site, in accordance with the evidentiary requirements set forth in § 503.11 of these regulations. Also briefly address the reasons you rejected consideration of other alternative sites. If you are requesting an exemption for an installation, or for an existing powerplant, you need not include this Chapter.

§ 502.7 Technical and engineering considerations.

Outline your approach and methodology for determining whether use of the alternate fuels you considered is technically feasible. Address the alternative unit designs you considered and the unit specifications required, etc. Indicate which fuels are not technically feasible and why you made that determination. If you concluded that there are no significant technical or engineering problems associated with the use of a particular fuel, you may merely state your conclusion and the reasons for it without providing in-depth analysis and documentation. Also outline and discuss any technical or engineering considerations which would require the use of petroleum or

of natural gas rather than an alternate fuel. Specific considerations which might be addressed include product or process problems, state of the art considerations, derating, and operational reliability problems. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load powerplant, address the appropriate technical and engineering considerations pertaining to each alternative site examined for each alternate fuel considered.

§ 502.8 Availability considerations.

Outline your approach and methodology for determining whether an adequate and reliable supply of the alternate fuels you examined is available. Also assess the availability of the kinds of petroleum and natural gas you considered. Identify the quantity and quality of fuels you sought, the number, kind and names of suppliers you contacted, the kinds of supply arrangements you proposed or were able to obtain (including prices), the timeliness of availability of the fuels, the impact of timeliness on reliability of service (if appropriate), the sources you used to conduct your search, and other availability questions. If you concluded that there are no significant availability problems associated with a particular fuel, you may merely state your conclusion and the reasons for it. If you are requesting a permanent exemption for a powerplant (except for cogeneration or peakload), address the alternate sources of electric power you considered. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, outline the appropriate availability considerations for each alternative site you examined for each alternate fuel you considered.

§ 502.9 Economic considerations.

Describe your approach and methodology for analyzing the relative economic benefits and costs of the alternate fuels, including petroleum and natural gas, you considered, and your findings. If you are requesting a permanent exemption for a powerplant (except for cogeneration or peakload), also address the economic considerations relating to the alternate sources of electric power you considered. Detail here the economic analyses you performed to determine whether use of a fuel is economically feasible. Economic considerations include capital costs, the ability to raise capital, operation and maintenance costs, fuel costs, transportation costs, and environmental costs. Present your assessment using the methodology for cost comparison calculations provided in §§ 503.5 and 505.5 of these regulations. Also present the approach, methodology and calculations you traditionally use to make economic decisions, and the results based on that methodology. If you concluded that use of a particular fuel is economically feasible, you may simply state this without providing in-depth analysis and documentation. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, outline the appropriate economic considerations for each alternate site you examined for each alternate fuel you considered.

§ 502.10 Site considerations.

Address the requirements that the use of alternate fuels, petroleum, and natural gas would impose on the site under consideration, and whether such requirements could be met. Site considerations could include accessibility of fuel, the adequacy of transportation facilities for delivery of fuel to the site, the adequacy of facilities and land for storage, use, and handling of fuel, the adequacy of facilities and land for disposal of wastes from the fuel, the availability and adequacy of water, and other potential site limitations. Describe the approach and methodology you used to assess the site requirements for each fuel you considered and the alternatives you examined for overcoming any site limitations. If you concluded that there are no significant site limitations which would preclude the use of a particular fuel, you may merely state this without further elaboration. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, analyze the alternative sites examined for each alternate fuel considered.

§ 502.11 Environmental regulatory considerations.

Describe the Federal, State and local environmental requirements, including air emission, water discharge and waste disposal limitations, which you must meet for each fuel considered. Also identify the equipment and facilities needed to meet the environmental requirements for each fuel. If the requirements can be met, but at an unreasonable cost, address the question of environmental costs in Economic Considerations Chapter. Describe the approach and methodology you used in making a good faith effort to comply with environmental requirements, including your examination of alternate technologies and fuels capable of meeting the requirements for necessary environmental permits. If you concluded that environmental standards and requirements would not constrain the use of a particular fuel, you may merely state your conclusion and the reasons for it. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, describe the environmental requirements and constraints pertaining to each alternative site you examined for each fuel you considered.

§ 502.12 Operational considerations.

Outline your operational requirements and the alternative approaches you examined to meet them. Describe and document the methodology you used to identify your load and reliability requirements, and to determine that a need exists for an emergency unit, a peakload unit, or for a unit capable of meeting scheduled equipment outages, if appropriate. Include an analysis of the feasibility of using alternate fuels, as well as petroleum and natural gas, for meeting such requirements. If you conclude that there are no significant operational considerations which would preclude the use of a particular fuel, you may merely state this without providing in-depth analysis and documentation. For powerplants, the analysis should address not only the facility under consideration, but your company and electrical region.

§ 502.13 Other considerations.

You may use this chapter to describe and analyze any other considerations which affected your fuel choice decisions, or to provide any other information which might be of use to ERA in evaluating your petition for exemption. Inclusion of this chapter is optional.

§ 502.14 Petroleum and natural gas consumption.

(a) Identify your current and projected petroleum and natural gas consumption for the unit for which you are requesting an exemption, and for the facility at which the unit is located. Provide the following information.

(1) *For powerplants and installations.* (i) How many units do you have at the facility under consideration which burn petroleum or natural gas (including the unit for which the exemption is requested), what is their nameplate and net dependable capac-

ity and current level of annual fuel consumption?

(ii) What are your retirement plans for your existing oil and gas units at the facility under consideration?

(iii) What are your projected (through 1990) annual levels of consumption of petroleum and natural gas (by fuel type and barrel or Mcf per year)?

(A) For the unit under consideration;

(B) For all existing oil and gas units at the facility under consideration;

(2) *For powerplants.* (i) How many units do you have in your system and electrical region which burn oil or gas, what is their capacity, and what is their current level of annual fuel consumption?

(ii) What are your retirement plans for the existing oil and gas units in your company and electrical region?

(iii) What are the projected (through 1990) annual levels of consumption of petroleum and natural gas (by fuel type and Bbl or mcf per year) for your company and electrical region?

(iv) What kind of regional planning has taken place so that you and other utilities in your electrical region will reduce your dependence on petroleum and natural gas?

(v) What are you doing to shift all of your existing powerplants off natural gas by 1990?

(vi) What changes in your dispatch of existing units do you contemplate if the exemption is granted, or if the exemption is denied?

(3) *For installations only.* (i) In the case of natural gas, what curtailment priorities will the unit and the facility under consideration fall under?

(b) If you are requesting an exemption which would allow you to use petroleum, identify the minimum amount of oil you would need for the unit under consideration in the event of a national emergency, such as a foreign supply interruption, which results in the reimposition of petroleum allocation controls. Also identify your plans and alternate courses of action during a national emergency if we were to prohibit you from using oil in that unit during such an emergency. For both the unit under consideration and the facility at which it is located, describe your fuel switching plans and capabilities.

§ 502.15 Conservation measures.

Identify, describe and document any conservation measures you have taken or intend to take to minimize the use of oil or gas if this exemption is granted. Outline the conservation measures you intend to take, and the conservation goals you have set for yourself, for the unit under consideration, for the facility at which the unit is or will be located, and for your company. Conservation measures entail either reduction in consumption of oil and gas or increased efficiency in the utilization of oil and gas. Such measures can range from housekeeping measures to replacement of inefficient units. Such measures also could include the use of mixtures of gas or oil and alternate fuels, and new more efficient technologies. Your description of the measures you intend to use should be detailed and should include comparative consumption figures, identification of conservation equipment or techniques, proposed manner of use, proposed date of use, cost, etc.

§ 502.16 Environmental impacts analysis.

(a) In order to aid us in fulfilling our objectives under the National Environmental Policy Act (NEPA), you must include this chapter in your Fuels Decision Report if you are requesting a permanent exemption for a new powerplant or installation, or a permanent exemption for an existing powerplant or installation relating to cogeneration, scheduled equipment outages, State or local requirements, or intermediate load powerplants. Material which has been included under § 502.11 or pursuant to any other requirement for environmental information may be incorporated by reference in this chapter.

(b) ERA will issue detailed guidelines for this Environmental Impacts Analysis chapter at a later time. In general, this chapter must contain the following:

(1) A clear and concise description of the existing site, and, in the case of new powerplants, alternative site(s) environment which may be affected by the grant or denial of your petition for exemption, including any pertinent summary technical data, maps, and diagrams;

(2) A detailed description of the probable environmental impacts resulting from the grant or denial of your petition, including direct and indirect impacts (including indirect increases in oil consumption attributable to the grant of your petition), and beneficial and negative impacts; and

(3) A discussion of how the grant or denial of your exemption would conform to or conflict with any existing or proposed Federal, State or local land use plans, policies or controls.

§ 502.17 ERA evaluation.

ERA will evaluate your Fuels Decision Report for its sufficiency under this Part. ERA may return your petition for exemption, in accordance with § 501.68, if you fail to submit a sufficient and complete Fuels Decision Report, fail to consider all reasonable alternate fuels, or fail to adequately demonstrate that you are unable to use any alternate fuel in lieu of petroleum or natural gas.

PART 503—NEW ELECTRIC POWERPLANTS

Subpart A—Statutory Prohibitions

§ 503.1 Purpose and scope.

(a) *Purpose.* This subpart sets forth the statutory prohibitions imposed by the Act.

(b) *Scope.* This subpart applies to all new electric powerplants for which construction or acquisition was initiated on or after April 20, 1977, except those designated as existing powerplants under Part 515 of this Title, or those granted an exemption under Subparts C and D of this Part. Any person who has any ownership or interest in, or who operates, rents or leases a powerplant is subject to the prohibition of the Act and the penalties specified by the Act.

§ 503.2 Statutory prohibitions.

Section 201 of the Act prohibits, except where an exemption has been granted under Subpart C or D of this Part, the following:

(a) The use of petroleum or natural gas as a primary energy source in any new electric powerplant; and

(b) The construction of any new electric powerplant without the capability to use an alternate fuel as a primary energy source.

Subpart B—General Requirements for Exemptions

§ 503.3 Purpose and scope.

This subpart establishes the general requirements necessary to qualify for either a temporary or permanent exemption under this Part and sets out the methodology for calculating the cost of using an alternate fuel and the cost of using imported petroleum.

§ 503.4 Fuels decision report.

(a) Before ERA will accept a petition for either a temporary or permanent exemption under this Part, you must include as part of your petition a Fuels Decision Report as described in Part 502. The Fuels Decision Report shall contain the analysis and documentation of the evidence required in support of your exemption request.

(b) Your petition may contain more than one exemption request. In this case, your petition would include one Fuels Decision Report which addresses your considerations and the appropriate forms for the exemptions you are processing.

§ 503.5 Cost calculations for new powerplants.

(a) *General.* If you are requesting an exemption for a new powerplant on the basis that the cost of using an alternate fuel as a primary energy

source or the cost of using an alternate power supply substantially exceeds the cost of using imported petroleum, you must use the comparative cost test provided in this section.

The cost of using an alternate fuel in lieu of imported petroleum as a primary energy source, or the cost to use an alternate power supply will be deemed to be substantially in excess of the cost to use imported petroleum where the ratio of the former to the latter is equal to or greater than the index set periodically by ERA.

Initially, ERA sets the index at (1.5). ERA will revise the index from time to time after public notice and an opportunity to comment. Revisions shall become effective for all ERA decisions after final publication.

The cost test takes into consideration capital outlays, operation and maintenance expenses, and delivered fuel expenditures. There are two comparative cost tests—a General Cost Test and a Special Cost Test. You must demonstrate eligibility for a permanent exemption using the procedures specified in the General Cost Test (section b). You must demonstrate eligibility for a temporary exemption using the procedures specified in the General Cost Test (section b) or the Special Cost Test (section c).

The General Cost test differs from the Special Cost Test with respect to the time period over which costs are calculated and the types of fuel consuming equipment being compared. When using the General Cost Test, the cost must be computed for the useful life of the powerplant. When using the Special Cost Test, the cost is computed only for the term of the exemption. In the General Cost Test the proposed oil or natural gas powerplant is compared with an alternate fuel capable powerplant. In the Special Cost Test an alternate fuel capable powerplant burning oil or natural gas is compared with an alternate fuel capable powerplant consuming that alternate fuel.

(b) *Cost Calculation—General Cost Test.* You may be eligible for a permanent exemption if you demonstrate that the cost of using an alternate fuel starting with each successive year within the first 10 years of operation will always substantially exceed the cost of using imported petroleum over the useful life of the powerplant. You will have to show that the cost of using an alternate fuel, starting in each of the first 10 years of operation and using oil or natural gas until the start of using an alternate fuel, substantially exceeds the cost of using only imported petroleum. In the case where you are comparing the costs of using an alternate power supply, you need only compare the cost of using the alternate power supply for the useful life of the powerplant to the cost of using imported petroleum in the proposed powerplant. If the costs of the former substantially exceeds the latter, you may be eligible for a permanent exemption.

ERA will not grant a permanent exemption if a temporary exemption solves the cost problem within ERA's definition. Therefore, if the cost computed with successive starting dates for alternate fuel use (for the first 10 years of operation) does not always substantially exceed the cost of using imported petroleum, you would only be eligible for a temporary exemption. The length of the temporary exemption would be for a minimum period where the cost of starting to use alternate fuel always substantially exceeds the cost of using imported petroleum. For example, if you plan to burn a coal derived fuel such as Low-Btu gas, which is not scheduled to be available form a bona fide supplier for 2 years after the installation of the boiler designed to burn the coal derived fuel, DOE may grant a temporary exemption and allow the burning of natural gas based on an acceptable certification of the schedule of delivery of the coal derived fuel.

For the General Cost Test, ERA defines cost as the sum of the annual outlays for capital, operations and maintenance and delivered fuel, discounted to the present.

To conduct the test, you must use the equations that follow.

Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 1.

$$\text{EQ 1} \qquad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

Calculate the cost of using an alternate fuel and imported petroleum with equation 2.

$$\text{EQ 2} \qquad \text{COST} = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_N + FL_N}{(1+K)^N} - \frac{S_p}{(1+K)^p} \quad 1/$$

[6450-01-C]

Calculate investment (I), operations and maintenance (OM), and fuel (FL) for equation 2 using equations 3, 4 and 5.

$$\text{EQ 3} \qquad I = I_o + \frac{I_1}{(1+K)^{\bar{1}}} + \frac{I_2}{(1+K)^{\bar{2}}} + \ldots + \frac{I_N}{(1+K)^{\bar{N}}}$$

1/The electric power industry is a regulated industry. Its profits depend upon its regulators as well as its costs. Since there are many regulatory bodies, which do not always act the same way, we decided not to be concerned with the profits, per se, but only with the costs to society of producing electricity. The income taxes paid by the utilities are transfer payments, from a societal point of view, and therefore are not included in the calculation.

EQ 4 $\quad OM = 8760 \times ACF \times O \times C$

EQ 5 $\quad FL = 8760 \times ACF \times C \times f \times H$

The terms in equations 1 through 5 are defined as follows:

R - The ratio of the cost of using an alternate fuel to the cost of using imported petroleum.

COST - The total discounted cost in dollars for the period of the exemption (life of the plant) of constructing and operating the plant.

I - Discounted total net capital outlay in dollars, excluding investment tax credits and "Advances in Aid of Construction" (as per FERC system of accounts). May include investment in additional transmission facilities to deliver power to your service area. (ERA will not consider investment tax credits for oil or gas fired powerplants.)

I_o - Net capital outlay in dollars up to the time the powerplant goes into operation or the alternate power supply becomes available.

$I_1 ... I_n$ Yearly net capital outlay from first year of operation through the life of the plant.

OM - Annual cost in dollars of operating and maintaining the unit. May include expenditures for wheeling power to your service area.

S_p - Salvage value of equipment rendered useless by changing the fuel from oil or natural gas to alternate fuel in year p, if the fuel is changed.

ACF - Annual capacity factor of the plant expressed as a fraction (see Section d).

O - Operations and maintenance in dollars per Kwh at 70% annual capacity factor ($/Kwh).

C - Design capacity of the plant in kW.

FL - Annual delivered fuel expenditures in dollars.

f - Delivered fuel expenditures to the plant expressed in dollars per Btu.

H - Heat input rate for the plant in Btu per KWH

P - Year fuel is changed from oil or natural gas to alternate fuel.

K - The real cost of capital expressed as a fraction (see Section d).

N - The useful life of the powerplant (see Section d).

8760 - The number of hours in a year.

Fuel transportation costs are part of delivered fuel expenditures except where you must invest in capital equipment to deliver the fuel. The capital outlays for this equipment are included in the capital outlay terms. Similarly, the cost of delivering power to your service area should be included in operations and maintenance unless you must construct transmission facilities, in which case you may include these expenditures in the capital outlay term.

The step by step procedure that follows shows the comparison that you must make. It outlines the equipment and fuel comparisons as well as the time comparisons. If you are using the test to demonstrate eligibility for a lack of alternate fuel supply exemption begin with step (A). If you are using the test to demonstrate that there is no alternate supply of power, use only steps (A), (D), (E), and (F).

(A) Compute: the cost (COST) of using an alternate fuel in an alternate fuel fired powerplant from the start of operation with equation (2).

(2). (b) Compute the cost (COST) of using an alternate fuel in a dual fire powerplant (alternate fuel and oil or natural gas) with equation (2) assuming an alternate fuel is not used as the primary energy source until the end of the first year of operation and that oil or natural gas is used for the first year of operation. Capital investment, operating and maintenance and fuel expenditures should reflect postponed use of alternate fuel (e.g., installation of scrubber when used).

(C) Successively compute the cost (COST) of using an alternate fuel in a dual fired power plant with equation (2) assuming alternate fuel is postponed until the end of the second through tenth year of operation (and oil or natural gas is used in the years preceeding alternate fuel use).

(D) Compute the cost (COST) of using oil or natural gas in an oil or natural gas fired powerplant as the primary energy source with equation (2) throughout the useful life of the unit.

(E) If you are comparing the use of an alternate power supply with the use of imported petroleum, compute the ratio of the cost of using the alternate power supply to the cost of using oil or natural gas both for the lifetime of the powerplant. Otherwise, compute the ratios (R) of the cost of using an alternate fuel at the beginning of operation, and successively at the end of the first through tenth year to the cost of using oil or natural gas throughout the life of the powerplant with equation (1).

(F) If all the ratios (R) are greater than, for illustrative purposes, 1.5 (an index to be set periodically by ERA), your proposed powerplant would meet the cost criteria for a permanent exemption. If one or more of the ratios (R) is equal to or less than 1.5 and a series of ratios (R), starting with the case where alternate fuel is used from the start of operation, are all greater than 1.5, a temporary exemption would be granted for the minimum period in which the cost of starting to use alternate fuel, deferred year by year, always exceeds 1.5.

The following table shows the hypothetical results of four sets of calculations.

HYPOTHETICAL RESULTS OF FOUR SETS OF CALCULATIONS

Year in which alternate fuel use is commenced	Case I	Case II	Case III	Case IV
At start of operation	1.7	1.7	1.7	1.3
1	1.7	1.7	1.7	1.3
2	1.4	1.7	1.7	1.3
3	1.4	1.7	1.7	1.3
4	1.4	1.7	1.4	1.3
5	1.4	1.7	1.4	1.0
6	1.4	1.7	1.2	1.0
7	1.4	1.7	1.2	1.0
8	1.4	1.7	1.2	1.0
9	1.4	1.7	1.2	1.0
10	1.4	1.7	1.2	1.0

The result of the above table shows that: A 2-year temporary exemption would be granted in Case I, a permanent exemption would be granted in Case II, a 3-year temporary exemption would be granted in Case III, and no exemption would be granted in Case IV.

(c) *Cost calculations—Special cost test.* You may be eligible for temporary exemption if you demonstrate that the cost of using an alternate fuel in an alternate fuel fired powerplant will substantially exceed the cost of using oil or natural gas in a dual fired powerplant (alternate fuel and oil or natural gas) over the period of the proposed exemption. The period of the exemption cannot exceed 10 years. You will have to show that the cost of using an alternate fuel substantially exceeds the cost of using imported petroleum for the first year of operation, the first two years of operation, and successive first years of operation, up to the period of the proposed exemption. To do so, you must perform the calculations with successive ending dates to determine the maximum length of the exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

The factors included in the computation are the operations and maintenance, delivered fuel expenditures incurred over the period of the proposed exemption, and marginal capital outlays required to use gas or oil as a primary energy source during the period of the temporary exemption.

To conduct the test, you must use the equations that follow.

Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 6.

$$\text{EQ 6} \quad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

Calculate the cost using equation 7.

$$\text{EQ 7} \quad \text{Cost} = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_p + FL_p}{(1+K)^p} - \frac{Sp_p}{(1+k)^p}$$

[6450-01-C]

Calculate investment (I), operations and maintenance (OM), and fuel (FL) for equation 7 using equations 8, 9, and 10.

$$\text{EQ 8} \quad I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_p}{(1+K)^p}$$

$$\text{EQ 9} \quad OM = 8760 \times ACF \times O \times C$$

$$\text{EQ 10} \quad FL = 8760 \times ACF \times C \times f \times H$$

The terms in equations 6 through 10 are defined as follows:

R - The ratio of the cost of using an alternate fuel to the cost of using imported petroleum.

COST - The total discounted cost in dollars of constructing and operating the powerplant for the period of the exemption.

I - Discounted total net capital outlay in dollars excluding investment tax credits and "Advance in Aid of Construction" (as per FERC system of accounts) to use oil or natural gas as a primary energy source during the period of the proposed exemption in a dual fired powerplant. The investment in the basic powerplant (that which would be required if oil or natural gas was not used) itself is not included in this comparison as it is irrelevant. (ERA will not consider investment tax credits for oil or gas fired powerplants.)

I_o - Net capital outlay in dollar up to the time the powerplant goes into operation to use oil or natural gas as a primary energy source during the period of the proposed exemption in a dual fired powerplant.

$I_1 \ldots I_p$ Yearly net capital outlay from first year of operation up to the change to alternate fuel to use oil or natural gas as a primary energy source during the period of the proposed exemption in a dual fired powerplant.

OM - Annual cost in dollars of operating and maintaining the powerplant.

S_p - Salvage value of equipment rendered useless by changing from oil or natural gas to alternate fuel,

ACF - Annual capacity factor of the powerplant expressed as a fraction (see Section d).

O - Operations and maintenance costs in dollars per KWH at 70% annual capacity factor ($/kWh).

C - Design capacity of the plant in KW.

FL - Annual delivered fuel expenditure in dollars (see section d).

f - Delivered fuel expenditure to the plant expressed in dollars per Btu (see Section d).

H - Heat input rate for the plant in Btu per KWH.

K - The real cost of capital expressed as a fraction, (see Section d).

p - The period of the proposed exemption.

8760 - The number of hours in a year.

The step by step procedure that follows shows the comparisons you must make.

(A) Compute the cost (COST) of using an alternate fuel in an alternate fuel fired powerplant assuming the length of the proposed exemption is 1 year with equation 7.

(B) Compute the cost (COST) of using oil or natural gas valued at imported petroleum prices in a dual fired powerplant assuming the length of the proposed exemption is 1 year with equation 7.

(C) Compute the ratio (R) of the cost of using an alternate fuel for the first year to the cost of using imported petroleum for the first year with equation 6.

(D) Repeat the calculations made in (A), (B), and (C) above assuming the length of the proposed exemption is 2 years, 3 years, 4 years, and so on, up to the period of the proposed exemption.

(E) A temporary exemption would be granted where the ratios (R) are greater than, for illustrative purposes, 1.5 (the index to be established by ERA).

(d) *Information on parameters used in the calculation. (1) All estimated expenditures, except natural gas, and petroleum products, shall be expressed in real (uninflated) terms using the prices in effect at the time the petition is submitted.*

(2) The delivered price of oil or natural gas to be used in the cost calculation must reflect the price of imported oil.

The imported petroleum price is reflected in the cost calculation in the following way:

$$PFE = \frac{PICO}{PCCO} \times PF$$

where

PICO = Price of imported crude oil. The most recent refiner acquisition cost of imported crude oil as reported in the Federal Register monthly notice for the DOE Domestic Crude Oil Allocation (Entitlements) Program.

PCCO = Price of composite crude oil. The most recent weighted average cost of total reported crude oil receipts as reported in the Federal Register notice for the DOE Entitlements Programs.

PF = Price of your fuel. The most recent actual weighted average cost of your fuel oil (other than natural gas). Alternatively, if no purchases of fuel oil occurred, or you used natural gas during that month, you should use a simple average of the industrial price of fuel oil (capable of being burned in your facility) sold in your area by at least three suppliers.

For proposed natural gas users, you shall use the price of No. 2 distillate fuel oil in this calculation.

PFE = Price of fuel for equation the cost of oil for use in Equation 1.

(3) For new powerplants, the annual capacity factor shall be assumed to be 70 percent of the design capacity.

(4) The useful life of a coal, nuclear, oil or natural gas fired powerplant will be 35 years. The useful life of other alternate fuels powerplants shall be presumed to be 35 years. You may rebut this presumption with suitable engineering evidence.

(5) The cost of capital for electric utilities is 3.5 percent per year in real terms.

(6) All estimated expenditures will be computed in accordance with generally accepted accounting principles.

(e) *Evidence Supporting the Comparative Cost Test.* All petitions for exemption requiring the use of the comparative cost test shall include, but not be limited to, the following information:

(1) A detailed accounting of all capital outlays including a description of all major construction and equipment. All critical assumption should be stated and sufficient data should be included to support your estimates.

(2) A detailed accounting of all operations and maintenance expenditures including a description of all major elements. All critical assumptions should be stated and sufficient data included to support your estimates.

(3) A detailed accounting of all delivered fuel expenditures including transportation. All critical assumptions should be stated and sufficient data included to support your estimates. The fuel characteristics for each alternate fuel should be included.

(4) If the useful life of the new powerplant is judged to be less than 35 years, all critical assumptions and sufficient data to support that position.

(5) The powerplant design capacity and the heat input rate, for each fuel considered.

(f) *Example of calculations.* You are planning to build a new powerplant and the fuels you are considering are coal and oil. In this particular situation, the delivered cost of coal is much greater for the first three years than it will be in later years because of a transportation problem requiring three years to resolve. Do you qualify for an exemption? If so, is it permanent or temporary?

To determine if you qualify for a permanent exemption, you would have to use the General Cost Test and compute the ratios of the cost to use (1) coal for the useful life of a coal fired powerplant, (2) oil for the first year and coal for the remainder of the useful life of a dual fired powerplant, (3) oil for the first two years and coal for the remainder of the useful life of a dual fired powerplant * * *, and 11) oil for the first 10 years and coal for the remainder of the useful life of a dual fired powerplant to the cost of using oil for the entire useful life of an oil fired powerplant.

All 11 ratios would have to be higher than 1.5 in order to qualify for a permanent exemption. However, if a series of successive ratios, starting with the case where alternate fuel is used from the start of operations, are all greater than 1.5, you would be eligible for a temporary exemption up to the last year the ratio is greater than 1.5.

In this example, we will only compute the ratios of (1) the cost to use coal for the useful life of a coal fired powerplant and (2) the cost of using oil for the first three years and coal for the remainder of the useful life of a dual fired powerplant to the cost of using oil for the entire useful life of an oil fired powerplant.

To determine if you qualify for a temporary exemption of three years, if you have not already done so with the General Cost Test, you would have to use the Special Cost Test and compute the ratios of the cost to use coal in a coal fired powerplant to the cost to use oil in a dual fired powerplant for one, two, and three years. All three ratios would have to be higher than 1.5 in order to qualify for a three year temporary exemption. In this example, we will only compute the ratio of the cost to use coal in a coal-fired powerplant to the cost to use oil in a dual fired plant for three years.

(1) *Parameters.* A set of hypothetical parameters are given below:

(A) Coal and dual-fired powerplant:
- Net capital outlay for coal-fired powerplant (without scrubber) before the plant becomes operational—$96,250,000.
- Net capital outlay for dual-fired powerplant (without scrubber) before the plant becomes operational—$111,710,000.
- Net marginal capital outlay for a dual-fired powerplant (without scrubber) before the plant becomes operational—$15,460,000.
- Salvage value of equipment rendered useless by shifting from oil to coal—$3,860,000.
- Net capital outlay for scrubber—$22,500,000.
- Operations and maintenance costs per kWh:
  - Dual-fired powerplant burning oil—$0.0015/kWh.
  - Coal-fired powerplant burning coal—$0.0025/kWh.

(B) Oil-fired powerplant:
- Net capital outlay for powerplant before it becomes operational—$66,250,000.
- Operations and maintenance cost per kWh—$0.0015/kWh.

(C) Fuel:
- Delivered price of oil—$2.52/1,000,000 Btu.
- Heat input rate of oil—10,000 Btu/kWh.
- Delivered price of coal for the first 3 years of operations—$4.28/1,000,000 Btu.
- Delivered price of coal for the 4th through 35th year of operation—$1.35/1,000,000 Btu.
- Heat input rate for coal—10,000 Btu/kWh.

(D) Powerplant capacity—250,000 kW.

(2) Analysis:

(A) The annual fuel and operations and maintenance expenditures are developed below.

—Delivered coal expenditures for the first 3 years:

```
FL = 8760 x ACF x C x f x H
   = 8760 hr/yr x 0.7 x 250,000 KW
     x $4.28/1,000,000 BTU
     x 10,000 BTU/KWH
   = $65,610,000/yr
```

—Delivered coal expenditures for the 4th through 35th years:

```
FL = 8760 x ACF x C x f x H
   = 8760 hr/yr x 0.7 x 250,000 KW
     x $1.35/1,000,000 BTU
     x 10,000 BTU/KWH
   = $20,700,000/yr
```

—Delivered oil expenditures:

```
FL = 8760 x ACF x C x f x H
   = 8760 h/yr x 0.7 x 250,000 KW
     x $2.52/1,000,000 BTU
     x 10,000 BTU/KWH
   = $38,610,000/yr
```

—Operations and maintenance expenditures for a coal-fired powerplant burning coal:

```
OM = 8760 x ACF x O x C
   = 8760 h/yr x 0.7 x $0.0025/KWH
     x 250,000 KW
   = $3,833,000/yr
```

—Operations and maintenance expenditures for a dual-fired powerplant burning oil:

```
OM = 8760 x ACF x O x C
   = 8760 hr/yr x 0.7 x $0.0015/KWH
     x 250,000 KWH
   = $2,300,000
```

—Operations and maintenance expenditure for an oil-fired powerplant burning oil:

```
OM = 8760 x ACF x O x C
   = 8760 hr/yr x 0.7 x $0.0015/KWH
     x 250,000 KW
   = $2,300,000/yr
```

(B) General cost test. The relevant cash flows are shown in the following table for the three cases in which computations are being made:

CASH FLOWS FOR GENERAL COST TEST

($ in Thousands)

Type of Cash Flow	Year(s)	Case I Coal Over Life of Powerplant	Case 2 Imported Petroleum for First 3 Yrs and Coal Thereafter	Case 3 Imported Petroleum Over the Life of the Powerplant
Investment	0	$96,250 + $22,500	$111,710	$ 66,250
Investment	3	0	$ 22,500	0
Salvage	3	0	$ 3,860	0
Operation and Maintenance	1, 2, 3	$ 3,383/yr.	$ 2,300/yr.	$ 2,300/yr.
Operation and Maintenance	4, ...,35	$ 3,833/yr.	$ 3,833/yr.	$ 2,300/yr.
Fuel	1, 2, 3	$ 65,610	$ 38,630/yr.	$ 38,630/yr.
Fuel	4, ...,35	$ 20,700/yr.	$ 20,700/yr.	$ 38,630/yr.

The following computations are in thousands of dollars.

- Cost of using coal from the start of operation.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= (96{,}250 + 22{,}500) + \frac{0}{(1.035)^1} + \frac{0}{(1.035)^1} + \ldots + \frac{0}{(1.035)^{35}}$$

$$= \$118{,}800$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_n + FL_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$= 118{,}800 + \frac{3{,}833 + 65{,}610}{(1.035)^1} + \frac{3{,}833 + 65{,}610}{(1.035)^2} + \frac{3{,}833 + 65{,}610}{(1.035)^3} + \frac{3{,}833 + 20{,}700}{(1.035)^4} + \ldots + \frac{3{,}833 + 20{,}700}{(1.035)^{35}} - 0$$

$$= \$735{,}300$$

- Cost of using imported petroleum for the first three years and coal thereafter.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= 111{,}710 + \frac{22{,}500}{(1.035)^3}$$

$$= \$132{,}000$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_n + FL_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$= 132{,}000 + \frac{2{,}300 + 38{,}630}{(1.035)^1} + \frac{2{,}300 + 38{,}630}{(1.035)^2} + \frac{2{,}300 + 38{,}630}{(1.035)^3}$$

$$+ \frac{3{,}833 + 20{,}700}{(1.035)^4} + \ldots + \frac{3{,}833 + 20{,}700}{(1.035)^{35}} - \frac{3{,}860}{(1.035)^3}$$

$$= \$655{,}100$$

- Cost of using imported petroleum over the life of the powerplant.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= 66,250 + \frac{0}{(1.035)^1} + \frac{0}{(1.035)^2} + \ldots + \frac{0}{(1.035)^{35}}$$

$$= \$66,250$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^1} + \ldots +$$

$$+ \frac{OM_n + FL_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$= 66,250 + \frac{2,300 + 38,630}{(1.035)^1}$$

$$+ \frac{2,300 + 38,630}{(1.035)^2} + \ldots + \frac{2,300 + 38,630}{(1.035)^{35}} - 0$$

$$= \$884,900$$

- Computation of ratios

$$R = \frac{COST\ (COAL\ throughout\ life)}{COST\ (OIL)}$$

$$= \frac{735,300}{884,900} = 0.83$$

$$R = \frac{COST\ (OIL\ first\ three\ years,\ coal\ thereafter)}{COST\ (OIL)}$$

$$= \frac{665,100}{884,900} = 0.75$$

—Since the index is less than 1.5, you would not qualify for a permanent or temporary exemption, using the general cost test.

(C) *Special cost test.* The relevant cash flows are shown in the following table for the two cases in which computations are being made.

CASH FLOW FOR SPECIAL COST TEST (IN THOUSANDS)

Type of Cash Flow	Year (s)	Total Case Flows		Capital Outlays Required to Use Imported Oil	
		Case 1 Coal Over Life of Powerplant	Case 2 Petroleum for First 3 Yrs. & Coal Thereafter	Case 1 Coal Over Life of Powerplant	Case 2 Petroleum for First 3 Yrs. & Coal Thereafter
Investment	0	$ 96,250 + $22,500	$111,710	$7,040	
Investment	3	0	$ 22,500	-	$22,500
Salvage	3	0	$ 3,860		(-) 3,860.
Operation and Maintenance	1,2, 3	$ 3,833/yr.	$ 2,300/yr.	//////////////////// //////////////////// ////////////////////	
Fuel	1,2, 3	$ 65,610/yr.	$ 38,630/yr.	////////////////////	

The following computations are in thousands of dollars.

- Cost of using coal from the start of operation.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots \frac{I_p}{(1+K)^p}$$

$$= \$7,040 + \frac{0}{(1.035)^1} + \frac{0}{(1.035)^2} + \ldots + \frac{0}{(1.035)^{35}}$$

$$= \$7,040$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_p + FL_p}{(1+K)^p} - \frac{S_p}{(1+K)^p}$$

$$= 7,040 + \frac{3,833 + 65,610}{(1.035)^1} + \frac{3,833 + 65,610}{(1.035)^2} + \frac{3,833 + 65,610}{(1.035)^3} - 0$$

$$= \$201,600$$

- Cost of using imported petroleum for the first three years (and coal thereafter)

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_p}{(1+K)^n}$$

$$= 0 + \frac{22{,}500}{(1.035)^3}$$

$$= \$20{,}290$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2}$$

$$+ \ldots + \frac{OM_p + FL_p}{(1+K)^p} - \frac{Sp}{(1+K)^p}$$

$$= 20{,}290 + \frac{2{,}300 + 38{,}630}{(1.035)^1}$$

$$+ \frac{2{,}300 + 38{,}630}{(1.035)^2} + \frac{2{,}300 + 38{,}630}{(1.035)^3}$$

$$- \frac{3860}{(1.035)^3}$$

$$= \$131{,}500$$

- Computation of ratio

$$R = \frac{\text{COST (COAL FOR PERIOD OF EXEMPTION)}}{\text{COST (OIL FOR PERIOD OF EXEMPTION)}}$$

$$= \frac{201,600}{131,500} = 1.53$$

If ERA had set the index at 1.5, you would be granted a temporary exemption.

§ 503.6 State approval required for powerplant.

(a) Where approval by the appropriate State regulatory authority is required prior to the construction or use of a new powerplant, you may submit a petition for an exemption for consideration by ERA prior to obtaining the approval.

(b) An exemption granted for a powerplant shall not become effective until you demonstrate to the satisfaction of ERA that all applicable approvals required by the State regulatory authority have been obtained.

§ 503.7 No alternative power supply—Permanent exemptions.

(a) *Application.* Section 212 of the Act provides for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, fuel mixtures, emergency purposes, reliability of service, or intermediate load. To qualify for one of these exemptions you must demonstrate to the satisfaction of ERA that despite diligent good faith efforts, there is no alternate supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run of long-run reliability of service which you could obtain. ERA assumes that you will be able to demonstrate that there is no alternative supply of electric power if the expected date of plant operation is more than 10 years from the date you apply for an exemption. For proposed plants expected to being operational within 10 years from the date you submit your petition, you must demonstrate to the satisfaction of ERA the following:

(1) You cannot purchase electricity from another utility at a cost per kwh that is less than 1.5 times the cost of petroleum. You may include transmission costs to your service area in your cost calculation. ERA will consider any source of electricity that costs less than 1.5 times the cost of producing electricity from your proposed plant to be within a reasonable distance and at a reasonable cost. (For this subpart the cost factor will be the same as that used in the cost calculation.)

(2) You cannot construct and operate an alternate fuel fired plant either within or outside your service area at a cost which does not substantially exceed the cost of using imported petroleum. See Section 503.5 for instructions on calculations of cost. You may include transmission costs for power delivery to your service area.

(b) *Evidence.* You must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A detailed description of your methodology to calculate the cost for purchased electricity and for your proposed plant as required in Subsection (a)(1) above;

(2) Identification and explanation of all figures used in your calculations supporting Subsection (a)(1) above;

(3) A description of your efforts to purchase electricity, and

(4) All data required by Section 503.5 (Cost Calculation) supporting Subsection (a)(2) above.

§ 503.8 Use of mixtures—General requirement for temporary exemptions.

(a) ERA will not consider a petition for any temporary exemption under Section 211 of the Act to be complete, adequate, or acceptable for filing unless you demonstrate to the satisfaction of ERA in your Fuels Decision Report whether or not the use of a mixture of natural gas or petroleum and an adequate fuel is economically and technically feasible during the period of the proposed exemption.

(b) If ERA determines that use of a particular fuel mixture is technically or economically feasible during the period of the proposed exemption, ERA will condition the granting of any temporary exemption under this Part upon the use of that mixture during the period of the temporary exemption.

§ 503.9 Use of mixtures—General requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for any of the following exemptions provided for in Section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, cogeneration, emergency purposes, reliability of service, or intermediate load) to be complete, adequate, or acceptable for filing unless you demonstrate to the satisfaction of ERA in your Fuels Decision Report that you have considered the use of a mixture(s) for which an exemption under Section 503.38 (Fuel Mixtures) of these regulations would be available.

(b) *Demonstration.* ERA will not grant any of the exemptions listed above unless you demonstrate that use of such a mixture(s) is not economically or technically feasible in the unit for which you are requesting an exemption. To make such a demonstration, you must show in your Fuels Decision Report to the satisfaction of ERA that:

(1) If use of a mixture(s) were required, you would be eligible for one of the following permanent exemptions provided for in the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or State or local requirements; or

(2) The use of a mixture(s) is not technically or economically feasible in your specific unit due to design or special circumstances as determined by ERA on a case-by-case basis.

§ 503.10 Use of fluidized bed combustion not feasible—general requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for one of the following exemptions provided for in Section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, cogeneration, emergency purposes, reliability of service, or intermediate load) to be complete, adequate or acceptable for filing unless you demonstrate to the satisfaction of ERA in your Fuels Decision Report that:

(1) You have considered the use of a method of fluidized bed combustion of an alternate fuel; and

(2) Use of a method of fluidized bed combustion of an alternate fuel is not economically or technically feasible.

(b) *Finding.* If ERA determines, on a generic basis, that use of a method of fluidized bed combustion is technically and economically feasible, ERA will deny your request for exemption unless you demonsttrate to the satisfaction of ERA that:

(1) If use of a method of fluidized bed combustion were required, you would be eligible for one of the following permanent exemptions provided for in Section 212 of the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or State or local requirements; or

(2) The use of a method of fluidized bed combustion is not technically or economically feasible in your specific unit due to design or special circumstances as determined by ERA on a case-by-case basis.

§ 503.11 Alternative site—General requirement for permanent exemptions.

(a) *Application.* Section 212 of the Act provides for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, or intermediate load. To qualify, you must demonstrate to the satisfaction of ERA that you cannot use alternate fuels at reasonable alternative sites as well as at your proposed sites. You must show that:

(1) You examined all reasonable alternative sites in your effort to use alternate fuels; and

(2) You are unable to use alternate fuels at any of the alternative sites you considered at a cost which does

not substantially exceed the cost of using imported petroleum, or, in special circumstances, for other reasons.

(b) *Evidence.* You must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A map indicating your proposed site and each of the alternative sites you considered;

(2) A description of each of the alternate fuels you considered for use at each alternative site you considered;

(3) A detailed description of the criteria you used to select the alternative sites you considered and to select the alternate fuels you examined for use at each alternative site;

(4) Copies or summaries of any studies you performed as part of, or in support of your search for reasonable alternative sites;

(5) All data required by § 503.5 (Cost Calculation) supporting any contentions you make pertaining to the cost of using alternate fuels at alternative sites; and

(6) A detailed explanation of any contention you make concerning other reasons which would preclude use of alternative sites.

§ 503.12 Terms and conditions; compliance plans.

(a) *Terms and conditions generally.* You must comply with the terms and conditions of an exemption granted under the Act by the ERA, including terms and conditions requiring the use of (1) effective fuel conservation measures, and (2) fuel mixtures.

(b) *Compliance plans for temporary exemptions.* (1) A compliance plan certified by the Chief Executive Officer shall accompany a petition for a temporary exemption. The compliance plan shall include at least the following:

(i) A detailed schedule of progressive events and the dates upon which the events are to take place indicating how compliance with the applicable prohibitions of the Act will occur;

(ii) Documentary evidence of binding contract for fuel or facilities for the production of fuel which would allow for compliance with the applicable prohibitions of the Act;

(iii) Any other documentary evidence which indicates an intention to comply with the applicable prohibitions of the Act; and

(iv) A detailed statement of the manner in which you intend to comply with Section 503.8 of these regulations requiring the use of fuel mixtures as a condition to the granting of a temporary exemption where the use of fuel mixtures is technically and economically feasible.

(2) The exemption shall not be effective until the compliance plan is approved by ERA.

(3) Revisions of Compliance Plans. If the petition is granted, you must submit to ERA an updated compliance plan certified by your Chief Executive Officer:

(i) At the end of each 12 month period from the effective date of the exemption;

(ii) Within 1 month of an alteration of any milestone in the compliance plan, together with the reasons for the alteration and its impact upon the scheduling of all other milestones in the plan; and

(iii) At any time the ERA, in its discretion, determines that a revised compliance plan is necessary to reflect changes in circumstances.

(c) *Enforcement.* An exemption is subject to termination upon the violation of any provision of an exemption or any provision of the pertinent compliance plan.

Subpart C—Temporary Exemptions for New Powerplants

§ 503.20 Purpose and scope.

(a) This subpart implements the provisions contained in section 211 of the Act with regard to temporary exemptions for new powerplants.

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

(c) You shall submit all petitions for temporary exemptions for new powerplants in accordance with the procedures set out in Part 501 of these regulations.

(d) The duration of any temporary exemption granted under this subpart shall be measured from the date that the powerplant is placed in service.

§ 503.21 Lack of alternate fuel supply.

(a) *Eligibility.* Section 211(a)(1) of the Act provides for a temporary exemption due to lack of an alternate fuel supply. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operational requirements of the new powerplant;

(2) For the period of the proposed exemption, the cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source as defined in § 503.5 (cost calculation) of these regulations; and

(3) You will be able to comply with the applicable prohibitions of these regulations at the end of the proposed exemption period.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuels you considered;

(2) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(3) A description of the detailed design requirements for the new powerplant as specified by the purchaser, including capacity, alternate fuel capability, and all other specifications;

(4) A description of the specific fuel characteristics of all the fuels which can be used by the new powerplant;

(5) Evidence that you sought to obtain the full range of alternate fuels and fuel characteristics which could be used by the new powerplant, including bid requests, and/or advertisements for supply contracts and all responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(6) Evidence of the contracts or other arrangements you have made to insure a reliable and adequate supply of an alternate fuel at the end of the proposed exemption; and

(7) All data required by Section 503.5 (Cost Calculation) of these regulations necessary for computing the cost calculation formula.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accord with section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by Section 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions of renewals, may not exceed 10 years.

§ 503.22 Site limitations.

(a) *Eligibility.* Section 211(a)(2) of the act provides for a temporary exemption due to a site limitation. To qualify you must demonstrate, to the satisfaction of ERA, that one or more of the following specific physical limitations relevant to the location or operation of your powerplant exist which, despite your diligent good faith, cannot be overcome before the end of the proposed exemption period:

(1) Alternate fuels would be inaccessible;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate facilities for handling, using or storing an alternate fuel would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed powerplant using an alternate fuel.

(b) *Evidence to be submitted in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above criteria:

(1) Evidence that the site limitation is a physical limitation, and not a requirement of Federal, State, or local law which could be the basis of an exemption under § 503.36 (State or local requirements);

(2) Evidence that alternative means for overcoming the specific site limitations were considered, with a detailed description of the efforts made to overcome the site limitations set out in your petition;

(3) Evidence of the equipment or space requirements for which the site limitation is claimed; and

(4) Evidence of contracts or other arrangements you have made to insure that the site limitation will be overcome and that you will comply with the prohibitions at the end of the proposed exemption period. Examples of evidence relevant to establishing a site limitation for purposes of a temporary exemption are as follows:

(i) Detailed documentation of impediments, including rights of way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the specific site of the powerplant and demonstration why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements, and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed powerplant;

(iv) Detailed scale site plans of the entire facility which include those areas not directly involved with the specific boiler;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuel;

(vii) Copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilities;

(viii) Copies of quotes from bona fide supplier, indicating lead times for purchase and installation of required ancillary storage of handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surounding the proposed powerplant;

(xi) A description of efforts made to secure off site disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

(c) *Compliance plan.* you must submit to ERA a compliance plan in accordance with section 214 of the Act and section 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions and renewals, may not exceed 5 years.

§ 503.23 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 211(a)(3) of the Act provides for a temporary exemption due to an inability to comply with applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA in your Fuels Decision Report that despite diligent good faith efforts:

(1) You will be unable to comply with the applicable prohibitions imposed by the Act without violating applicable Federal of State environmental requirements as of the projected date of commencement of operations; and

(2) You will be able to comply with the applicable prohibitions imposed by the Act by the end of the temporary exemption period.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA, you must include your Fuels Decision Report petition the following substantial evidence to corroborate the above requirements:

(1) A copy of any application which has been filed with EPA or a State agency for a permit to construct or operate a new powerplant.

(2) A copy of the decision of action taken by EPA or a State agency with respect to the application for a permit to construct or operate the new powerplant.

(3) A detailed synopsis of the administrative record fo the proceedings by EPA or the State agency for a construction or operation permit.

(4) Copies of all technical studies that you have relied upon with regard to consideration of alternate fuels, pollution control equipment, offsets, variances, State Implementation Plan revisions, and redesignations of Class 2 areas to Class 3.

(5) Copies of requests for bids, all responses received, and contracts signed, if any, for an alternate fuel supply and for the purchase and installation of pollution control equipment.

(6) Copies of agreements made by you with the State or other companies for the acquisition of appropriate "offsets." If the agreement is conditioned upon the grant of a variance, State Implementation Plan revision or redesignation of Class 2 areas, you must submit a letter from the State agency indicating when a proceeding to effectuate the agreement will take place.

(c) *A petition to ERA in lieu of application to EPA.* If you have not applied to EPA or a State agency for a construction or operation permit, you must also submit to ERA:

(1) Verification that the facility cannot burn an alternate fuel on the date of commencement of operations in compliance with all applicable air pollution control requirements; and

(2) Items required under paragraphs (b) 4, 5, and 6 above.

(d) *Compliance plan.* You must submit to ERA a compliance plan in accord with section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(e) *Duration.* This temporary exemption, taking into account extensions and renewals, may not exceed 5 years.

§ 503.24 Future use of synthetic fuels.

(a) *Eligibility.* Section 211(b) of the Act provides for a temporary exemption based upon the future use of synthetic fuels. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You will be able to comply with the applicable prohibitions imposed by the Act by the end of the proposed exemption period by the use of synthetic

fuel as a primary energy source in your powerplant;

(2) You will not be capable of complying with the applicable prohibitions imposed by the Act by using an alternate fuel in your powerplant before the end of the proposed exemption period.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Copies of economic and technical feasibility studies pertaining to the use of synthetic fuels by your proposed powerplant;

(2) Reliable evidence of the financial commitments you have made to construct, operate, and maintain equipment which will use synthetic fuel as the primary energy source at the end of the proposed exemption period;

(3) Copies of bid requests, advertisements, contracts and/or other agreements relating to the production, purchase, and transportation of synthetic fuel; and

(4) Information with regard to permits that may be required by Federal or State agencies for the construction and operation of a powerplant using synthetic fuels.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You shall submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption may be granted for a period of up to 5 years and may be extended for an additional 5 years, but so extended may not exceed 10 years.

§ 503.25 Public interest exemption.

(a) *Eligibility.* Section 211(c) of the Act provides for a temporary public interest exemption. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with the applicable prohibitions imposed by the Act, except in extraordinary circumstances during the period for which exemption is requested, but that you will be capable of complying at the end of the proposed exemption period;

(2) You are not eligible for a temporary exemption based on lack of alternate fuel supply, site limitations, or environmental requirements;

(3) The granting of the petition would be in accord with the purposes of the Act and would be in the public interest.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report substantial evidence to corroborate the above requirements.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with Section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account extension and renewals, may not exceed 5 years.

Subpart D—Permanent Exemptions for New Electric Powerplants

§ 503.30 Purpose and scope.

(a) This subpart implements the provisions contained in section 212 of the Act with regard to permanent exemptions for new electric powerplants.

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants that petition for a permanent exemption must meet to sustain their burden of proof under the Act.

(c) You must submit all petitions for permanent exemptions for new powerplants in accordance with the procedures set out in Part 501 of these regulations.

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) *Eligibility.* Section 212(a)(1)(A)(i) of the Act provides for a permanent exemption due to lack of an adequate and reliable supply of alternate fuel during the first 10 years of useful life of the new powerplant. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operational requirements of the new powerplant; and

(2) Such a supply will not be available within the first 10 years of useful life of the new powerplant.

(b) *Evidence in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new powerplant as specified by the purchaser, including capacity, alternate fuels capability, and all other pertinent specifications;

(3) A description of the specific fuel characteristics of all the fuels which can be used by the new powerplant;

(4) Evidence that you sought to obtain the full range of alternate fuels and fuel characteristics which could be used by the new powerplant;

(5) Evidence that you solicited at least three bids from at least 25 percent of the supplier market for an adequate and reliable supply of alternate fuel, including bid requests and/or advertisements for supply contracts and all proposals or responses thereto, as well as any other arrangements you attempted to make to secure supplies; and

(6) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuel you considered, including a discussion of how you made your assessment that an adequate and reliable supply of the quality of fuel needed would not be available within the first 10 years of useful life of the new powerplant.

§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) *Eligibility.* Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to design and operational requirements of the new powerplant; and

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the new powerplant as defined in § 503.5 (Cost Calculation) of these regulations.

(b) *Evidence in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new

powerplant as specified by the purchaser, including capacity, alternate fuels capability, and all other pertinent specifications;

(3) A description of the specific fuel characteristics of all the fuels which can be used by the new powerplant;

(4) Evidence that you sought the full range of alternate fuels and fuel characteristics which could be used by the new powerplant, including bid requests and/or advertisements for supply contracts, all proposals and responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(5) All data required by § 503.5 of these regulations (Cost Calculation) necessary for computing the cost calculation formula; and

(6) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuel you considered.

§ 503.33 Site limitation.

(a) *Eligibility.* Section 212(a)(1)(B) of the Act provides for a permanent exemption due to a site limitation. To qualify you must demonstrate to the satisfaction of ERA that, despite good faith efforts:

(1) Alternate fuels are inaccessible as a result of a specific physical limitation to the location or operation of the proposed powerplant;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate facilities for handling, using or storing alternate fuels would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed powerplant using an alternate fuel, and these limitations cannot be reasonably expected to be overcome within 5 years after commencement of operations.

(b) *Evidence to be submitted in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above criteria.

(1) Evidence that the site limitation is a physical limitation, and not a requirement of Federal, State, or local law which could be the basis of an exemption under § 503.36 (State or local requirements);

(2) Evidence that alternatives means for overcoming the specific site limitations were sought, with a detailed description of the efforts made to overcome the site limitations set out in your petition; and

(3) Evidence of the equipment or space requirements for which the site limitation is claimed. Examples of evidence relevant to establishing a site limitation for purposes of a permanent exemption are as follows:

(i) Detailed documentation of impediments, including rights of way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the geographic site of the powerplant and demonstration why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed powerplant;

(v) Detailed scale site plans of the entire facility which include those areas not directly involved with a specific powerplant;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuels;

(vii) Copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilities;

(viii) Copies of quotes from bona fide suppliers, indicating lead times for purchase and installation or required ancillary storage or handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed powerplant;

(xi) A description of efforts made to secure off-site disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

§ 503.34 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 212(a)(1)(C) of the Act provides for a permanent exemption due to the inability to comply with the applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA that, despite good faith efforts:

(1) You cannot burn alternate fuels without violating applicable environmental requirements within 5 years after beginning operation by providing proof that EPA or the State has denied a construction permit and by providing the information requested below, and

(2) You cannot burn alternate fuels at reasonable alternative sites and meet the applicable environmental requirements.

(b) *Evidence supporting petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of your construction permit application and all supporting documents filed with or subsequent to the application;

(2) To the extent applicable, a copy of the EPA and/or State denial of your construction permit application;

(3) A detailed synopsis of the administrative record of the EPA and/or state permit proceedings;

(4) Copies of reports examining environmental compliance of the facility including fuel use, pollution control equipment, availability of offsets, variances, SIP revisions, and redesignations;

(5) Copies of requests for bids and responses received for fuel supply and pollution control equipment and copies of correspondence on offsets, variances, SIP revisions, and redesignations; and

(6) Evidence that there is no reasonable alternative site as specified in § 2003.11 of these regulations.

(c) *Prepetition actions.* (1) It is recommended that you request a meeting with ERA and EPA or the appropriate State regulatory agency to discuss options for complying with the prohibitions; and (2) you must submit a copy to DOE of your construction permit application at the same time you submit it to EPA or the State if you are applying for use of oil or gas as well as an alternate fuel.

§ 503.35 Inability to obtain adequate capital.

(a) *Eligibility.* Section 212(a)(1)(D) of the Act provides for a permanent exemption due to inability to obtain adequate capital. To qualify you must demonstrate to the satisfaction of ERA that despite good faith efforts:

(1) You will be unable to comply with the applicable prohibitions imposed by the Act if you cannot obtain the additional capital required for an alternate fuel facility beyond that required for your proposed facility.

(2) You cannot raise this additional capital due to specific restrictions in your ability to raise debt and equity capital; and

(3) These specific restrictions on your ability to raise debt and equity capital could not be alleviated by any past or future action of your public utility Commission or any other regulatory authority.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report supporting documentary evidence to corroborate the above requirements. The evidence should include but not be limited to the following information:

(1) Statement of the State regulatory authority's policies on utility capital structure and formation, on the recognition of allowance for funds used during construction (in the utility's net plant) and of construction work in progress (in the utility's rate base), and on the accounting procedure for recognizing tax credits (flow-through or normalized).

(2) Relevant records pertaining to the utility's specific efforts to raise capital associated with the proposed powerplant.

(3) Five year history of the utility's capital structure recognizing specific security issues and their current yields and investment ratings. Indicate where a security issued has specific ties to an on-line or scheduled generating unit.

(4) Five year summary of the utility's financial record as indicated by the standard financial indicators including cash earnings and dividend records; time interest coverage ratios; price-earnings ratios; and market to book value ratios.

(5) Projected changes in the utility's capital structure and financial indicators where the powerplant burns:

(i) Alternate fuel; and

(ii) Oil or natural gas.

§ 503.36 State or local requirements.

(a) *Eligibility.* Section 212(b) of the Act provides for a permanent exemption due to State or local requirements. To qualify you must demonstrate to the satisfaction of EPA that:

(1) With respect to the proposed site of the powerplant, the operations or construction of the new powerplant using an alternate fuel is infeasible because of a State or local requirement other than a building code, nuisance or zoning law;

(2) You have, in good faith attempted unsuccessfully to obtain a variance from the State or local requirement or have determined why none is available;

(3) There is no reasonable alternative site for the facility;

(4) The granting of the exemption would be in the public interest and would be consistent with the purposes of this Title; and

(5) You are unable to comply with the applicable prohibitions imposed by the Act and you are ineligible for a permanent exemption based on lack of alternate fuel supply, site limitations, environmental requirements or inability to obtain adequate capital.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of the pertinent State or local requirement with its citation and its legislative history;

(2) The identification and location of the administrative body which implements the requirement;

(3) A description of your attempts to obtain a variance from the requirement;

(4) A description of any activities you were involved in pertaining to the enactment of the requirement;

(5) A description of equipment, procedures, advance planning time and costs necessary to comply with the requirement;

(6) A detailed description of why compliance is infeasible;

(7) The impact upon you and/or your local community, if any, should this petition be denied;

(8) An explanation of the reasons why granting this exemption would be in the public interest:

(9) An analysis of why you cannot qualify for each of the exemptions listed in (a)(5) above; and

(10) All evidence required by Section 503.11 (Alternative Sites), of this Part.

§ 503.37 Cogeneration.

(a) *Eligibility.* Section 212(c) of the Act provides for a permanent exemption for cogeneration. To qualify you must demonstrate to the satisfaction of ERA at least the following minimum criteria:

(1) You are unable to comply with the applicable prohibitions imposed by the Act;

(2) That there are economic and other benefits of cogeneration with petroleum or natural gas, none of which are obtainable through the use of an alternate fuel.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, or inability to raise adequate capital;

(2) The purchaser's design specifications of the new unit;

(3) An engineering description of the system, including proposed output and uses thereof, with sufficient detail to ensure that the unit qualifies as a cogeneration facility;

(4) A detailed economic and engineering analysis demonstrating the benefits of cogenerating with petroleum or natural gas and demonstrating that these benefits are not obtainable through the use of alternate fuels;

(5) A comparison of the total oil and gas consumption by the proposed cogeneration project and the best feasible alternatives, including the effect on oil or gas used by the electric utility or by other affected parties; and

(6) An analysis of the immediate and long-term economic impacts on parties not directly involved in the project (for example, the other customers of the utility receiving the electricity).

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) *Eligibility.* Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You propose to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source;

(2) You are not capable of complying with the applicable prohibitions imposed by the Act; and

(3) The amount of petroleum or natural gas you propose to use in the mixture will not exceed the minimum percentage of the total Btu heat imput needed to maintain operational reliability consistent with maintaining a reasonable level of fuel efficiency.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A complete description of the fuel mixture, component elements of the mixture, and percentage of each component to be utilized;

(2) The purchaser's design specifications for the unit for which you are requesting an exemption;

(3) An engineering assessment of the proportions of petroleum or natural gas needed to maintain operational reliability and an adequate level of fuel efficiency; and

(4) Documentary evidence which demonstrated that you have considered the use of alternate fuels as a primary energy source. You must include a description of the supply alternatives you considered, the cost and

availability of each alternate fuel considered, and the factors important in your decision to reject the use of an alternate fuel as a primary energy source.

(c) *Reporting requirement.* If the exemption is granted, you must submit an annual report to ERA certifying that the affected units have used no more than the percentage of oil or natural gas specified in the exemption order. The certification shall be executed by your Chief Executive Officer.

§ 503.39 Emergency purposes.

(a) *Eligibility.* Section 212(e) of the Act provides for a permanent exemption for emergency purposes. To qualify you must demonstrate to the satisfaction of ERA:

(1) You are unable to comply with the applicable prohibitions imposed by the Act; and

(2) You shall operate and maintain the powerplant for emergency purposes only.

(b) *Definition.* For the purposes of this permanent exemption an emergency exists when the operating utility has been required to curtail its industrial customers by 10 percent or more from expected noninterruptible demand.

(c) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report substantial evidence to corroborate the above requirements. The evidence submitted must include at a minimum:

(1) A certificate executed by the Chief Executive Officer of the operating utility stating that emergency operation under the provisions of this exemption will occur only when it is required to curtail 10 percent or more of its noninterruptible industrial customers; and

(2) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, certain State or local requirements, or other reasons which would preclude the use of an alternate fuel.

(d) *Reporting requirement.* At the end of each 12 month period from the effective date of the exemption, you must report to ERA the monthly and annual total generating capacity used and amounts of electricity generated under the provisions of this exemption with a description of the purposes of use.

503.40 Permanent exemption for powerplants necessary to maintain reliability of service.

(a) *Eligibility.* (1) Section 212(f) of the Act provides for a permanent exemption to maintain reliability of service. To qualify you must demonstrate to the satisfaction of ERA that:

(i) You are not capable of complying with the applicable prohibitions imposed by the Act without an impairment of reliability of service as measured by the loss of load probability technique described in paragraphs (a)(2), and (a)(3) below:

(ii) Despite diligent good faith efforts, you are not able to make the demonstration necessary to obtain a permanent exemption on the basis of lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, or certain State or local requirements, in the time required to prevent an impairment of service;

(2) You must calculate reliability of service utilizing the loss of load probability (LOLP) technique. The LOLP must be computed for your electrical region using the first 12 month period of powerplant operation. It is to be calculated as the sum of either the weekly or the monthly estimates of hourly load/capacity deficits. You may decide whether to perform the calculation using weekly or monthly data. The LOLP calculation must take into consideration equipment forced outage rates, projected customer electrical demand, and generating capacity projections for the electrical region, including existing generating capacity, planned generating capacity additions and projected firm bulk electrical purchases and sales, and projected retirements. If necessary, you may also calculate LOLP with modifications to account for transmission constraints, energy shortages, and other factors that are not adequately addressed by adhering to the foregoing specifications.

(3) Reliability of service is impaired if the LOLP at the time the proposed unit is to be added, including all available emergency reliability connections and other bulk power ties, is greater than:

(i) One day in 5 years if your proposed powerplant will start operating within 3 years from the filing of your petition;

(ii) One day in 3 years if your proposed powerplant will start operating between 3 and 5 years from the filing of your petition; or

(iii) One day in 1 year if your proposed powerplant will start operating in 5 or more years from the filing of your petition.

(b) *Evidence supporting the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) All data you used in determining the loss of load probability;

(2) An explanation including equations of how you are calculating the loss of load probability;

(3) A description of the proposed new powerplant to include the size and type of powerplant, and type of fuel used;

(4) Your plans for meeting projected customer electrical demand and an explanation of the method and data you employ in calculating that demand; and

(5) If your proposed new powerplant is not to be a combustion turbine powerplant, an explanation of the reasons why the construction of a combustion turbine powerplant would not resolve your reliability of service problem.

(c) *Duration.* If ERA grants a reliability of service exemption for a combustion turbine powerplant, the exemption shall be valid as long as there is no change in the thermal cycle of the powerplant.

§ 503.41 Peakload powerplants.

(a) *Eligibility.*—(1) *Proposed use of petroleum.* Section 212(g) of the Act provides for a permanent exemption for peakload powerplants if you propose to use petroleum as a primary energy source in a new peakload powerplant, or propose to construct a peakload powerplant to use petroleum without the capability to use an alternate fuel as a primary energy source. To qualify you must certify to ERA that the powerplant will be operated solely as a peakload powerplant for the life of the powerplant and supply the requested data supporting this contention.

(2) *Proposed use of natural gas.* Section 212(g) of the Act provides for a permanent exemption for peakload powerplants if you propose to use natural gas as a primary energy source in a new peakload powerplant, or propose to construct a peakload powerplant to use natural gas without the capability to use an alternate fuel as a primary energy source. To qualify:

(i) You must certify to ERA that the powerplant will be operated solely as a peakload powerplant for the life of the powerplant; and

(ii) The Administrator of the EPA or the Director of the appropriate State air pollution control agency must certify that the use by the powerplant of an available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded.

(3) Your powerplant is operated solely as a peakload powerplant if the electrical generation of the powerplant in kilowatt hours does not exceed, for any 12-calendar-month period, the powerplant's design capacity multiplied by 1,500 hours.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) The petition must be accompanied by a sworn statement signed by the Chief Executive Officer of the electric utility which will operate the powerplant certifying that the powerplant is to be operated solely as a peakload powerplant. The certification must set forth the design capacity of the powerplant and the maximum allowable generation of the powerplant in kilowatt hours according to the definition of peakload for each 12 months of operation as a peakload powerplant.

(2) If you propose to use natural gas or construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, an air qualify certification must have been prepared for the Secretary by the Administrator of the EPA or the Director of the appropriate State air pollution control agency which meets the requirements contained in paragraph (a)(2)(ii), above, and which describes all fuels considered in the certification. The air quality certification must be accompanied by a copy of your application requesting the certification as filed before the EPA or State air pollution control agency and by all supporting documentation filed with or subsequent to the application. DOE may determine that your application for the air quality certification is deficient for purposes of this subpart if the EPA or State air pollution control agency failed to consider all available alternate fuels.

(3) If your proposed peakload powerplant is to be other than a combustion turbine powerplant, you must supply with the petition the following information on the electrical region that would include the proposed peakload powerplant based on the pwerplant's first 12 months of projected operation:

(i) A demand projection;

(ii) A load duration curve;

(iii) An inventory of existing powerplants by size, type, and fuel used;

(iv) A listing of planned powerplants by size, type, and fuel use; and

(v) The projected order of dispatch for existing and proposed powerplants.

(c) *Liability for operating in excess of exemption.* The operation of a peakload powerplant which has been granted this exemption in excess of that allowed by the exemption shall be subject to penalties under Title VII, Subtitle C of the Act unless the powerplant meets the criteria set forth in section 721(c) of the Act.

(d) *Reporting requirement.* If the petition is granted, you must report to ERA, at the end of each 12 month period from the first day of the month following the effective date of the exemption and, if applicable, upon reaching the maximum number of hours of permitted operation within each 12 month period, the name, location, and design capacity of the exempted unit, the number of hours of operation permitted by the exemption, and the number of hours of actual operation.

§ 503.42 Intermediate load powerplants.

(a) *Eligibility.* Section 211(h) of the Act provides for an exemption for intermediate load powerplants use of petroleum as a primary source. To qualify you must demonstrate to the satisfaction of ERA that:

(1) The Administrator of the EPA or the Director of the appropriate State air pollution control agency has certified that the use of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded as described in (c) below;

(2) The powerplant to be constructed and operated will replace no more than the equivalent generating capacity of existing units which:

(i) Permanently cease operation within one month of commencement of operation of the new powerplant;

(ii) Use natural gas or petroleum as a primary energy source;

(iii) Are owned by the same person who is to operate the new powerplant;

(iv) Are capable of using coal as a primary energy source; and

(v) Would cause or contribute to a pollutant concentration in a manner described in subsection (a)(1), above;

(3) The powerplant is to be operated only as an intermediate load powerplant in which the electrical generation, in kilowatt hours, for any 12-calendar-month period, shall not exceed the powerplant's design capacity multiplied by 3,500 hours;

(4) The net heat input rate for the powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the useful life of the powerplant;

(5) There is no reasonable alternative site for the powerplant, as defined in § 503.11 of these regulations; and

(6) The powerplant is to be constructed with the capability to use a synthetic fuel derived from an alternate fuel as a primary energy source.

(b) *Evidence supporting the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements;

(1) A copy of your application for air quality certification for this unit filed with the EPA or State air pollution control agency, and all supporting documentation filed with or subsequent to the application;

(2) A description of the existing powerplants to be replaced by the new intermediate load powerplant which shall include:

(i) The name and location of each of the existing powerplants;

(ii) The volume of fuel consumed by type for the previous 2 years by the existing powerplants;

(iii) The corporate ownership of the existing powerplants;

(iv) Evidence that the existing powerplants are capable of using coal; and

(v) The reasons for claiming that the existing powerplants would cause or contribute to a pollutant concentration if they used coal as a primary energy source;

(3) An affidavit executed by the Chief Executive Officer of the electric utility which will operate the proposed powerplant certifying that the powerplant shall be operated at all times in the future only as an intermediate load powerplant. The certification shall set forth the design capacity of the proposed powerplant and the maximum allowable generation of the proposed powerplant in kilowatt hours for its first 12 months of operation as an intermediate load powerplant;

(4) An affidavit executed by the Chief Executive Officer and a qualified engineer of the operating utility of the powerplant which certifies that the powerplant can operate at a heat rate of 9,500 Btu's per kilowatt hour or less throughout the useful life of the powerplant;

(5) An affidavit executed by the Chief Executive Officer and a qualified engineer of the operating utility certifying that the powerplant will meet the synthetic fuels capability requirement described in paragraph (a)(7) above. The affidavit must include a description of the specific characteristics that make the intermediate load powerplant capable of using the synthetic fuels which the powerplant is being designed to use; and

(6) A demonstration that there are no alternative sites where you could comply with the prohibitions; and

(7) Identification and description with appropriate documentation of the synthetic fuels you have selected and a description of the basis for your decision to select that particular fuel, including any marketing studies, con-

tracts or other documents relating to that selection.

(c) *Air quality certification to the Secretary*—(1) Your petition is not complete unless the Administrator of the Environmental Protection Agency or the Director of the appropriate State air pollution control agency has certified to the Secretary that the use by the powerplant of an alternate fuel as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region of a pollutant for which any national ambient air quality standard is or would be exceeded.

(2) The air qualify certification shall be an essential part of the ERA administrative record on the petition and the record shall not be completed without it. The certificate shall include at least a specification of each alternate fuel considered by EPA or the appropriate State air pollution control agency in reaching its decision regarding certification.

(d) *Reporting requirement.* If the petition is granted, you must report to ERA, at the end of each 12-month period from the first day of the month following the effective date of the exemption and, if applicable, upon reaching the maximum number of hours of permitted operation within each 12 month period, the name, location, and design capacity of the exempt unit, the number of hours of operation permitted by the exemption, the number of hours of actual operation, and efforts taken to seek and obtain a synthetic fuel for use in the powerplants.

(e) *Periodic review.* ERA shall, from time to time, review this exemption and shall terminate it when he finds that there is available a supply of synthetic fuel suitable for use by the exempt powerplant.

(f) *Enforcement.* Violations of the provisions of this exemption shall subject you to the maximum penalties provided for by Part 501, Subpart O of these regulations.

PART 505—NEW MAJOR FUEL BURNING INSTALLATIONS

Subpart A—Prohibitions

§ 505.1 Purpose and scope.

(a) *Purpose.* This subpart sets forth the statutory prohibitions imposed on boilers by the Act and establishes the procedures ERA intends to employ in administering and implementing its authority to prohibit nonboilers from using petroleum or natural gas.

(b) *Scope.* This subpart applies to all new major fuel burning installations for which construction or acquisition was initiated on or after April 20, 1977, except those designated as existing installations under part 515 of this chapter, or those granted an exemption under Subparts C and D of this Part. Any person who has any ownership or interest in, or who operates, rents or leases an installation is subject to the prohibitions of the Act and the penalities as specified by the Act.

§ 505.2 Prohibitions.

(a) *Prohibition of the use of natural gas or petroleum as a primary energy source in boilers.* Section 202(a) of the Act prohibits, except where an exemption has been granted under Subpart C or D of these regulations, the use of petroleum or natural gas as a primary energy source in any new installation consisting of one or more boilers.

(b) *Prohibition of the use of natural gas or petroleum as a primary energy source in nonboilers.* (1) Prohibition by Rule: (i) ERA may prohibit, by issuance of a rule, certain categories of nonboilers from the use of petroleum or natural gas as a primary energy source.

(ii) In a rulemaking proceeding ERA will consider any special circumstances or characteristics of the category of nonboilers that would be prohibited from using natural gas or petroleum as a primary energy source. Factors to be considered include the overall technical feasibility of members of the category to burn an alternate fuel, as well as their size and their appropriate location. ERA will consider all other circumstances, characteristics, and factors it deems relevant and appropriate which are brought to its attention.

(iii) ERA will not apply a final rule to your installation covered by this subsection while it is considering any petition you have filed for an exemption for that installation. Your petition must be filed, under the procedures outlined in Part 501, within 60 days after publication of the final rule in the FEDERAL REGISTER for ERA to stay the rule as it pertains to your installation. The stay will also be in effect during any period required for judicial review of ERA's action on your exemption petition.

(iv) No final rule will apply to an installation that—

(A) has received an order containing a comparable prohibition; or

(b) was proposed to receive an order but did not because of a demonstration that the installation qualified or would qualify for an exemption under the Act.

(2) Prohibition by Order: (i) ERA may prohibit, by order, the use of natural gas or petroleum as a primary energy source in a new major fuel burning installation consisting of a nonboiler, if that installation has not been identified as a member of a category subject to a final rule at the time of the issuance of the proposed order.

(ii) ERA may not issue a final order to your installation covered by this subsection if you can demonstrate that your installation is eligible for an exemption. However, if your installation is eligible for a temporary exemption only, ERA can issue you a final order that will take effect at the expiration of the temporary exemption.

(iii) If ERA cannot issue you a final order because your facility is eligible for a permanent exemption, or if the effective date of the order is delayed during the period that a temporary exemption is in effect, ERA will take the necessary action to assure that you comply with the terms and conditions of the order granting the exemption.

(3)(i) ERA may not prohibit the use of petroleum or natural gas in your installation covered by this subsection if you began the acquisition or construction of the nonboiler installation before the date the proposed rule or proposed order containing the prohibition was published.

(ii) If you began acquisition or construction of the installation prior to the date of publication of the proposed rule or proposed order, ERA will consider your installation to be an "existing" installation for purposes of treatment under the Existing Major Fuel Burning Installations section (Title III, Subtitle A) of the Act.

Subpart B—General Requirements for Exemptions

§ 505.3 Purpose and scope.

This subpart establishes the general requirements necessary to qualify for either a temporary or permanent exemption under this Part and sets out the methodology for calculating the cost of using an alternate fuel and the cost of using imported petroleum.

§ 505.4 Fuels decision report.

(a) Before ERA will accept a petition for either a temporary or permanent exemption under this Part, you must include as part of your petition a Fuels Decision Report, as described in Part 502. The Fuels Decision Report shall contain the analysis and documentation of the evidence required in support of your exemption request.

(b) Your petition may contain more than one exemption request. In this case, your petition would include one Fuel Decision Report which addresses your considerations and the appropriate forms for the exemptions you are requesting.

§ 505.5 Cost calculation for new installations.

(a) *General.* If you are requesting an exemption for a new installation on the basis that the cost of using an alternate fuel as a primary energy source substantially exceeds the cost of using imported petroleum, you

must use the comparative cost test provided in this section.

The cost of using an alternate fuel in lieu of imported oil or gas as a primary energy source will be deemed to be substantially in excess of the cost of using imported oil or gas where the ratio of the former to the latter is equal to or greater than the index set periodically by ERA.

Initially, ERA sets the index at (1.5). ERA will revise the index from time to time after public notice and time to comment. Revisions shall become effective for all ERA decisions after final publication.

The cost test takes into consideration capital outlays, operation, and maintenance expenses, delivered fuel expenditures, and the effect of depreciation and taxes on cash flow. There are two comparative cost tests—A General Cost Test and a Special Cost Test. If you are eligible for a permanent exemption you must demonstrate that eligibility using the procedures specified in the General Cost Test (section b). If you are eligible for a temporary exemption, you must demonstrate that eligibility using the procedures specified in the General Cost Test (section b) or the Special Cost Test (section c).

The General Cost Test differs from the Special Cost Test with respect to the time period over which costs are calculated and the types of fuel consuming equipment being compared. When using the General Cost Test, the cost is computed for the useful life of the installation. When using the Special Cost Test the cost is computed only for the term of the exemption. In the General Cost Test, the proposed oil or natural gas installation is compared with an equivalent alternate fuel capable installation. In the Special Cost Test, an alternate fuel capable installation burning oil or natural gas is compared with an alternate fuel capable installation consuming that alternate fuel.

(b) *Cost calculation—General cost test.* You may be eligible for a permanent exemption if you demonstrate that the cost of using an alternate fuel starting any time within the first 10 years of operations will always substantially exceed the cost of using imported petroleum over the useful life of the unit. You will have to show that the cost of using an alternate fuel starting in each of the first 10 years of operation and using oil or natural gas until the start of using alternate fuel, substantially exceeds the cost of using only imported petroleum.

ERA will not grant a permanent exemption if a temporary exemption solves the cost problem within ERA's definition. Therefore, if the cost computed with successive starting dates for alternate fuel use (for the first 10 years of operation) does not always substantially exceed the cost of using imported petroleum, you would only be eligible for a temporary exemption. The length of the temporary exemption would be the minimum period within which the cost of starting to use alternate fuel always substantially exceeds the cost of using imported petroleum. For example, if you plan to burn a coal derived fuel such as Low-BTU gas, which is not scheduled to be available from a bona fide supplier for 2 years after the installation of the boiler designed to burn the coal derived fuel, ERA may grant a temporary exemption and allow the burning of natural gas based on an acceptable certification of the schedule of delivery of the coal derived fuel.

In the General Cost Test, ERA defines cost as the sum of the annual after tax cash outlays for capital, operations and maintenance, and delivered fuel, and the effect of depreciation and taxes on cash flow discounted to the present.

To conduct the test, you must use the equations that follow.

Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 1.

$$\text{EQ 1} \qquad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

Calculate the cost of using an alternate fuel and imported petroleum with equation 2.

$$\text{EQ 2} \qquad \text{COST} = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots + \frac{(1-t)(OM_n + FL_n) - t \cdot DPR_n}{(1+K)^n} - \frac{Sp}{(1+K)^p}$$ 1/

Calculate investment (I), for equation 2 using equation 3.

$$\text{EQ 3} \qquad I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_N}{(1+K)^N}$$

1/ This definition of cost follows accepted industry practice of basing investment decisions on the after tax cash flow associated with investment, depreciation and operating expenses.

The terms in equations 1 through 3 are defined as follows:

R - The ratio of the cost of using an alternate fuel to the cost of using imported oil or gas.

COST - The total discounted after tax cost in dollars for the period of the exemption (life of the installation) of constructing and operating the installation.

I - Discounted total net capital outlay in dollars excluding investment tax credits.

I_o - Net capital outlay in dollars up to the time the installation goes into operation.

$I_1 \ldots I_n$ - Yearly net capital outlays from first year of operation through the life of the installation.

OM - Annual cost in dollars of operating and maintaining the installation.

t - Federal income tax rate (see Section d).

FL - Annual delivered fuel cost in dollars (see Section d).

P - Year fuel is changed from oil to alternate fuel.

K - The real cost of capital expressed as a fraction (see Section d).

N - The useful life of the installation (see Section d).

DPR - Annual depreciation using the method which depreciates the asset as quickly as allowed by law. You cannot use accelerated depreciation for oil and gas fired boilers.

Sp - Salvage value of equipment rendered useless by changing the fuel from oil or natural gas to alternate fuel in year P, if the fuel is changed.

The step by step procedure that follows shows the comparisons that you must make. It outlines the equipment and fuel comparisons as well as the time comparisons.

(A) Compute the cost (COST) of using an alternate fuel in an alternate fuel fired installation from the start of operation with equation (2).

(B) Compute the cost (COST) of using an alternate fuel in dual fired installation with equation (2) assuming an alternate fuel is not used as the primary energy source until the end of the first year of operation and that oil or natural gas is used for the first year of operation. Capital investment, operating and maintenance and fuel expenditures should reflect postponed use of alternate fuel (e.g., installation of scrubber when used).

(C) Successively compute the cost (COST) of using an alternate fuel in a dual fired installation with equation (2) assuming alternate fuel is postponed until the end of the second through tenth year of operation (and oil or natural gas is used in the years preceding alternate fuel use).

(D) Compute the cost (COST) of using oil or natural gas in an oil or natural gas fired installation as the primary energy source with equation (2) throughout the useful life of the unit.

(E) Compute the ratios (R) of the cost of using an alternate fuel at the beginning of operation, and successively at the end of the first through tenth year to the cost of using oil or natural gas throughout the life of the installation with equation (1).

(F) If all the ratios (R) are greater than, for illustrative purposes, 1.5 (an index to be set periodically by ERA), your proposed installation would meet the cost criteria for a permanent exemption. If one or more of the ratios (R) is equal to or less than 1.5 and a series of ratios (R), starting with the case where alternate fuel is used from the start of operation, are all greater than 1.5, a temporary exemption would be granted for the minimum period in which the cost of starting to use alternate fuel, deferred year by year, always exceeds 1.5.

The following table shows the hypothetical results of four sets of calculations.

HYPOTHETICAL RESULTS OF FOUR SETS OF CALCULATIONS

Year in which alternate fuel use is commenced	Case I	Case II	Case III	Case IV
At start of operation	1.7	1.7	1.7	1.3
1	1.7	1.7	1.7	1.3
2	1.4	1.7	1.7	1.3
3	1.4	1.7	1.7	1.3
4	1.4	1.7	1.4	1.3
5	1.4	1.7	1.4	1.0
6	1.4	1.7	1.2	1.0
7	1.4	1.7	1.2	1.0
8	1.4	1.7	1.2	1.0
9	1.4	1.7	1.2	1.0
10	1.4	1.7	1.2	1.0

The results of the above table shows that: a 2-year temporary exemption would be granted in Cast I, a permanent exemption would be granted in Case II, a 3-year temporary exemption would be granted in Case III, and no exemption would be granted in Case IV.

(c) *Cost Calculation—Special Cost Test.*

You may be eligible for a temporary exemption if you demonstrate that the cost of using an alternate fuel in an alternate fuel fired installation will substantially exceed the cost of using oil or natural gas in a dual fired installation (alternate fuel and oil or natural gas) over the period of the proposed exemption. The period of the exemption cannot exceed 10 years. You will have to show that the cost of using alternate fuel substantially exceeds the cost of using imported petroleum for the first year of operation, the first 2 years of operation, and successive first years of operation, up to the period of the proposed exemption. To do so, you must perform the calculations with successive ending dates to determine the maximum lenght of the exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

The calculation takes into consideration the operations and maintenance and delivered fuel expenditures incurred and the effect of depreciation and taxes on cash flow during the period of the proposed exemption and marginal capital outlays required for your installation to use gas or oil as a primary energy source during the period of the temporary exemption.

To conduct the test you must use the equations that follow.

Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation (6).

$$\text{EQ 6} \quad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

Calculate the cost using equation (7).

$$\text{EQ 7} \quad \text{Cost} = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots + \frac{(1-t)(OM_p + FL_p) - t \cdot DPR_p}{(1+K)^p} - \frac{So}{(1+K)^p}$$

$$\text{EQ 8} \quad I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_p}{(1+K)^p}$$

The terms in equations 6 through 8 are defined as follows.

R - The ratio of the cost of using an alternate fuel to the cost of using imported petroleum.

COST - The total discounted cost in dollars of constructing and operating the installation for the period of the exemption.

I - Discounted total net capital outlay in dollars excluding investment tax credit to use oil or natural gas as a primary energy source during the period of the proposed exemption, in a dual fired installation. The investment in the basic installation (that which would be required if oil or natural gas was not used) itself is not included in this comparison as it is irrelevant. (ERA will not consider investment tax credits for oil and gas fixed installations.)

I_o - Net capital outlay in dollars up to the time the installation goes into operation to use oil or natural gas as a primary energy source during the period of the proposed exemption, in a dual fired installation.

$I_1 \ldots I_p$ - Yearly net capital outlay from first year of operation up to the change to alternate fuel to use oil or natural gas as a primary energy source during the period of the proposed exemption, in a dual fired installation.

OM - Annual cost in dollars in operating and maintaining the installation.

Sp - Salvage value of equipment rendered useless by changing from oil or natural gas to alternate fuel.

t - Federal income tax rate (see Section d).

FL - Annual delivered fuel cost in dollars (see Section d).

K - The real cost of capital expressed as a fraction (see Section d).

P - The period of the proposed exemption.

DPR - Annual depreciation using the method which depreciates the asset as quickly as allowed by law. You cannot use accelerated depreciation for oil and gas fired boilers.

The step by step procedure that follows shows the comparison you must make.

(A) Compute the cost (COST) of using an alternate fuel in an alternate fuel fired new installation assuming the length of the proposed exemption is 1 year with equation 7.

(B) Compute the cost (COST) of using oil or natural gas valued at imported petroleum prices in a dual fired installation assuming the length of the proposed exemption is 1 year with equation 7.

(C) Compute the ratio (R) of the cost of using an alternate fuel for the first year to the cost of using imported petroleum for the first year with equation 6.

(D) Repeat the calculations made in (A), (B), and (C) above assuming the length of the proposed exemption is 2 years, 3 years, 4 years, and so on, up to the period of the proposed exemption.

(E) A temporary exemption would be granted, where the ratios (R) are greater than, for illustrative purposes, 1.5 (the index established by ERA).

(d) *Information on parameters used in the calculation.* (1) All estimated expenditures, except natural gas and petroleum products shall be expressed in real (uninflated) terms using the prices in effect at the time the petition is submitted.

(2) The delivered price of oil or natural gas to be used in the cost calculation must reflect the price of imported oil.

The imported petroleum price is reflected in the cost calculation in the following way:

$$PFE = \frac{PICO}{PCCO} \times PF$$

where

PICO = Price of imported crude oil. The most recent refiner acquisition cost of imported crude oil as reported in the Federal Register monthly notice for the DOE Domestic Crude Oil Allocation (Entitlements) Program.

PCCO = Price of composite crude oil. The most recent weighted average cost of total reported crude oil receipts as reported in the Federal Register notice for the DOE Entitlements Program.

PF = Price of your fuel. The most recent actual weighted average cost of your fuel oil (other than natural gas). Alternatively, if no purchases of fuel oil occurred, or you used natural gas during that month, you should use a simple average of the industrial price of fuel oil (capable of being burned in your facility) sold in your area by at least three suppliers.

For proposed natural gas users, you shall use the price of No. 2 distillate fuel oil in this calculation.

PFE = Price of fuel for equation. The cost of oil for use in Equation 1.

(3) For new installations, the annual capacity factor shall be assumed to be 60 percent of the design capacity. You may rebut this presumption with suitable engineering evidence.

(4) The useful life of major fuel burning installations shall be 40 years. You may rebut this presumption with suitable engineering evidence.

(5) The cost of capital for major fuel burning installations is 7.0 percent per year in real terms.

(6) The Federal income tax rate is 46 percent.

(7) All estimated expenditures will be computed in accordance with generally accepted accounting principles.

(e) *Evidence supporting the comparative cost test.* All petitions for exemption requiring the use of the comparative cost test shall include, but not be limited to the following information:

(1) A detailed accounting of all capital outlays including a description of all major construction and equipment. All critical assumptions should be stated and sufficient data should be included to support your estimates.

(2) A detailed accounting of all operations and maintenance expenditures including a description of all major elements. All critical assumptions should be stated and sufficient data included to support your estimates.

(3) A detailed accounting of all delivered fuel expenditures including transportation. All critical assumptions should be stated and sufficient data included to support your estimates. The fuel characteristics for each alternate fuel should be included.

(4) If the useful life of the installation is judged to be less than 40 years, all critical assumptions and sufficient data to support that position.

(5) A detailed accounting of the depreciation which should include the depreciable base and its tax life. All critical assumptions should be stated and sufficient data included to support your estimates.

(f) *Example of calculations.* You are planning to build a new major fuel burning installation and the fuels you are considering are coal and oil. In this particular situation, the delivery cost of coal is much greater for the first three years than it will be in the later years because of a transportation problem requiring three years to resolve. Do you qualify for an exemption? If so, is it permanent or temporary?

To determine if you qualify for a permanent exemption, you would have to use the General Cost Test and compute the ratios of the cost to use (1) coal for the useful life of a coal fired installation, (2) oil for the first year and coal for the remainder of the useful life of a dual fired installation, (3) oil for the first two years and coal for the remainder of the useful life of a dual fired installation, * * *, and 11) oil for the first 10 years and coal for the remainder of the useful life of a dual fired installation to the cost of using oil for the entire life of an oil fired installation.

All eleven ratios would have to be higher than 1.5 in order to qualify for a permanent exemption. However, if a series of successive ratios, starting with the case where alternate fuel is used from the start of operation, are all greater than 1.5, you would be eligible for a temporary exemption up to the last year the ratio greater than 1.5.

In this example, we will only compute the ratios of (1) the cost to use coal for the useful life of a coal fired installation and (2) the cost to use oil for the first 3 years and coal for the remainder of the useful life of a dual fired installation to the cost of using oil for the entire useful life of an oil fired installation.

To determine if you qualify for a temporary exemption, if you have not already done so with the General Cost Test, of 3 years, you would have to use the Special Cost Test and compute the ratios of the cost to use coal in a coal fired installation to the cost to use oil in a dual fired installation for 1, 2, and 3 years. All three ratios would have to be higher than 1.5 in order to qualify for a three year temporary exemption. In this example, we will only compute the ratio of the cost to use coal in a coal fired installation to the cost to use oil in a dual fired installation for 3 years.

(1) *Parameters*—a set of hypothetical parameters are given below.

(A) Coal and Dual fired installation:

Net capital outlay for coal fired installation (without scrubber) before the installation becomes operational, $5,545,000.

Net capital outlay for dual fired installation (without scrubber) before unit becomes operational, $6,435,000.

Net marginal outlay for dual fired installation (without scrubber) before the unit becomes operational, $890,000.

Salvage value of equipment rendered useless by shifting from oil to coal, $223,000.

Net capital outlay for scrubber, $2,575,000.

Operations and maintenance costs per year:

Dual fired installation burning oil, $343,000.

Coal fired installation burning coal, $858,000.

(B) Oil fired installation:

Net capital outlay for installation before it becomes operational, $2,668,000.

Operations and maintenance costs per year, $258,000.

(C) Fuel:

Annual cost to burn imported oil, $2,163,000.

Annual cost to burn coal for the first three years of operation, $3,447,000.

Annual cost to burn coal for the fourth through fortieth year of operation, $1,159,000.

(2) *Analysis.*

(A) General Cost Test. The relevant cash flows are shown in the following table for the three cases in which computations are being made.

CASH FLOWS FOR GENERAL COST TEST IN (IN THOUSANDS)

Type of Cash Flow	Year(s) Flow Occurs	Case 1 Coal Over Life Of Installation	Case 2 Imported Petroleum For First 3 Yrs. & Coal Thereafter	Case 3 Imported Petroleum Over the Life Of Installation
Investment	0	$5,545 + $2,575	$6,435	$2,668
Investment	3	0	$2,575	0
Salvage	3	0	$ 223	0
Operation & Maintenance	1, 2, 3,	$ 858/yr.	$343/yr.	$258/yr.
Operation & Maintenance	4, ..., 40	$ 858/yr.	$858/yr.	$258/yr.
Fuel	1, 2, 3,	$3,477/yr	$2,163/yr.	$2,163/yr.
Fuel	4, ..., 40	$1,159/yr.	$1,159/yr.	$2,163/yr.
Effect of Taxes and Depreciation	1, ..., 40	Depreciation is greater of double declining balance or straight line over remaining period. For the purposes of this example the pollution control equipment is depreciated in the same way as all other equipment.		

The following computation are in thousands of dollars.

- Cost of using coal from the start of operation.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= (5{,}545 + 2{,}575)$$

$$\frac{0_1}{(1.07)^1} + \frac{0_2}{(1.07)^2} + \ldots + \frac{0_{40}}{(1.07)^{40}}$$

$$= \$8{,}120$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1}$$

$$+ \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots$$

$$+ \frac{(1-t)(OM_n + FL_n) - t \cdot DPR_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$COST = 8{,}120 + \frac{(1-0.46)(858 + 3477) - 0.46 \times DPR_1}{(1.07)^1}$$

$$+ \frac{(1-0.46)(858 + 3477) - 0.46 \times DPR_2}{(1.07)^2}$$

$$+ \frac{(1-0.46)(858 + 3477) - 0.46 \times DPR_3}{(1.07)^3}$$

$$+ \frac{(1-0.46)(858 + 1159) - 0.46 \times DPR_4}{(1.07)^4}$$

$$+ \ldots + \frac{(1-0.46)(858 + 1159) - 0.46 \times DPR_{40}}{(1.07)^{40}}$$

$$- \frac{0}{(1.07)^{40}}$$

$$= \$24,330$$

- Cost of using imported petroleum for the first three years and coal thereafter.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= 6,435 + \frac{2,575}{(1.07)^3}$$

$$= \$8,537$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1}$$

$$+ \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots$$

$$+ \frac{(1-t)(OM_n + FL_n) - t \cdot DPR_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$\text{COST} = 8{,}537 + \frac{(1-0.46)\,(343 + 2{,}163) - 0.46 \times \text{DPR}}{(1.07)^{1}}{}^{1}$$

$$+ \frac{(1-0.46)(343 + 2{,}163) - 0.46 \times \text{DPR}}{(1.07)^{2}}{}^{2}$$

$$+ \frac{(1-0.46)(343 + 2{,}163) - 0.46 \times \text{DPR}}{(1.07)^{3}}{}^{3}$$

$$+ \frac{(1-0.46)(858 + 1{,}159) - 0.46 \times \text{DPR}}{(1.07)^{4}}{}^{4}$$

$$+ \ldots$$

$$+ \frac{(1-0.46)(858 + 1{,}159) - 0.46 \times \text{DPR}}{(1.07)^{40}}{}^{40}$$

$$- \frac{223}{(1.07)^{3}}$$

$$= \$21{,}762$$

- Cost of using imported petroleum over the life of the installation

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= 2{,}668 + \frac{0}{(1.07)^1} + \frac{0}{(1.07)^2} + \ldots + \frac{0}{(1.07)^{40}}$$

$$= 2{,}668$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots \pm \frac{(1-t)(OM_n + FL_n) - t \cdot DPR_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$COST = 2{,}668 + \frac{(1-0.46)(258 + 2{,}163) - 0.46 \times DPR_1}{(1.07)^1} + \frac{(1-0.46)(258 + 2{,}163) - 0.46 \times DPR_2}{(1.07)^2} + \ldots$$

$$+ \frac{(1-0.46)(258 + 2{,}163) - 0.46 \times DPR}{(1.07)^{40}} - 0$$

$$= 19{,}573$$

- Computation of ratios

$$R = \frac{\text{COST (COAL THROUGHOUT LIFE)}}{\text{COST (OIL)}}$$

$$= \frac{24{,}330}{19{,}573} = 1.24$$

$$R = \frac{\text{COST (OIL FIRST THREE YEARS, COAL THEREAFTER)}}{\text{COST (OIL)}}$$

$$= \frac{21{,}762}{19{,}573} = 1.11$$

- Since the index is 1.5, you would not qualify for a permanent exemption, or a temporary exemption, using the General Cost Test.

(C) Special Cost Test. The relevant cash flow are shown in the following tables for the two cases in which computations are being made.

CASH FLOW FOR SPECIAL COST TEST (IN THOUSANDS)

Type of Cash Flow	Year(s)	Total Cash Flows: Case 1 Coal Over Life of Installation	Total Cash Flows: Case 2 Imported Petroleum First 3 Yrs & Coal Thereafter	Capital Outlays Required to Use Oil: Case 1 Coal Over Life of Installation	Capital Outlays Required to Use Oil: Case 2 Imported Petroleum First 3 Yrs of Coal Thereafter
Investment	0	$5,545 + $2,575	$6,435	$1,685	-
Investment	3	0	$2,575	-	$ 2,575
Salvage	3	0	$ 223	-	(-)223
Operation & Maintenance	1, 2, 3,	$ 858/yr.	$ 343/yr.		
Fuel	1, 2, 3,	$3,477/yr.	$2,163/yr		
Effects of Taxes and Depreciation	1, 2, 3,	Depreciation is greater of double declining balance or straight line over remaining period. For the purposes of this example, the pollution control equipment is depreciated in the same way as all other equipment.			

The following computations are in thousands of dollars.

- Cost of using coal from the start of operation.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots \frac{I_p}{(1+K)^p}$$

$$= 1{,}685 + \frac{0}{(1.07)^1} + \frac{0}{(1.07)^2} + \frac{0}{(1.07)^3}$$

$$= 1{,}685$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots + \frac{(1-t)(OM_p + FL_p) - t \cdot DPR_p}{(1+K)^p} - \frac{S_p}{(1+K)^p}$$

$$COST = 1{,}685 + \frac{(1-0.46)(858 + 3{,}477) - 0.46 \times DPR_1}{(1.07)^1} + \frac{(1-0.46)(858 + 3{,}477) - 0.46 \times DPR_2}{(1.07)^2} + \frac{(1-0.46)(858 + 3{,}477) - 0.46 \times DPR_3}{(1.07)^3} - 0$$

$$= \$7{,}361$$

- Cost of using imported petroleum for the first three years (and coal thereafter)

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_p}{(1+K)^p}$$

$$= 0 + \frac{2,575}{(1.07)^3}$$

$$= \$2,102$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots + \frac{(1-t)(OM_p + FL_p) - t \cdot DPR_p}{(1+K)^p} - \frac{S_p}{(1+K)^p}$$

$$COST = 2,102 + \frac{(1-0.46)(343 + 2,163) - 0.46 \times DPR_1}{(1.07)^1} + \frac{(1-0.46)(343 + 2,163) - 0.46 \times DPR_2}{(1.07)^2} + \frac{(1-0.46)(343 + 2,163) - 0.46 \times DPR_3}{(1.07)^3} - \frac{223}{(1.07)^3}$$

$$= 4,868$$

- Computation of ratio

$$R = \frac{\text{COST (COAL FOR PERIOD OF EXEMPTION)}}{\text{COST (OIL FOR PERIOD OF EXEMPTION)}}$$

$$\frac{7,361}{4,868} = 1.51$$

- If ERA had set the index at 1.5, you would be granted a temporary exemption.

§ 505.6 Use of mixtures—General requirement for temporary exemptions.

(a) ERA will not consider a petition for a temporary exemption under section 211 of the Act to be complete, adequate or acceptable for filing unless you demonstrate, to the satisfaction of the ERA in your Fuels Decision Report, whether or not the use of a mixture of natural gas or petroleum and an alternate fuel is economically and technically feasible during the period of the proposed exemption.

(b) If ERA determines that the use of a particular fuel mixture is technically and economically feasible during the period of the proposed exemption, ERA will condition the granting of any temporary exemption under this part upon the use of that mixture during the period of the temporary exemption.

§ 505.7 Use of mixtures—General requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for any of the following exemptions provided for in section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, cogeneration, emergency purposes, product/process, or equipment outages) to be complete, adequate, or acceptable for filing unless you demonstrate to the satisfaction of ERA in your Fuels Decision Report that you have considered the use of a mixture(s) for which an exemption under § 503.28 (Fuel Mixtures) of these regulations would be available.

(b) *Demonstration.* ERA will not grant any of the exemptions listed above unless you demonstrate that use of such a mixture(s) is not economically or technically feasible in the unit for which you are requesting an exemption. To make such a demonstration, you must show in your Fuels Decision Report to the satisfaction of ERA that:

(1) If use of a mixture(s) were required, you would be eligible for one of the following permanent exemptions provided for in the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or State or local requirements; or

(2) The use of a mixture(s) is not technically or economically feasible in your specific unit due to design or special circumstances as determined by ERA on a case-by-case basis.

§ 505.8 Use of fluidized bed combustion not feasible—General requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for one of the following permanent exemptions provided for in section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, cogeneration, emergency, product/process, or equipment outages), to be complete, adequate or acceptable for filing unless you demonstrate in your Fuels Decision Report to the satisfaction of ERA that:

(1) You have considered the use of a method of fluidized bed combustion of an alternate fuel; and

(2) Use of a method of fluidized bed combustion of an alternate fuel is not economically or technically feasible.

(b) *Finding.* If ERA determines, on a generic basis, that use of a method of fluidized bed combustion is economically and technically feasible, ERA will deny your request for exemption unless you demonstrate to the satisfaction of ERA that:

(1) If use of a method of fluidized bed combustion were required, you would be eligible for one of the following permanent exemptions provided for in section 212 of the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, or State and local requirements; or

(2) The use of a method of fluidized bed combustion is not technically or economically feasible in your specific unit due to design or special circumstances as determined by ERA on a case-by-case basis.

§ 505.9 Terms and conditions; compliance plans.

(a) *Terms and conditions generally.* You must comply with the terms and conditions of an exemption granted under the Act by the ERA, including terms and conditions requiring the use of (1) effective fuel conservation measures and (2) fuel mixtures.

(b) *Compliance plans for temporary exemptions.* (1) A compliance plan certified by your Chief Executive Officer must accompany a petition for a temporary exemption. The compliance plan shall include at least the following:

(i) a detailed schedule of progressive events and the dates upon which the events are to take place indicating how you will comply with the applicable prohibitions of the Act;

(ii) documentary evidence of binding contracts for fuel or facilities for the production of fuel which you require to comply with the applicable prohibitions of the Act;

(iii) any other documentary evidence which indicates your intention to comply with the applicable prohibitions of the Act, and

(iv) a detailed statement of the manner in which you intend to comply with § 505.6 of these regulations requiring the use of fuel mixtures as a condition to the granting of a temporary exemption where the use of fuel mixtures is technically and economically feasible.

(2) The exemption shall not be effective until the compliance plan is approved by ERA.

(3) Revisions of Compliance Plans. If the petition is granted, you must submit the ERA an updated compliance plan certified by your Chief Executive Officer:

(i) at the end of each 12 month period from the effective date of the exemption;

(ii) within 1 month of an alteration of any milestone in the compliance plan, together with the reasons for the alteration and its impact upon the scheduling of all other milestones in the plan, and

(iii) at any time the ERA, in its discretion, determines that a revised compliance plan is necessary to reflect changes in circumstances.

(c) *Enforcement.* Any exemption is subject to termination upon the violation of any provision of the exemption or any provision of the pertinent compliance plan.

Subpart C—Temporary Exemptions for New Major Fuel Burning Installations

§ 505.10 Purpose and scope.

(a) This subpart implements the provisions contained in Section 211 of the Act with regard to temporary exemptions for new installations.

(b) This subpart establishes the criteria and standards which owners or operators of new installations who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

(c) You must submit all petitions for temporary exemptions for new installations in accordance with the procedure set out in Part 501 of these regulations.

(d) The duration of any temporary exemption granted under this subpart shall be measured from the date that the installation is placed in service.

§ 505.11 Lack of alternate fuel supply.

(a) *Eligibility.* Section 211(a)(1) of the Act provides for a temporary exemption due to lack of an alternate fuel supply. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operational requirements of the new installation;

(2) For the period of the proposed exemption, the cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source as defined in

§ 505.5 (Cost Calculation) of these regulations; and

(3) You will be able to comply with the applicable prohibitions of these regulations at the end of the proposed exemption period.

(b) *Evidence required in support of a petition.* In order to submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuels you considered.

(2) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(3) A description of the detailed design requirements for the new installation as specified by the purchaser, including capacity, alternate fuel capability, and all other specifications;

(4) A description of the specific fuel characteristics of all the fuels which can be used by the new installation;

(5) Evidence that you sought to obtain the full range of alternate fuels and fuel characteristics which could be used by the new installation, including bid requests and/or advertisements for supply contracts and responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(6) Evidence of the contracts or other arrangements you have made to insure a reliable and adequate supply of an alternate fuel at the end of the proposed exemption; and

(7) All data required by § 505.5 (Cost Calculation) of these regulations necessary for computing the cost calculation formula.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accord with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition in order to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions or renewals, may not exceed ten years.

§ 505.12 Site Limitations.

(a) *Eligibility.* Section 211(a)(2) of the Act provides for a temporary exemption due to a site limitation. To qualify you must demonstrate, to the satisfaction of the ERA, that one or more of the following specific physical limitations relevant to the location or operation of your installation exist which, despite your diligent good faith efforts, cannot be overcome before the end of the proposed exemption period:

(1) Alternate fuels would be inaccessible as a result of a specific physical limitation relevant to the location or operation of the proposed installation;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate facilities for handling, using or storing an alternate fuel would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed installation using an alternate fuel.

(b) *Evidence to be submitted in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above criteria:

(1) Evidence that the site limitation is a physical limitation, and not a requirement of a Federal, state, or local law which could be the basis of an exemption under § 505.26 (State or local requirements);

(2) Evidence that alternative means for overcoming the specific site limitations were considered, with a detailed description of the efforts made to overcome the site limitations set out in your petition;

(3) Evidence of the equipment or space requirements for which the site limitation is claimed;

(4) Evidence of the contracts or other arrangements you have made to insure that the site limitation will be overcome and that you will comply with the prohibitions at the end of the proposed exemption period. Examples of evidence relevant to establishing a site limitation for purposes of a temporary exemption are as follows:

(i) Detailed documentation of impediments, including rights-of-way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the specific site of the installation and a demonstration why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed installation;

(v) Detailed scale site plans of the entire facility which include those areas not directly involved with the specific installation;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuel;

(vii) Copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilities;

(viii) Copies of quotes from bona fide suppliers, indicating lead times for purchase and installation of required ancillary storage or handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed installation;

(xi) A description of efforts made to secure offsite disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions and renewals, may not exceed 5 years.

§ 505.13 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 211(a)(3) of the Act provides for a temporary exemption due to an inability to comply with applicable environmental requirements. To qualify you must demonstrate in your Fuels Decision Report to the satisfaction of the ERA that despite diligent good faith efforts:

(1) You will be unable to comply with the applicable prohibitions imposed by the Act without violating applicable Federal or State environmental requirements as of the projected date of commencement of operation; and

(2) You will be able to comply with the applicable prohibitions imposed by the Act by the end of the temporary exemption period.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of any application which has been filed with EPA or a State agency for a permit to construct or operate the new installation;

(2) A copy of the decision or action taken by EPA or a State agency with respect to the application for a permit to construct or operate the new installation;

(3) A detailed synopsis of the administrative record of the proceedings by ERA or the State agency for a construction or operation permit;

(4) Copies of all technical studies that you have relied upon with regard to consideration of alternate fuels, pollution control equipment, offsets, variances, State Implementation Plan revisions, and redesignations of Class 2 areas to Class 3 areas;

(5) Copies of requests for bids, responses received, and contracts signed, if any, for an alternate fuel supply and for the purchase and installation of pollution control equipment; and

(6) Copies of agreements made by you with the State or other companies for the acquisition of appropriate "offsets." If the agreement is conditioned upon the grant of a variance, State Implementation Plan revision or redesignation of Class 2 areas, you must submit a letter from the State agency indicating when a proceeding to effectuate the agreement will take place.

(c) *A petition to ERA in absence of application to EPA.* If you have not applied to EPA or a State agency for a construction or operation permit, you must submit to ERA:

(1) Verification that the facility cannot burn an alternate fuel on the date of commencement of operations in compliance with all applicable air pollution control requirements; and

(2) Items required under paragraphs (b), (4), (5), and (6) above.

(d) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(e) *Duration.* This temporary exemption taking into account extensions and renewals, may not exceed 5 years.

§ 505.14 Future use of synthetic fuels.

(a) *Eligibility.* Section 211(b) of the Act provides for a temporary exemption based upon the future use of synthetic fuels. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You will be able to comply with the applicable prohibitions imposed by the Act at the end of the proposed exemption period by the use of synthetic fuel as a primary energy source in your installation; and

(2) That you will not be capable of complying with the applicable prohibitions imposed by the Act by using an alternate fuel in your installation before the end of the proposed exemption period.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Copies of economic and technical feasibility studies pertaining to the use of synthetic fuels by your installation;

(2) Reliable evidence of the financial commitments you have made to construct, operate, and maintain equipment which will use synthetic fuel as the primary energy source at the end of the proposed exemption period;

(3) Copies of bid requests, advertisements, contracts and/or other agreements relating to the production, purchase, and transportation of synthetic fuel; and

(4) Information with regard to permits that may be required by Federal or State agencies for the construction and operation of an installation using synthetic fuels.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accord with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You shall submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption may be granted for a period of up to 5 years and may be extended for an additional 5 years, but so extended may not exceed 10 years.

§ 505.15 Public interest exemption.

(a) *Eligibility.* Section 211(c) of the Act provides for a temporary public interest exemption. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with the applicable prohibitions imposed by the Act, except in extraordinary circumstances, during the period for which exemption is requested, but that the installation will be capable of complying at the end of the proposed exemption period;

(2) You are not eligible for any other temporary exemption contained in section 211 of the Act; and

(3) The granting of the exemption request would be in accord with the purposes of the Act and would be in the public interest.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report substantial evidence to corroborate the above requirements.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulation and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account extensions and renewals, may not exceed 5 years.

§ 505.16 The use of petroleum.

(a) *Eligibility.* This exemption is designed to afford installations subject to the prohibitions imposed by section 202 of the Act, an opportunity for relief prior to the date that regulations become final. Section 211(d) of the Act provides for a temporary exemption for the use of petroleum which may be granted in certain cases, as described below. Petitions filed for this exemption will be deemed to be a petition for a mixtures exemption after the effective date of the final regulations and will be received by ERA under § 505.28 of this Title (mixtures). To qualify for this exemption, you must demonstrate to the satisfaction of ERA that:

(1) The installation does not have nor will it acquire a design capacity of consuming any fuel at a heat input rate in excess of 300 MMBtu's per hour;

(2) The installation will utilize alternate fuels for at least 75 percent of the annual fuel heat input upon expiration of the temporary exemption;

(3) An expedited granting of a temporary exemption permitting the use of petroleum is necessary, and that you cannot reasonably wait until final regulations are promulgated; and

(4) You would reasonably be entitled to a temporary exemption on some other basis and that you will apply for that exemption in a manner timely enough to afford resolution prior to expiration of this temporary exemption.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuel Decision Report the following substantial evidence to corroborate the above requirements:

(1) Description of the detailed design requirements for the new installation as indicated in the purchaser's design specifications, including capacity, alternate fuel capabilities, and other appropriate specifications;

(2) Evidence of binding contracts, State construction permits, or other arrangements you have made to insure that an alternate fuel will be utilized for at least 75 percent of the annual fuel heat input of the unit at the end of the proposed exemption period;

(3) Documentation of the rationale for the need for an expedited approval of a temporary exemption prior to the date final regulations become effective; and

(4) Description of the impact if the exemption request were denied.

(b) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 505.9 of these regulations is required simultaneously with submission of your petition in order to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(c) *Duration.* This temporary exemption, taking into account extensions and renewals, may not exceed 5 years.

Subpart D—Permanent Exemptions for New MFBI's

§ 505.20 Purpose and scope.

(a) This subpart implements the provisions contained in Section 211 of the Act with regard to permanent exemptions for new major fuel burning installations.

(b) This subpart establishes the criteria and standards which owners or operators of new installations who petition for a permanent exemption must meet to sustain their burden of proof under the Act.

(c) You must submit all petitions for permanent exemptions for new installations in accordance with the procedures set out in Part 501 of these regulations.

§ 505.21 Lack of alternate fuel supply for the first 10 years of useful life.

(a) *Eligibility.* Section 212(a)(1)(A)(i) of the Act provides for a permanent exemption due to lack of an adequate and reliable supply of alternate fuel during the first 10 years of useful life of the new installation. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the qualify necessary to conform to the design and operational requirements of the new installation; and

(2) Such a supply will no be available within the first 10 years of useful life of the new installation.

(b) *Evidence in support of a petition.* In order to submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new installation as specified by the purchaser, including capacity, alternate fuels capability, and all other pertinent specifications.

(3) A description of the specific fuel characteristics of all the fuels which can be used by the new installation;

(4) Evidence that you sought to obtain the full range of alternate fuels and fuel characteristics which could be used by the new installation;

(5) Evidence that you solicited at least 3 bids from at least 25 percent of the supplier market for an adequate and reliable supply of alternate fuel, including bid requests and/or advertisements for supply contracts and all responses you received, as well as any other arrangements you attempted to make to secure supplies; and

(6) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuel you considered, including a discussion of how you made your assessment that an adequate and reliable supply of the quality of fuel needed would not be available within the first 10 years of useful life of the new installation.

§ 505.22 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) *Eligibility.* Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported oil. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to design and operational requirements of the new installation; and

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source, as defined in § 505.5 (Cost Calculation) of these regulations during the useful life of the new installation.

(b) *Evidence in support of a petition.* In order to submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new installation as specified by the purchaser, including capacity, alternate fuels capability, and all other pertinent specifications;

(3) A description of the specific fuels characteristics of all of the fuels which can be used by the new installation.

(4) Evidence that you sought the full range of alternate fuels and fuel characteristics which could be used by the new installation, including bid requests, and/or advertisements for supply contracts, all responses you received, as well as any other arrangements you attempted to make to secure supplies;

(5) All data required by § 505.5 of these regulations (Cost Calculation) necessary for computing the cost calculation formula; and

(6) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuel you considered.

§ 505.23 Site limitations.

(a) *Eligibility.* Section 211(a)(2) of the Act provides for a permanent exemption due to a site limitation. To qualify you must demonstrate to the satisfaction of the ERA that, despite good faith efforts:

(1) Alternate fuels would be inaccessible as a result of a specific physical limitation to the location or operation of the proposed installation;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate facilities for handling, using, or storing alternate fuels would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed installation using an alternate fuel and that these limitations cannot be reasonably expected to be overcome within 5 years

after the commencement of operations.

(b) *Evidence to be submitted in support of the petition.* In order to submit an adequate petition for review by ERA, you must include in your Fuels Decision Rationale the following substantial evidence to corroborate the above criteria:

(1) Evidence that the site limitation is a physical limitation, and not a requirement of a Federal, State, or local law which could be the basis of an exemption under Section 505.26 (State or local requirements);

(2) Evidence that alternative means for overcoming the specific site limitations were sought, with a detailed description of the efforts made to overcome the site limitations set out in your petition; and

(3) Evidence of the equipment or space requirements for which the site limitation is claimed. Examples of evidence relevant to establishing a site limitation for purposes of a permanent exemption are as follows:

(i) Detailed documentation of impediments, including rights-of-way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the geographic site of the installation and demonstration showing why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements, and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed installation;

(v) Detailed scale site plans of the entire facility which include those areas not directly involved with the specific installation;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuels;

(vii) Copies of bid requests, advertisements, and general efforts made to secure alternative storage facilities;

(viii) Copies of quotes from bona fide suppliers, indicating lead times for purchase and installation for required ancillary storage or handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed powerplant;

(xi) A description of efforts made to secure off site disposal areas, transportation facilities, and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

§ 505.24 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 212(a)(1)(C) of the act provides for a permanent exemption due to inability to comply with applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA that, despite good faith efforts, you cannot burn alternate fuels without violating applicable environmental requirements within 5 years after beginning operation by providing proof that EPA or the State has denied a construction permit and by providing the information requested below.

(b) *Evidence supporting petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of your construction permit application and all supporting documents filed with or subsequent to the application;

(2) To the extent applicable, a copy of the EPA and/or State denial of your construction permit application;

(3) A detailed synopsis of the administrative record of the EPA and/or State permit proceedings;

(4) Copies of reports examining environmental compliance of the facility including fuel use, pollution control equipment, availability of offsets, variances, SIP revisions, and redesignations; and

(5) Copies of requests for bids and responses received for fuel supply and pollution control equipment and copies of any correspondence on offsets, variances, SIP revisions, and redesignations.

(c) *Prepetition actions.* (1) It is recommended that you request a meeting with ERA and EPA or the State to discuss options for complying with the prohibitions; and

(2) You must also send a copy of your construction permit application at the same time you submit it to EPA or the State if you are applying for use of oil or gas as well as an alternate fuel.

§ 505.25 Inability to obtain adequate capital.

(a) *Eligibility.* Section 212(a)(1)(D) of the Act provides for a permanent exemption due to inability to obtain adequate capital. To qualify you must demonstrate to the satisfaction of ERA that—

(1) If you are a part of an existing consolidated corporation, the differ-

ence in cost between your proposed facility and an alternate fuel facility is equal to or greater than 25 percent of the averge annual investment expenditures for the past three years of the consolidated corporation of which you are a part; or

(2) If you are a new business firm, not a part of a consolidated corporation, despite good faith efforts that you cannot obtain the additional capital required for an alternate fuel facility beyond that required for your proposed facility.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report supporting documentary evidence to corroborate the foregoing requirements. The evidence should include but not be limited to the following information:

(1) If you are a part of an existing consolidated corporation, 3-year summary of the financial record of the consolidated corporation, as indicated by the standard financial indicators including cash earnings and dividend records; time interest coverage ratios; price-earnings ratios; market to book value ratios; and all investment expenditures.

(2) If you are a new business firm:

(i) Relevant records pertaining to your specific efforts to raise capital associated with your proposed facility.

(ii) Your financial statement.

§ 505.26 State or local requirements.

(a) *Eligibility.* Section 212(b) of the Act provides for an exemption due to State or local requirements. To qualify you must demonstrate to the satisfaction of the ERA that:

(1) With respect to the proposed site of the installation, the operation or construction of the new installation using an alternate fuel is infeasible because of a State or local requirement other than a building code, nuisance or zoning law;

(2) You have, in good faith, attempted unsuccessfully to obtain a variance from the State or local requirement or have demonstrated why none is available;

(3) The granting of the exemption would be in the public interest and would be consistent with the purposes of this title; and

(4) You are ineligible for a permanent exemption based on lack of alternate fuel supply, site limitations, environmental requirements, or inability to obtain adequate capital.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of the pertinent State or local requirement with its citation and its legislative history;

(2) The identification and location of the administrative body which implements the requirement;

(3) A description of your attempts to obtain a variance from the requirements;

(4) A description of any activities you were involved in pertaining to the enactment of the requirement;

(5) A description of equipment, procedures, advance planning time and costs necessary to comply with the requirement;

(6) A detailed description of why compliance is infeasible;

(7) The impact upon you and/or your local community, if any, should your petition be denied;

(8) An explanation of the reasons why granting this exemption would be in the public interest; and

(9) An analysis of why you cannot qualify for any of the exemptions listed in paragraph (a)(4) above.

§ 505.27 Cogeneration.

(a) *Eligibility.* Section 212(c) of the Act provides for a permanent exemption for cogeneration. To qualify you must demonstrate to the satisfaction of ERA at least the following minimum criteria:

(1) You are unable to comply with the applicable prohibitions imposed by the Act;

(2) That there are economic and other benefits of congeneration with petroleum or natural gas none of which are obtainable through the use of an alternate fuel.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, or inability to raise adequate capital;

(2) Purchaser's design specifications for the new unit;

(3) An engineering description of the system, including proposed output and uses thereof, with sufficient detail to insure that the unit qualifies as a cogeneration facility;

(4) A detailed economic and engineering analysis demonstrating the benefits of cogenerating with petroleum or natural gas and demonstrating that these benefits are not obtainable through the use of alternate fuels;

(5) A comparison of the total oil and gas consumption by the proposed cogeneration project and the best feasible alternative, including the effect on oil or gas used by the installation or by other affected parties; and

(6) An analysis of the immediate and long-term economic impacts on parties not directly involved in the project.

§ 505.28 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) *Eligibility.* Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You propose to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source;

(2) You are not capable of complying with the applicable prohibitions imposed by the Act; and

(3) The amount of petroleum or natural gas you propose to use in the mixture will not exceed the minimum percentage of the total Btu heat input needed to maintain operational reliability consistent with maintaining a reasonable level of fuel efficiency.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A complete description of the fuel mixture, component elements of the mixture, and percentage of each component to be utilized;

(2) The purchaser's design specifications for the unit for which you are requesting an exemption;

(3) An engineering assessment of the proportions of petroleum or natural gas needed to maintain operational reliability and an adequate level of fuel efficiency; and

(4) Documentary evidence which demonstrates that you have considered the use of alternate fuels as a primary energy source. You must include a description of the supply alternatives you considered, the cost and availability of each alternate fuel considered, and the factors important in your decision to reject the use of an alternate fuel as a primary energy source.

(c) *Reporting requirement.* If the exemption is granted, you must submit an annual report to ERA certifying that the affected units have used no more than the percentage of oil or natural gas specified in the exemption order. The certification shall be executed by your chief executive officer.

§ 505.29 Emergency purposes.

(a) *Eligibility.* Section 212(e) of the Act provides for a permanent exemption for emergency purposes. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with applicable prohibitions imposed by the Act;

(2) You will operate and maintain the installation for emergency purposes only.

(b) *Definition.* For the purposes of this permanent exemption, an emergency exists when operation is necessary for (1) plant protection, or (2) the preservation of human health, including services to hospitals, public transportation facilities, sanitation, water supply and pumping, or other essential services. Secondary services which support essential services are excluded.

(c) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Certification executed by the Chief Executive Officer stating that emergency operation under the provisions of this exemption will occur only when plant protection or the preservation of human health is required;

(2) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, certain State or local requirements, or other reasons which would preclude the use of an alternate fuel;

(3) An estimate of the emergency generating capacity required for the first three 12-month periods of exempt operation to be used for plant protection and for preservation of human health;

(4) A list of specific uses described by the terms plant protection and preservation of human health, is provided in paragraph (b) above;

(5) The total emergency generating capacity for which exemption is requested; and

(6) Identification and description of previous exemptions, if any, granted under the provisions of this section.

(d) *Reporting requirement.* At the end of each 12-month period from the effective date of the exemption you must report to ERA the monthly and annual total generating capacity used and amounts generated under the provisions of this exemption with a description of the purposes of use.

§ 505.30 Product or process requirements.

ERA has made a preliminary determination that this exemption (section 212(i) of the Act) applies solely to cer-

tain nonboiler categories. These categories are not subject to the statutory prohibitions against petroleum and gas usage, although the Act does provide ERA with the discretionary authority to promulgate rules prohibiting oil and gas use by these categories of nonboilers. ERA does not intend to issue rules pertaining to those categorical prohibitions at this time. Therefore, we do not now intend to issue regulations governing the eligiblity and evidence requirements for granting this exemption.

§ 505.31 Scheduled equipment outages.

(a) *Eligibility.* Section 212(j) of the Act provides for a permanent exemption to meet scheduled equipment out<ages. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with the applicable prohibitions imposed by the Act;

(2) Your routine maintenance schedule does not permit continuing operation unless ERA grants this exemption and the reasons why; and

(3) The pertinent unit will be used only during those periods when other units are not in operation for reason of scheduled outage.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A schedule of operation for the pertinent unit estimating the number of hours per year and fuel consumption for projected use during the first 12 months of operation after commencement of operation;

(2) A description of the maintenance schedule for all units located at the facility specifically identifying those units at the facility which will be out of service for scheduled maintenance at times when the unit for which the exemption is requested, is operating; and

(3) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, or certain State or local requirements.

(c) *Reporting requirement.* ERA will rely upon the schedule of operation of the unit submitted with the petition as the permanent schedule for exempt use. You must notify ERA in advance of any changes to this schedule.

APPENDIX—DRAFT REGULATORY ANALYSIS—PROPOSED RULES TO IMPLEMENT PROVISIONS OF THE POWERPLANT AND INDUSTRIAL FUEL USE ACT

I. INTRODUCTION

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing rules to implement provisions of the Powerplant and Industrial Fuel Use Act (FUA). The Act contains prohibitions on the use of petroleum and natural gas and provides certain exemptions from the prohibitions.

The Act contains the following provisions restricting oil and natural gas use:

It prohibits use of petroleum or natural gas in new facilities;

It prohibits building new electric powerplants that cannot burn coal or other alternate fuels;

It forbids use of natural gas as a primary energy source in existing electric powerplants after January 1, 1990;

It bans natural gas use by existing powerplants before January 1, 1990, unless that fuel was used by a powerplant as a primary energy source during 1977;

It provides that where a powerplant has historically used natural gas, it cannot consume any greater proportion of the fuel than in the past; and

It provides DOE with authority to issue rules or orders prohibiting existing facilities from using petroleum or natural gas and from using excessive amounts of petroleum or natural gas in mixtures.

FUA authorizes DOE to exempt a powerplant or an installation from the statutory or discretionary prohibitions. The exemptions cover certain physical, economic, environmental, and legal factors that preclude compliance with the prohibitions. The proposed rules establish criteria that must be met to obtain an exemption. The burden of proof of demonstrating that an exemption is warranted rests on the petitioner requesting the exemption and not on DOE.

II. POLICY OBJECTIVES

FUA is an integral part of the National Energy Act (NEA) and represents an expansion of the authority contained in the Energy Supply and Environmental Coordination Act of 1974 (ESECA). The primary purpose of FUA is to minimize the use of petroleum and natural gas in industrial and electric utility boilers. By minimizing the use of scarce fuels in boilers, use of all alternate fuels, not only coal, is encouraged. A shift from consumption of scarce fuels to more abundant domestic resources furthers the goal of national energy self sufficiency and its attendance benefits of reducing the vulnerability of the United States to energy supply interruptions and improving the balance of payments.

The policy objectives for implementing this program follow from the Act. Most important is to prohibit or minimize the use of oil or natural gas, and second, where oil or natural gas must be used, to insure that it is used efficiently. Therefore ERA intends to administer the Act in a stringent manner calling on American industry to utilize its ingenuity and expertise to develop and use technologies for using alternate fuels.

III. IMPACT ANALYSIS OF PROPOSED REGULATIONS

The quantitative impacts of policy alternatives available to ERA in implementing

the Fuel Use Act were assessed by the Energy Information Administration (EIA), DOE, at the request of ERA. Their findings are presented in an analysis memorandum, "Analysis of Proposed DOE Regulations Implementing the Powerplant and Industrial Fuel Use Act", AM/EI/79-07. The memorandum can be obtained from: Energy Information Administration Clearinghouse, 1726 M Street NW., Room 210, Washington, D.C. 20461, 202-634-5641.

The analysis focuses on three key policy alternatives that are discussed in section IV. The following subsections provide an overview of some aspects not captured by the forecasts and the highlights of the regulatory program's estimated impact on national energy consumption and imports.

Forecasting considerations

Forecasts of the impact of regulations are highly dependent upon the structure of the models used to produce the forecasts and on the assumptions incorporated in the cases examined. As a result some of the benefits of implementing FUA regulations may not be evident from the quantitative forecasts and are instead discussed qualitatively in this section.

Savings of oil and gas attributable to implementing FUA are measured from a base case without FUA. The base is predicated upon firms selecting the most economic energy source. However, there may be instances where a firm may not do this. For example, a utility which is having difficulty obtaining rate increases may prefer to construct a less capital intensive plant even though the generation costs over the life of the plant may be slightly greater than for a more capital intensive plant. An industrial firm may prefer to burn oil or gas, rather than coal, even at a slightly higher cost because these are cleaner fuels and enhance the corporate image as a good neighbor. In these cases a regulatory program reinforces the market mechanism and insures that there will not be backsliding from the base case forecasts.

Similarly, the base case may be over optimistic in terms of coal consumption since the forecasts do not take into account the level of risk and uncertainty of using one fuel as opposed to another. Users often perceive coal burning and nuclear powerplants as presenting greater uncertainties than oil or gas burning. The construction lead times are longer and capital outlays are greater resulting in a potential for escalation in project costs. Further, in some geographic areas where coal has not recently or has never been burned there may be considerable hesitation in initiating its use. The implementation of FUA will greatly reduce the role of uncertainty in fuel burning decisions.

It is likely that the program will encourage the introduction of new technology to burn conventional alternate fuels and encourage the introduction of new energy sources. Since coal is the most abundant alternate energy source most firms subject to the prohibitions of the Act will elect to burn coal. With greatly increased direct coal use improved methods of burning will develop, commercialization of those methods, such as fluidized bed combustion, will occur, and an experienced coal industry labor force will expand. The Act will also encourage research and the commercialization of other alternate energy sources such as solid waste, gasified coal, and solar energy.

In addition to the factors described above that are not accounted for in the model, and therefore not the forecasts, two significant assumptions were made which must be kept in mind when interpreting the forecasts. First, it was assumed that world oil prices in constant dollars would not increase. If it had instead been assumed that world oil prices in constant dollars will increase, market forces would tend to cause a reduction in oil and gas consumption that is otherwise attributed to the regulatory program.

Secondly, most of the policy alternatives in implementing FUA were analyzed without the other portions of the National Energy Act. When the natural gas pricing provisions of NEA are included the combined oil and gas savings attibutable to FUA tend to decline, but oil imports are further reduced. This extra reduction in oil imports occurs because the NEA gas pricing provisions eliminate the distinction between interstate and intrastate gas markets, and some of the gas freed up by FUA is delivered to interstate markets where it substitutes for oil, rather than remaining in the ground awaiting demand from the intrastate market. To the extent possible the analysis presented in this summary is based upon EIA's analysis including the natural gas pricing provisions or an interpretation of impacts that would occur had the natural gas pricing provisions been included throughout.

Energy impact of implementing FUA

The oil and natural gas savings from implementing FUA are estimated to be about 450 thousand barrels a day (MBD) oil equivalent in 1985 and about 650 MBD oil equivalent in 1990. Most of the savings are oil rather than natural gas. This occurs because the price of natural gas rises with the implementation of the NEA gas pricing provisions so that firms with boilers large enough to be covered by the Act are less likely to choose natural gas even in the absence of a regulatory program.

Virtually all of the program savings are attributable to the industrial sector and not the utility sector. The relative cost of using coal as opposed to oil leads utilities to select construction of base load coal fired plants. However, industrial firms that have somewhat lower utilization rates and face relatively higher coal prices and operations and maintenance costs may favor construction of oil fired plants. The regulatory program is effective in preventing much of this oil fired construction by the cost criteria it imposes.

By implementing FUA oil imports are expected to decline by about 450 MBD in both 1985 and 1990. Not all of the program savings in 1990 translate into import reductions because natural gas consumption in the residential and commercial sectors increases.

IV. POLICY ALTERNATIVES

Three significant policy issues were selected for detailed analysis. They are the level of the index to be used in the comparative cost test, the extent to which discretionary prohibitions on existing units should be exercised, and the extent to which types of proposed utility generating equipment should be considered in granting a reliability exemption. Each issue is discussed below.

Index level of the comparative cost test

A facility shall be exempt from the prohibitions if it can be demonstrated that the

cost of using an alternate fuel substantially exceeds the cost of using imported petroleum. The determination of what constitutes "substantially exceeds" is very important since most exemption requests will be evaluated under this criteria. ERA has used a level of 50 percent for illustrative purposes in its proposed regulations. ERA will designate an index in its final regulations that will probably be between 30 percent and 80 percent but may well be higher.

The index level should be high considering the purposes of the Act and the variations in cost estimates. The primary objective of the regulatory program is to reduce oil and gas consumption. This reduction is necessary to further the goal of national energy self sufficiency, reduce the vulnerability of the United States to energy supply interrruptions, and to conserve gas and petroleum for the benefit of present and future generations. The importance of the goals and the legislative language, "substantially exceeds", indicate that use of a large percentage figure to capture social benefits is warranted. Also, the variation in cost estimates is so great as to render meaningless small differences in estimated costs.

According to the model, using a cost index of 30 percent saves 650 MBD (oil equivalent) of oil and natural gas in 1990. By increasing the index to 50 percent an additional 50 MBD of oil and natural gas is saved. There are additional savings by increasing the index to 80 percent but they amount to less than 50 MBD.

As noted earlier, the model attributes negligible savings to the utility sector. However, according to the model, those savings would be captured if the index were 10 percent.

At an index of 50 percent or 80 percent, most of the new industrial boilers and existing coal capable boilers would not be exempted from the prohibitions on the basis of cost. Installations where the cost of using an alternate fuel would exceed the cost of using imported petroleum by more than 50 or 80 percent are likely to be small (less than 250 MMBtu/hour) and require a substantial amount of pollution control equipment.

The total annualized cost in 1990 to directly affected installations is estimated to be about $515 million (1975 dollars) with a 30 percent index. By increasing the index from 30 percent to 50 percent the cost increases by $26 million, and by another $23 million by increasing the index from 50 percent to 80 percent. The costs represent the difference between burning coal versus oil or natural gas. The annualized costs are calculated by dividing the present value of the capital, operations and maintenance, and fuel costs by the sum of the present value discount factors. Because of this discounting calculation these costs cannot meaningfully be divided by program savings.

The cost to the economy may be less than that to directly affected users to the extent that the oil and natural gas saved goes to consumers in the residential and commercial sectors who would otherwise have to use imported petroleum or synthetic natural gas.

All units versus new units only

The Act prohibits new facilities from using oil or natural gas. However, it grants DOE discretionary authority to issue prohibition orders to certain existing facilities. Generally these facilities must be alternate fuel capable; they must not require substantial physical modification or substantial derating to use coal or other alternate fuel; and the conversion must be financially feasible.

The model considered only the impacts of direct solid coal burning by existing facilities. The analysis shows that oil and natural gas savings due to prohibiting existing units from burning oil or natural gas amounts to about 200 MBD oil equivalent in both 1985 and 1990. 200 MBD represents approximately 45 percent of total program savings in 1985 and 30 percent in 1990. No additional units are converted between 1985 and 1900 so the percentage reflects the changeover in capital stock where new units become relatively more important than today's units in terms of fuel consumption.

Virtually all the savings from existing facilities are attributable to the industrial sector.

The costs imposed on a directly affected installation will be about the same whether it is existing or new because both face the same comparison test.

In terms of total annualized costs incurred by directly affected MFBI's the impact among regions is somewhat more unequal when only new MFBI's are subject to prohibitions. For example, in 1985 if only new MFBI's were subject to prohibitions the MFBI's in the Southwest would incur costs of $225 million (1975 dollars) which represents 78 percent of the national cost. However, if prohibitions are applied to existing as well as new units the cost incurred by the southwest increases to $261 million but this amount is about 71 percent of the national cost.

Type of equipment—Utilities

The Act provides an exemption for an oil or natural gas powerplants if the plant is required to prevent an impairment of reliability of service. Although the exemption is a permanent exemption, the condition that it covers, reliability, is temporary in nature. The policy alternatives examined with respect to this exemption were favoring combustion turbine equipment in granting the exemption and disregarding the type of proposed equipment.

The objectives in administering this exemption are to assure that adequate capacity is constructed so that brownouts will not occur, to minimize the use of oil and natural gas consumed under this exemption, and to provide incentives for adequate planning for construction of alternate fuel-fired plants to meet load requirements.

The analysis assesses the trade off between constructing less efficient generating units versus construction of more efficient units that would operate at higher capacity factors. A combusion turbine has a substantially higher heat rate than a combined cycle unit so it requires more oil to generate a kilowatt hour of electricity. However, due to its high operating costs it is one of the last units dispatched to meet electrical demand. The combined cycle unit, conversely, requires less oil to generate a kilowatt hour but its favorable economics tend to result in dispatching it to meet intermediate load demand and occasionally base load demand.

The forecasts show that in 1985 oil-fired capacity will be constructed to meet the reserve margin requirement since the lead time is not great enough to construct sufficient nuclear or coal fired capacity. By 1990 lead times are great enough so that reliability is not a problem.

In the absence of a combustion turbine restriction, utilities would construct 7000 megawatts (MW) of combined cycle capacity by 1985 to meet reliability requirements. In 1985 operation of the combined cycles would save an additional 20 MBD of oil in the utility sector over the program cases presented earlier.

However, the 7000 MW of combined cycle constructed through 1985 would be operating to meet intermediate load demand in 1990 whereas the distillate turbines would be operating to meet peak load demand. Further, most of the distillate turbines constructed for reliability by 1985 displace turbines that would otherwise have been constructed between 1985 and 1990 to service peak load demand in 1990. Additional coal-fired capacity will be constructed to meet load requirements. The net result is that in 1990 by restricting the reliability exemption to combustion turbines 100 MBD of oil is saved. Had the turbine restriction (or some equally effective substitute) not been incorporated in all the program forecasts, utility oil consumption in 1990 would have been 100 MBD higher than was shown in the program forecasts.

V. MACROECONOMIC EFFECTS

The annual impact on real GNP for any of the years 1978 through 1990 will not exceed a decline of about 0.1 of 1 percent of total predicted GNP, or approximately $1.6 billion per year in an economy which is estimated to be about $2 trillion.

The effect of the program on other macroeconomic variables such as the unemployment rate, the wholesale price index, and the consumer price index will be to increase them by an amount that is the same as or smaller than the impact on the GNP. For example, if the long-term base rate of inflation is 4 percent per year, this program would increase this rate to a maximum of 4.1 percent.

VI. REASONS FOR SELECTING THE PREFERRED ALTERNATIVES

ERA proposes to select an index as high as 80 percent or higher for the comparative cost test, pursue a prohibition order program for existing facilities, and favor construction of combustion turbines in granting the reliability exemption. These alternatives are preferred because they result in the greatest oil and natural gas savings which is the primary objective of the program.

In light of national energy goals and the fact that corporate decisions do not conventionally include national costs of burning oil or natural gas, the costs associated with an index of 80 percent are not unreasonable. Further the costs could well be less than those indicated in the analysis because of the large variability of construction project estimates. Also, we intend to review and adjust the index from time to time as experience dictates.

By pursuing a prohibition program for existing facilities large oil and gas savings can be achieved in a relatively short period of time.

In adition to the scarce fuel savings directly associated with favoring combustion turbines for the reliability exemption, the approach provides the greatest incentive to utilities to adequately plan in advance for meeting load requirements with alternate fuel-fired plants.

VII. LEGISLATIVE INITIATIVES

The Fuel Use Act represents a significant advance in the effort to minimize oil and natural gas consumption in the industrial and utility sectors. Further measures may follow FUA. These measures may include broadening of FUA as well as initiatives that would complement and increase the effectiveness of the oil and natural gas replacement effort.

[FR Doc. 78-32308 Filed 11-14-78; 11:51 am]

federal register

FRIDAY, NOVEMBER 17, 1978
PART V



DEPARTMENT OF LABOR

Mine Safety and Health Administration

■

METAL AND NONMETAL MINING OTHER THAN COAL MINING

Health Standards; Miscellaneous Amendments

[4510-43-M]

Title 30—Mineral Resources

CHAPTER I—MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER N—METAL AND NONMETALLIC MINE SAFETY

METAL AND NONMETAL MINING OTHER THAN COAL MINING

Health Standards; Miscellaneous Amendments

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: This rule establishes a definition for the term "potable water," establishes new mandatory standards with respect to silica and new mandatory standards limiting the use and storage of specified toxic or harmful chemical substances, and revises the mandatory standards related to exposure to asbestos dust. These regulations will improve health conditions to which mine workers are exposed and provide mine workers with an equivalent degree of protection as workers in other industries subject to similar hazards.

EFFECTIVE DATE: December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Aurel Goodwin, Chief, Division of Health, Metal and Nonmetal Mine Safety and Health, Mine Safety and Health Administration, U.S. Department of Labor, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-8307.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

Acting under the rulemaking authority of section 6 of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725) (Metal Act), the Secretary of the Interior published a notice of proposed rulemaking to amend Parts 55, 56, and 57, Title 30, Code of Federal Regulations in the Federal Register on Thursday, July 7, 1977 (42 FR 35000-35002).

The notice proposed to:

(1) Revise the definition of "potable" water;

(2) Prohibit the use or storage of certain specified toxic chemical substances except under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary;

(3) Revise existing mandatory standards by reducing the 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed from 5 fibers per milliliter greater than 5 microns in length to 2 fibers per milliliter; and

(4) Prohibit silica sand or other materials containing more than 1 percent free silica from being used as an abrasive substance in abrasive blasting cleaning operations underground and allowing such use in surface activities only with the use of full-flow respiratory protection, or equivalents for all exposed persons.

A comparison was made between the language and substantive requirements of each proposed definition and mandatory health standard with the corresponding OSHA definition and regulation. In each instance, the proposed definition or mandatory health standard affords at least the same degree of health protection to the individuals working in the metal and nonmetal mining industries as its counterpart OSHA definition or regulation affords those persons working in the general and construction industries subject to the Occupational Safety and Health Act. The proposed definition and rules were developed or revised after consultation with the Federal Metal and Nonmetal Mine Safety Advisory Committee appointed under section 7 of the Metal Act (30 U.S.C. 726).

Pub. L. 95-164, the Federal Mine Safety and Health Amendments Act of 1977 (Amendments Act), amended the Federal Coal Mine Health and Safety Act, Pub. L. 91-173, and repealed the Federal Metal and Nonmetallic Mine Safety Act, Pub. L. 89-577.

The resulting law, the Federal Mine Safety and Health Act of 1977, applies to all coal and other (metal and nonmetal) mines. With regard to rulemaking proceedings which had begun but were not completed prior to March 9, 1978, the effective date of the Amendments Act, section 301(c)(3) of that Act provides the Secretary of Labor with the authority to continue the proceedings and promulgate such rules under the rulemaking authority of the Federal Mine Safety and Health Act.

II. Discussion of Comments and Changes

1. *55, 56, 57.5-1(b)—Asbestos.* Comments were made expressing concern as to the wording of proposed paragraph (b) regarding methods for asbestos fiber identification, based in part, on the conclusions of a National Bureau of Standards (NBS) report entitled "A Report on the Fiber Content of Eighty Industrial Talc Samples Obtained From, and Using the Procedures of, the Occupational Safety and Health Administration."

Among the conclusions contained in the report were: (1) It is the opinion at NBS that the existing OSHA procedure is useful only for determining "fiber" content and not "asbestos" content.

(2) The NBS believes that the resolution of the measurement problem, including the definition and identification of asbestos, will be accomplished by significant changes in the procedure and probably by changes in the method as well.

Several medical studies were referenced in the comments. T. R. Fears, "American Journal of Epidemiology" (vol. 104, pp. 523-526, 1976); McDonald, et al., "Cancer" (vol. 26, pp. 914-919, 1970); McDonald, et al., "American Review of Respiratory Disease Supplement" (vol. 115, No. 4, April 1977); Gibson, "Inserm" (vol. 52, pp. 107-116); Enterline, New York Academy of Science (February 1975); McDonald, et al., "Archives of Environmental Health" (vol. 28, February 1974); and Finklea, unpublished.

The NBS study, performed at the request of OSHA, was done for bulk materials, not airborne dust, and does not represent an analysis of the methods used by MSHA. MSHA does not use the method evaluated by NBS to identify asbestos minerals.

Presumably, the medical studies were cited to either refute the need for a standard or to argue against a reduction of the standards. The studies cited represent only a small part of the medical literature on asbestos exposure and disease. When all reports on this subject are considered, they demonstrate an overwhelming association between asbestos exposure and lung disease. Few, if any, of these reports have sufficient information to judge the specific risk of disease associated with any given exposure. The general consensus within the medical community is that any exposure to carcinogens creates a risk of disease. Therefore, standards should require exposure levels to be set as low as possible so long as they are both achievable and can be measured.

Because of scientific data developed in the late 1960's and early 1970's, the asbestos standards 30 CFR 55.5-1, 56.5-1, and 57.5-1 were amended in 1974 to provide the current limit of 5 fibers/ml greater than 5 microns (micrometers) in length. In keeping with the Secretary's responsibilities, MESA (predecessor of MSHA) continued to study the available data on asbestos dust, and as a result of these studies, in June 1976 submitted to the advisory committee a recommendation to reduce the 5 fibers/ml limit to 2 fibers/ml. The reason for the reduction to 2 fibers/ml limit is to prevent

asbestosis and to protect to a greater degree against cancer. The 2 fibers/ml limit is consistent with MSHA's current asbestos dust standard for surface work areas of underground coal mines and surface coal mines and OSHA's current standards for general industries and the construction industry. A reduction from 5 fibers/ml level to 2 fibers/ml will improve significantly the working environment of miners.

MSHA believes that the two fiber regulation is both achievable and amenable to measurement. The 2 fiber/ml standard should assure that less than 1 percent of workers, occupationally exposed, will develop clinical signs of asbestosis.

Some prominent medical and health authorities have indicated that permissible exposures up to 2 fibers/ml may still be too high to adequately protect the health of miners exposed to asbestos dust during a working lifetime. OSHA has published in the FEDERAL REGISTER and solicited comments on a proposal to reduce asbestos exposure levels from 2 to 0.5 fibers/ml for all industries except the construction industry which will be considered separately at some later date. NIOSH has recommended to OSHA an asbestos standard of 0.1 fiber/ml. Although MSHA has no present plans to implement such a further reduction in exposure levels, data and evidence will continue to be gathered and analyzed to determine if future reductions may be warranted.

It was commented that the term "fiber" as used in the regulation was not clearly defined and that the definition of "asbestos" appeared to have been designed expressly to include crushed stone operations.

The terminology for defining asbestos was obtained from mineralogists and was not designed expressly to include crushed stone operations. Crushing and grinding are performed in most mining operations, including those producing commercial asbestos, and not just at crushed stone operations.

Commenters stated that no studies have quantified health hazards resulting from exposure to asbestiform tremolite and actinolite and that there is sufficient controversy among recognized occupational health experts concerning the need to apply increasingly stringent exposure limits to all "asbestiform" minerals on the basis of carcinogenicity to warrant further careful study. They also recommended exclusion of actinolite from a more restrictive standard (i.e., less than 2 fibers/ml) unless adequate laboratory testing and epidemiological studies indicate otherwise.

In response to these comments, of the six asbestos minerals specified in the regulation, chrysotile, amosite, crocidolite, and anthophylite have been associated with increased risk of cancer in humans. Neither tremolite nor actinolite asbestos have been shown to cause cancer in humans or animals. However, studies of workers involved in mining materials containing mixtures of tremolite and other minerals have shown excess disease associated with such exposures. Tremolite and actinolite appear to form a solid solution series, representing end members of that mineral group. The promulgated standards retain tremolite and actinolite asbestos in the definition of asbestos.

It was commented that the proposed rule differed from that recommended by the advisory committee in that the phrase "longer than 5 micrometers" after the phrase "in excess of 10 fibers" had been omitted.

The omission of the phrase "longer than 5 micrometers" was a typographical error and has been corrected in the promulgated standards.

2. *55, 56, 57.5-10—Silica.* Commenters stated that the term "exposed" should be defined and that the proposed standards should have included other abrasive materials such as staurolite, garnet, and those made from slag containing a high percentage of glass.

The term " exposed" as used in regulations 55, 56, 57.5-10 refers to persons who would breathe air containing potentially harmful concentrations of silica dust originating from an abrasive cleaning operation. If abrasive cleaning is conducted in a building with forced ventilation, exposed persons would be persons in the downstream direction from the abrasive cleaning operation. If the cleaning is conducted out of doors, persons downwind of the abrasive cleaning operation may be exposed. In all cases, those persons whose exposure exceeds the applicable TLV limit in regulations 55, 56, 57.5-1 would be considered exposed. In a closed building with little or no ventilation, concentrations of harmful silica dust may persist for several hours following the conclusion of abrasive blasting. So the termination of abrasive blasting may not end the exposure.

Regulations limiting exposure to toxic substances are required under the act. It has been demonstrated that worker exposure to crystalline silica does cause silicosis. Evidence does not indicate that the health effects of such materials as glass, staurolite or garnet are as severe. However, the use of these materials is governed by other standards which may require that the same control measures be taken.

3. *55, 56, 57.5-6—Chemical storage.* Concern was expressed that "* * * conditions approved by nationally recognized agency * * *," could be interpreted to mean a laboratory accredited by the American Industrial Hygiene Association or a similar organization.

The term "nationally recognized agency which is acceptable to the Secretary" includes agencies and organizations that provide guidelines for laboratory procedures. Such organizations are the American Industrial Hygiene Association laboratories accredited by the American Industrial Hygiene Association and the Manufacturing Chemists Association.

4. *55, 56, 57.2—Potable water.* It was commented that the public health service drinking water standards, 42 CFR 72, Subpart J, are applicable only to interstate commerce, and that the Environmental Protection Agency standards published in 40 CFR 141 under the Safe Drinking Water Act of 1974, Pub. L. 93-523, should be included. The definition of "potable water" is modified in this final rule by adding 40 CFR 141.

III. DRAFTING INFORMATION

The principal persons responsible for preparation of these proposed health standards are: Thomas J. Shepich, Administrator for Metal and Nonmetal Mine Safety and Health, MSHA; Dr. Aurel Goodwin, Chief, Division of Health; and Donald R. Tindal, Counsel for General Legal Advice, Office of the Solicitor, U.S. Department of Labor.

IV. REGULATORY ANALYSIS

NOTE.—It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order No. 12044, or the Department of Labor's proposed guidelines for implementation of the Executive Order (43 FR 22915, May 26, 1978). The primary impact of new § 55.5-1, 56.5-1, and 57.5-1, pertaining to asbestos, will be upon asbestos mines and mills which contain known asbestos fibers, employing a total of approximately 1,000 workers. The total cost of compliance with these provisions is estimated to be less than $10 million during the first year.

Dated: November 8, 1978.

ROBERT B. LAGATHER,
Assistant Secretary, for Mine Safety and Health.

PART 55—SAFETY AND HEALTH STANDARDS—METAL AND NONMETALLIC OPEN PIT MINES

Part 55, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

A. Section 55.2 "Definitions" is amended by revising the definition of the term "Potable" as follows:

§ 55.2 Definitions

* * * * *

"Potable water" means water which shall meet the applicable minimum health requirements for drinking water established by the State or community in which the mine is located or by the Environmental Protection Agency in 40 CFR Part 141, pages 169-182 revised as of July 1, 1977. Where no such requirements are applicable, the drinking water provided shall conform with the Public Health Service Drinking Water Standards, 42 CFR Part 72, Subpart J, pages 527-533, revised as of October 1, 1976. Publications to which references are made in this definition are hereby made a part hereof. These incorporated publications are available for inspection at each Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.

* * * * *

§ 55.5 [Amended]

B. Section 55.5 "Air Quality and Physical Agents" is amended as follows:

1. Paragraph (b) of mandatory standard 55.5-1 is revised as follows:

55.5-1 *Mandatory.* * * *

* * * * *

(b) The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400- 450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. "Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term "asbestos" as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

* * * * *

2. New mandatory standard 55.5-6 is added as follows:

55.5-6 *Mandatory.* The following chemical substances shall not be used or stored except by competent persons under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary.

(a) Carbon tetrachloride,
(b) Phenol,
(c) 4-Nitrobiphenyl,
(d) Alpha-naphthylamine,
(e) 4,4-Methylene Bis (2-chloroaniline),
(f) Methyl-chloromethyl ether,
(g) 3,3 Dichlorobenzidine,
(h) Bis (chloromethyl) ether,
(i) Beta-napthylamine,
(j) Benzidine,
(k) 4-Aminodiphenyl,
(l) Ethylenediamine,
(m) Beta-propiolactone,
(n) 2-Acetylaminofluorene,
(o) 4-Dimethylaminobenzene, and
(p) N-Nitrosodimethylamine.

3. New mandatory standard 55.5-10 is added as follows:

55.5-10 *Mandatory.* Silica sand, or other materials containing more than 1 percent free silica, shall not be used as an abrasive substance in abrasive blasting cleaning operations without requiring full-flow respiratory protection, or equivalent, to all exposed persons.

(Sec. 508, Pub. L. 91-173 as amended by Pub. L. 95-164, 83 Stat. 803 (30 U.S.C. 957), and Sec. 301(c)(3), Pub. L. 95-164, 91 Stat. 1318 (30 U.S.C. 961).)

PART 56—SAFETY AND HEALTH STANDARDS—SAND, GRAVEL, AND CRUSHED STONE

Part 56, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

C. Section 56.2 "Definitions" is amended by revising the definition of the term "Potable" to read as follows:

§ 56.2 Definitions

* * * * *

"Potable water" means water which shall meet the applicable minimum health requirements for drinking water established by the State or community in which the mine is located or by the Environmental Protection Agency in 40 CFR Part 141, pages 169-182 revised as of July 1, 1977. Where no such requirements are applicable, the drinking water provided shall conform with the Public Health Service Drinking Water Standards, 42 CFR Part 72, Subpart J, pages 527-533, revised as of October 1, 1976. Publications to which references are made in this definition are hereby made a part hereof. These incorporated publications are available for inspection at each Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.

* * * * *

§ 56.5 [Amended]

D. Section 56.5 "Air Quality and Physical Agents" is amended as follows:

1. Paragraph (b) of mandatory standard 56.5-1 is revised as follows:

56.5-1 *Mandatory.*

* * * * *

(b) The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400-450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. "Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term "asbestos" as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

* * * * *

2. New mandatory standard 56.5-6 is added as follows:

56.5-6 *Mandatory.* The following chemical substances shall not be used or stored except by competent persons under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary.

(a) Carbon tetrachloride,
(b) Phenol,
(c) 4-itrobiphenyl,
(d) Alpha-naphthylamine,
(e) 4,4-Methylene Bis (2-chloroaniline),
(f) Methyl-chloromethyl ether,
(g) 3,3 Dichlorobenzidine,
(h) Bis (chloromethyl) ether,
(i) Beta-napthylamine,
(j) Benzidine,
(k) 4-Aminodiphenyl,
(l) Ethylenediamine,
(m) Beta-propiolactone,
(n) 2-Acetylaminofluorene,
(o) 4-Dimethylaminobenzene, and
(p) N-Nitrosodimethylamine.

3. New mandatory standard 56.5-10 is added as follows:

56.5-10 *Mandatory.* Silica sand, or other materials containing more that 1 percent free silica, shall not be use as an abrasive substance in abrasive blasting cleaning operations without requiring full-flow respiratory protection, or equivalent, to all exposed persons.

(Sec. 508, Pub. L. 91-173 as amended by Pub. L. 95-164, 83 Stat. 803 (30 U.S.C. 957), and Sec. 301(c)(3), Pub. L. 95-164, 91 Stat. 1318 (30 U.S.C. 961).)

PART 57—SAFETY AND HEALTH STANDARDS—METAL AND NONMETALLIC UNDERGROUND MINES

Part 57, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

E. Section 57.2 "Definitions" is amended by revising the definition of the term "Potable" is to read as follows:

§ 57.2 Definitions

* * * * *

"Potable water means water which shall meet the applicable minimum health requirements for drinking water established by the State or community in which the mine is located or by the Environmental Protection Agency in 40 CFR Part 141, pages 169-182 revised as of July 1, 1977. Where no such requirements are applicable, the drinking water provided shall conform with the Public Health Service Drinking Water Standards, 42 CFR Part 72, Subpart J, pages 527-533, revised as of October 1, 1976. Publications to which references are made in this definition are hereby made a part hereof. These incorporated publications are available for inspection at each Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.

* * * * *

§ 57.5 [Amended]

F. Section 57.5 "Air Quality, Ventilation, Radiation, and Physical Agents" is amended as follows:

1. Paragraph (b) of mandatory standard 57.5-1 which is applicable to surface and underground is revised as follows:

57.5-1 *Mandatory.*

* * * * *

(b) The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400-450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. "Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term "asbestos" as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

* * * * *

2. New mandatory standard 57.5-6 which is applicable to surface and underground is added as follows:

57.5-6 *Mandatory.* The following chemical substances shall not be used or stored except by competent persons under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary.

(a) Carbon tetrachloride,
(b) Phenol,
(c) 4-Nitrobiphenyl,
(d) Alpha-naphthylamine,
(e) 4,4-Methylene Bis (2-chloroaniline),
(f) Methyl-chloromethyl ether,
(g) 3,3 Dichlorobenzidine,
(h) Bis (chloromethyl) ether,
(i) Beta-napthylamine,
(j) Benzidine,
(k) 4-Aminodiphenyl,
(l) Ethylenediamine,
(m) Beta-propiolactone,
(n) 2-Acetylaminofluorene,
(o) 4-Dimethylaminobenzene, and
(p) N-Nitrosodimethylamine.

3. New mandatory standard 57.5-10 which is applicable to surface only is added as follows:

57.5-10 *Mandatory.* Silica sand, or other materials containing more than 1 percent free silica, shall not be used as an abrasive substance in abrasive blasting cleaning operations without requiring full-flow respiratory protection, or equivalent, to all exposed persons.

4. New mandatory standard 57.5-16 which is applicable to underground only is added as follows:

57.5-16 *Mandatory.* Silica sand, or other materials containing more than 1 percent free silica, shall not be used as an abrasive substance in abrasive blasting cleaning operations.

(Sec. 508, Pub. L. 91-173 as amended by Pub. L. 95-164, 83 Stat. 803 (30 U.S.C. 957), and Sec. 301(c)(3), Pub. L. 95-164, 91 Stat. 1318 (30 U.S.C. 961).)

[FR Doc. 78-32300 Filed 11-16-78; 8:45 am]

FRIDAY, NOVEMBER 17,1978
PART VI



federal register

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

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RENTAL PUBLIC HOUSING PROGRAM

Revised Annual Contributions Contract

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-78-898]

RENTAL PUBLIC HOUSING PROGRAM

Revised Annual Contributions Contract

AGENCY: Department of Housing and Urban Development.

ACTION: Announcement of comment and public inspection period for the revised annual contributions contract for the rental public housing program (24 CFR Part 841).

SUMMARY: The consolidated annual contributions contract (ACC) for the rental public housing program is being revised by the Department to incorporate the requirements of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. The following are the current HUD forms which will be superseded: HUD-53010 (11-69) Consolidated Annual Contributions Contract Part I, HUD-53010B (2-70) Consolidated Annual Contributions Contract Part I, HUD-53010C (1-72) Amendment to Annual Contributions Contract and HUD-53011 (11-69) Consolidated Annual Contributions Contract Part II. From the publication of this notice until the expiration of the comment period, copies of the revised ACC will be available for public inspection, during regular business hours, at each HUD Regional office and with the rules docket clerk at HUD Headquarters. A copy of the ACC will also be furnished to any interested party making a request to the rules docket clerk during the comment period.

DATES: Comments are invited from public housing agencies (PHA's), Federal agencies, members of the public and other interested parties. All relevant comments received on or before December 18, 1978, will be considered for inclusion in the final printed version of the revised ACC.

ADDRESS: Comments should be sent to the rules docket clerk, office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Jane Taliaferro, Chief, Conventional Housing Branch, Public Housing Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone 202-755-5837.

SUPPLEMENTARY INFORMATION: This is the first major revision to the ACC in almost 10 years and many of the changes incorporate the requirements of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. As has been done previously, it is the intent of the Department to require PHA adoption of the new ACC form for all of its projects (including section 23 and Turnkey III projects but excluding all section 8 projects) only when there is either an ACC amendment or a new contract providing for additional financial assistance. The most significant changes incorporated in the revised ACC are summarized as follows:

1. Section 1 provides a new format for summarizing the necessary information relating to each project which should greatly reduce the preparation and review time spent by HUD staff. The pertinent data will be provided on a separate attachment for each project, thus facilitating the addition of projects and the use of the data.

2. The special provisions for Turnkey projects (section 110) have been revised to provide that, before a seller may call upon HUD to take action to remedy an alleged default, the seller must notify HUD of a substantial default by the PHA within 30 days of the initial occurrence and must provide supporting evidence thereof and of the fact that the seller is not in default. HUD will be obligated to act only if it determines that a substantial default by the PHA has occurred and that the seller is not in default.

3. The "equivalent elimination" and "Buy American Act" requirements have been eliminated from article III, since these former statutory requirements were deleted from the USHAct by the HCDAct of 1974.

4. Under section 312 the reconstruction, restoration or repair of a damaged or destroyed project must now be accomplished in accordance with a reconstruction or restoration progran which has been approved by HUD.

5. A new section 317 has been added requiring a PHA to notify HUD of litigation and to take certain litigation-related actions only in accordance with HUD policy and procedure.

6. Section 401(F) has been changed to give HUD the right to require any depositary to refuse to permit withdrawals from the PHA's general fund when a substantial default is threatened, as well as when it has already occurred.

7. Section 405(D) contains the following new provisions: (1) A PHA must notify HUD immediately when development moneys theretofore received exceed the PHA's needs for the next 6-month period; and (2) development moneys which are in excess of a project's needs must be applied in payment of obligations or for reduction of annual contributions.

8. Section 405(E) provides for amendment of the ACC to state the actual development cost after issuance of the actual development cost certificate, whereas previously such an ACC amendment has not been required.

9. In section 408 and elsewhere reference is no longer made to the terms "permanent note" and "project loan note"; reference is made, instead, only to the HUD loan. It is intended to develop one note form covering all HUD loans.

10. Section 415(D) provides a new formula for determining the amount of each debt service annual contribution after the first one. Under this formula the annual contribution amount is equal to (A) the level debt service on all unmatured issues of bonds issued for the project plus (B) an amount computed by multiplying the maximum debt service contribution percentage less 1 percent or less such other differential as HUD may from time to time determine, by the excess of the latest established minimum development cost for the project over the principal amount of bonds issues to finance that project.

11. Section 415(M) adds a new provision limiting debt service annual contributions with respect to any project to the amount of contract authority states in exhibit A after any required reductions.

12. Section 417 will require the application of all moneys in the advance amortization fund to payment of outstanding obligations, or to payment of development cost in lieu of issuing additional obligations, or to reduction of annual contributions.

13. Article V has been reorganized to include all grounds of default under "substantial default". The term "substantial breach" is no longer used. New specific grounds of "substantial default" are (1) failure to comply with training, employment and contracting opportunities under section 3 of the HUD Act of 1968; (2) failure to complete or prosecute diligently, or to repair or reconstruct a project; (3) failure to comply with any statutory or budgetary restriction on cost of construction or development; (4) refusal or neglect to sell project notes or bonds as required under the ACC; or (5) institution of any litigation without HUD approval. Upon the occurrence or threat of occurrence of any event constituting a substantial default, HUD may exercise the remedies provided under article V. HUD may demand possession or conveyance of title to the projects or any specified part thereof under the ACC, and it is expressly provided that HUD is not obligated to demand or accept posses-

sion or title to any project. If a substantial default occurs during development, HUD has the right to suspend development, reduce the number of units or terminate the ACC under the specified conditions.

Issued at Washington, D.C., on October 26, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing,
Federal Housing Commissioner.

[FR Doc. 78-32395 Filed 11-16-78; 8:45 am]

FRIDAY, NOVEMBER 17, 1978
PART VII



federal register

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

USE AND DISPOSITION OF PROPERTY ACQUIRED BY STATES

Modified or Terminated Highway Projects

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER E—PLANNING

[FHWA Docket No. 78-19]

PART 480—USE AND DISPOSITION OF PROPERTY ACQUIRED BY STATES FOR MODIFIED OR TERMINATED HIGHWAY PROJECTS

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule prescribes requirements and standards for the disposition and use of property acquired by States with the participation of Federal-aid highway funds in connection with proposed highway projects which are subsequently modified or terminated. The rule provides that, upon the approval of the Federal Highway Administrator, States may use such property for certain public interest purposes without being required to make a credit to Federal funds. This issuance is necessary in order to implement section 107(f) of the Surface Transportation Assistance Act of 1978, OMB Circular A-102, and the President's urban policy.

EFFECTIVE DATE: December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Lawrence A. Staron, Chief, Interstate Reports Branch, Office of Engineering, FHWA, 202-426-0404; Reid Alsop, Attorney, Office of the Chief Counsel, FHWA, 202-426-0800; or Robert C. Ashby, Attorney, Office of the General Counsel, Office of the Secretary of Transportation (OST), 202-426-4710. The address of these individuals is 400 7th Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On August 7, 1978, FHWA published a proposed rule (43 FR 35007) to prescribe standards for the use and disposal of property that was acquired by States with the participation of Federal-aid highway funds in connection with proposed highway projects which are subsequently modified or terminated. Usually, in such cases, the property is no longer needed for highway purposes. State and local governments have been uncertain about how to use or dispose of this property, particularly since FHWA policy had been to require repayment of the Federal share in many cases.

The preamble to the proposed rule set forth the policy and statutory bases for the proposed rule. Since the publication of the proposed rule, Congress has partially altered the legal framework for regulatory action. Section 107(f) of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689, strengthened and made more explicit the statutory basis for the rule. Section 107(f) also repealed section 110(b) of the Federal-aid Highway Act of 1976, discussed in the preamble to the proposed rule.

With respect to portions of the Interstate system withdrawn under 23 U.S.C. 103(e)(2) and 103(e)(4) before its date of enactment, section 107(f) prohibits FHWA from requiring repayment of the Federal share of the cost of acquiring property which the State reuses for a transportation project under title 23 of the United States Code, for a public conservation or recreation purpose, or for another public purpose determined by the Secretary to be in the public interest. In order to take advantage of the statutory prohibition, States must apply the property to the substitute use within 10 years of the withdrawal of the Interstate project.

The statutory prohibition applies only to property acquired in connection with Interstate projects which have been withdrawn under 23 U.S.C. 103(e)(2) and 23 U.S.C. 103(e)(4) prior to November 6, 1978, the date of enactment of section 107(f). The statute is silent on whether FHWA may require or decline to require repayment of the Federal share in other situations. The statute is not, therefore, a mandate to FHWA to impose payback in other situations. Consequently, FHWA has the discretion, as a matter of administrative policy, to impose or not to impose payback in these situations.

The policy considerations informing FHWA's discretion in this matter are those outlined in the preamble to the proposed rule. In the past, States planned extensive freeway systems in major urban areas. Land was acquired for these planned highways, and buildings were torn down or fell into disrepair. In many cases, the highway project was later abandoned. Such abandonments may occur in the future as well, for environmental or other reasons. The vacant land, often in or near the central city, may be very important to the revitalization of the urban centers. Such urban revitalization is a cornerstone of the President's urban policy. Department of Transportation policy should encourage, rather than discourage, the use of land formerly intended to be used for a terminated highway project for purposes consistent with urban revitalization. Requiring repayment of highway funds to the Federal Government as a prerequisite to a new use discourages such use. A policy which does not require repayment when an appropriate new use is found for the land encourages and facilitates important new urban projects.

OMB Circular A-102, attachment N, which constitutes binding policy guidance on FHWA, provides that when a recipient of Federal funds no longer can use property acquired with the Federal funds for its original purpose, it can use the property for another Federal program or a State and local program consistent with the programs of the grantor agency. The grantor agency may not require repayment of the Federal share if it approves such a reuse. Given this directive, FHWA must exercise the discretion it has under statute to permit appropriate reuses without a repayment requirement.

Both the House and Senate debate concerning section 107(f) demonstrate legislative support for the policy set forth in the proposed rule. Senator Javits, the Senate sponsor, said that he wished Congress to work "in concert with the administration" to achieve the goals of the Secretary's policy (Daily Congressional Record, Aug. 18, 1978, S13748). The House sponsor, Representative Fowler, said in his floor comments that he favored the policy expressed in the proposed rule and did not intend his legislation to restrict the authority of the Secretary of Transportation to implement the policy in non-Interstate situations (Daily Congressional Record, Sept. 27, 1978, H10937). This final rule applies to Interstate situations, including future withdrawals, and to non-Interstate situations as well.

Comments Received

FHWA received 35 comments on the proposed rules. Of these, 23 were favorable, 5 were unfavorable, and 7 were neither favorable nor unfavorable.

Changes to the Rule in Response to Comments

CONSISTENCY WITH LOCAL AND REGIONAL PLANNING

The most frequent comment about the proposed rules concerned the absence of any specific requirement that local or regional officials participate in the planning of proposed substitute projects. The commenters on the subject unanimously suggested that proposed reuses have the approval and concurrence of the local government where the property is located or that responsible local officials be included in the decisionmaking process. We agree that local and regional officials

and planning organizations should have a role in the selection and planning of substitute projects, as may be required in State or Federal law governing such substitute projects. However, in the interest of regulatory simplicity, we do not wish to add a new Federal requirement that projects must receive concurrences that are not now required. Therefore, § 480.107 (b)(5) requires States to certify to the Administrator that all local or regional concurrences required under law for submission of a given proposal have been received. Thus, Federal, State and local requirements for concurrences of local officials and other mechanisms for public participation concerning proposals for park, recreation, urban renewal or other programs must be obtained before the State submits its proposal to FHWA. This provision does not mean that all concurrences necessary for final implementation of the program must be obtained in order to make the proposal. Presumably, concurrences necessary to final implementation must be obtained before the substitute project can become a reality. If these concurrences are not forthcoming, then the proposal as originally conceived cannot be implemented, and a requirement of a credit to Federal funds under § 480.107(e) may arise.

TRANFERS OF PROPERTY TO PRIVATE PARTIES

Commenters were divided on the issue, not addressed in the proposed rule, of whether it should be permissible for States to transfer property to private parties as part of public interest projects under the rules. Some of the several commenters on this issue said that States should not be able to sell property to a private party, even as part of a public interest program, without paying the Federal share of the sales proceeds back to the Federal Government. Others, pointing to the role of private development in urban renewal projects, urged that such transfers be explicitly permitted.

The primary intent of the regulations is to facilitate the development of publicly owned projects for public benefit. Sales to private parties by the State, or by a transferee of the State (such as an urban redevelopment authority), even as part of a worthwhile public interest project, raise serious questions of policy in the context of these regulations. As a general matter, where such sales take place, States should share the proceeds with FHWA. Nevertheless, we recognize that there may be some situations in which important benefits may not become available to the public unless the State, without having to make a credit to Federal funds, is able directly or indirectly to transfer the property to private parties. Certain urban renewal programs, if accompanied by suitable safeguards against windfalls to any party, may create such a situation.

Section 480.107(b)(4) of the final rule requires States to inform the Administrator if property will be transferred to a private party in connection with the proposed reuse. If so, the State must justify the transfer to the Administrator. The justification should indicate why transfer to a private party, without any credit by the State to Federal funds, is necessary in order to provide important benefits to the public. The Administrator (§ 480.107(d)(4)) shall impose a requirement for a credit to Federal funds unless he or she finds that this justification is sufficient. A requirement for a credit to Federal funds on this ground would affect only the property proposed for transfer to private parties.

APPLICABILITY OF THE REGULATION

The proposed rule applied to all future uses and dispositions of former highway property, regardless of the date of modification or termination of the highway project. States were required to submit reuse proposals within 10 years of the modification or termination (or 2 years after the effective date of the regulations) and to make the reuse within 6 years of the Administrator's determination that no credit to Federal funds was required.

a. *Retrospective application.* Section 107(f) of the Surface Transportation Assistance Act of 1978 limited the applicability of its prohibition of repayment requirements to applications of former highway property to appropriate reuses within 10 years of the withdrawal of the original Interstate project. While FHWA has the discretion to designate a longer period, we believe that a 10-year limitation is sound as a policy matter. For consistency, the final rule applies the 10-year limit to all situations (§ 480.103(c)).

b. *Application to smaller properties.* A number of comments recommended that the word "modification" be defined carefully, lest the regulations be interpreted to cover disposals of small parcels of property, uneconomic remnants, and the like, to which the policies of the regulation do not apply. The proposed rule attempted to deal with this problem by excepting from coverage property "insignificant in size or value." In drafting the final rule, however, we have decided instead to exclude from coverage portions of highway rights-of-way covered by subpart C of 23 CFR part 713 (§ 480.103(b)). Subpart C applies to the disposal of right-of-way property in situations other than Interstate transfers under 23 U.S.C. 103(e)(2) or 103(e)(4) and other decisions not to build a major section of a planned highway. The use of this existing regulation will simplify administration and obviate the need to define "modification."

c. *Time limit for reuse.* One commenter expressed concern that the 6-year time limitation for reuse of property after the Administrator's determination was too inflexible. The requirement of § 480.107(b)(9) that the State assure that the reuse will be made "expeditiously" gives FHWA and the States the opportunity to work out realistic timetables for the development of reuses on a case-by-case basis. The 6-year limitation has been dropped.

THE ISSUE OF INTENT

Several commenters expressed the concern that the regulations would give States an incentive to acquire property for nonhighway purposes in the first instance. That is, knowing that land acquired for highways could later be used for another purpose, the States would purchase the land with Federal-aid highway funds even though they had no intention of actually constructing a highway. Representative Howard expressed a similar concern in the floor discussion of section 107(f) of the Surface Transportation Assistance Act of 1978 (Daily Congressional Record, Sept. 15, 1978, Id.) The thorough review process, including environmental, planning and engineering requirements, which States must now go through in order to get FHWA's approval to acquire right-of-way with Federal-aid funds is a strong, probably conclusive, obstacle to such practices. Nevertheless, we think it proper for States to certify to the Administrator as part of their submission concerning a reuse of property acquired after the effective date of this regulation that it was acquired with the intention, at the time of acquisition, of constructing a highway (§ 480.107(b)(1)). The Administrator, of course, has the discretion to look behind this or any other certification required in the submission if he or she believes it is necessary to do so.

RELOCATION ASSISTANCE

The proposed rule provided for FHWA participation in relocation assistance to end with the modification or termination of the highway project. One commenter made a persuasive case that FHWA participation should continue for a longer time. After reevaluating our policy position, we have decided to permit FHWA participation in relocation assistance until the date when the State sells or otherwise disposes of the property of a person, tenant or business whose property was acquired in connection with a Federal-aid highway project, who remains in

occupancy, and who would have qualified for relocation aid had they moved prior to the modification or termination of the highway project. This participation is permissive: The Administrator has the discretion to end such participation at any time after the modification or termination of the project. The aim of this provision is equity to all interested parties, and it is anticipated that the actual end point of FHWA participation in any given case will be decided by negotiation between the State and FHWA. After this end point, relocation assistance becomes the responsibility of the State and any Federal agency involved with the substitute project (§ 480.115).

PROPERTY MANAGEMENT

One commenter asked FHWA to participate in court awards and settlements and property management costs such as demolition arising after the date of withdrawal. The proposed rule provided that FHWA property management standards would apply to the property until the date on which the Administrator approves a reuse or on which the State sells or otherwise disposes of the property. We believe that it would be reasonable to permit FHWA to participate in property management and other costs, such as those cited by the comment, until the same date. This participation will be discretionary, to be decided on a case-by-case basis by FHWA.

RIGHTS OF FORMER OWNERS

A number of States have laws protecting the rights of persons from whom property was acquired for highway rights-of-way, providing that when the property is not used for highway purposes the property reverts to the original owners or that the original owners have the first option to repurchase the property. FHWA intends that such laws be followed. It was with these laws in mind that the proposed rule required all proposed reuses to be consistent with State law. Several comments suggested that this provision of the proposed rule was not sufficiently explicit, and section 107(f) of the Surface Transportation Assistance Act of 1978 explicitly protected the rights under State law of former property owners. In light of these developments, the final rule requires States to certify that rights under State law of former owners have been observed (§ 480.107(b)(6)).

FUTURE USES OF PROPERTY

A few commenters expressed concern that States might use highway property for a public interest purpose for a short time and then sell it, realizing a windfall in the process. This fear seems somewhat speculative. However, it is probably prudent to create a precaution against such actions by requiring States to assure the Administrator that they will not make major alterations in an approved reuse without the Administrator's consent (§ 480.107(b)(8)). For purposes of this requirement, a major alteration is a change in the nature of the property use (e.g. from a park to a housing project, from public to private ownership). If this assurance is not observed, the Administrator may revoke the approval of the reuse and require the State to make an appropriate credit to Federal funds (§ 480.107(e)).

APPLICATION TO RURAL AREAS

One comment expressed concern that, given the rule's emphasis on urban revitalization, the rule slighted the needs of rural areas. While the problem addressed by the rule is most acute in urban areas, the rule applies in all parts of the country. To clarify this general application of the rule, we have added the words "or rural" to § 480.107(a)(2).

HISTORIC PRESERVATION

One commenter suggested that FHWA and the State should be required to prepare an assessment of the effects of the reuse of the property on historic resources on or eligible for inclusion in the National Register of Historic Places. The comment asked for coverage under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) and the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) of all State and local projects concerning which a credit to Federal funds was not required under these rules. When a State or local government receives Federal assistance from the Department of Transportation or another Federal agency for a substitute project, the procedures of the National Historic Preservation Act and the Advisory Council regulations automatically apply to the substitute project.

However, with respect to State or local substitute projects which do not receive Federal assistance, it would be inappropriate for this rule to impose the considerable administrative requirements of the National Historic Preservation Act and the Advisory Council regulations. There is no legal requirement for such an imposition. The absence of a requirement for a credit to Federal funds is not a Federal expenditure on behalf of the substitute project. The project is a purely State or local effort. The Administrator's determination not to require a credit to Federal funds is not a license for the substitute project. There is consequently no direct Federal "undertaking," no federally assisted undertaking, and no Federal licensing of a State activity, such that 16 U.S.C. 470e or its implementing regulations are legally required to apply.

As a matter of policy, however, we agree that States should take the preservation of historic resources explicitly into account as they plan substitute projects. Therefore, the regulations (§ 480.107(b)(5)) will require a State to consult with and seek the comments of its State Historic Preservation Officer with respect to proposed reuses of highway property which affect historic resources on or eligible for inclusion in the National Register of Historic Places.

OTHER CHANGES

In addition to the changes made in response to comments or to legislation, the final rule differs from the proposed rule in the following respects:

1. A definition of "applied to a reuse under this part" has been added to § 480.105. Because the rule does not apply to property which has not been applied to a reuse under this part within 10 years of the modification or termination of the highway project, it is necessary to define what constitutes such an application. An application must be a commitment by the State to devote the property to a specific public interest use. It is impossible to determine in advance what would constitute an adequate commitment in every case. Therefore, the rule leaves it to the discretion of the Administrator to determine on a case-by-case basis when an application has been made.

2. There may be instances in which, to make an informed determination about a proposed reuse, the Administrator will need additional information about the proposal or its impacts. Therefore a new provision (§ 480.107(b)(10)) has been added to require States to submit such additional information on request.

3. In addition to laws concerning the rights of former owners, some States have laws specifically governing the disposal of former highway property. A provision has been added to require State certification that these laws, and all other State laws involved with a proposed reuse, have been observed (§ 480.107(b)(7)).

4. In many urban renewal programs, a State or other public agency will sell property to a private developer below market value. If such an arrangement is not approved without a requirement for repayment under § 480.107(d)(4), the State, under the proposed rule, would have had to sell the property competitively and attempt to obtain the highest possible return. This requirement could be inconsistent with sales as part of urban renewal programs. Therefore, § 480.109(2) has been amended to give the Administra-

tor discretion to waive the requirement for competitive sales and highest possible return in meritorious cases.

5. In the proposed rules, the frequent references were made to the Administrator's "approval" of a reuse or of "approved reuses." This terminology is somewhat misleading. The Administrator has no authority to approve or disapprove uses by States of land which the States own. All the Administrator does under these regulations is to determine whether or not the State is required to make a credit to Federal funds concerning property acquired but no longer needed for a highway project. The language of the final rule (e.g. § 480.107(c)) reflects this understanding of the Administrator's role.

COMMENTS NOT RESULTING IN CHANGES TO THE PROPOSED RULE

CONSISTENCY WITH TITLE 23

The principal objection to the proposed rule by the unfavorable comments was that the rule was inconsistent with title 23 of the United States Code. Objectors focused on 23 U.S.C. 101(d), which provides that "no funds authorized to be appropriated from the Highway Trust Fund shall be expended by or on behalf of any Federal department, agency or instrumentality other than the Federal Highway Administration" unless the expenditures are specifically called for by an appropriations act and are for the "construction of Federal-aid highways" or other highway purposes.

Section 101(d) is concerned with expenditures. There is no evidence in the legislative history of the provision that Congress intended the term to be understood in any but ordinary meaning—"an expending, a laying out of money, a disbursement" (Black's Law Dictionary). Such expenditure occurred earlier, when the State, acting in good faith, incurred costs to acquire property pursuant to a project agreement with FHWA and was reimbursed for a share of these costs. When the Administrator approves a reuse under the regulations, there is no disbursement of highway funds. Section 101(d) does not purport in any way to affect the subsequent disposition of property that was acquired with Federal funds. The absence of a repayment requirement cannot reasonably be construed to be an expenditure for the purposes of title 23. The final rule is not inconsistent with section 101(d).

In this connection, it should be pointed out that OMB Circular A-102 forbids the imposition of requirements additional to its standards "unless specifically required by Federal law" (attachment N, § 1). Title 23 makes no specific legal requirement which authorizes FHWA to add a repayment mandate to the OMB standards. The only statute specifically addressing repayment in section 107(f), which prohibits repayment with respect to certain categories of property. Outside of these categories, the OMB Circular applies. Where section 107(f) applies, of course, the policy of the rules has been mandated by statute.

ADJACENT FEDERAL PROPERTY

One commenter suggested that when former highway property is adjacent to Federal property, such as national parks, the Federal agency involved be given first option to acquire the property. We do not believe it is appropriate to place additional Federal constraints upon the States' authority to use or dispose of property to which they hold title, and for this reason did not adopt the suggestion.

DELEGATION TO THE ADMINISTRATOR

One commenter suggested that the Secretary, rather than the Administrator, should have the approval authority over proposed reuses. We do not adopt this suggestion, believing that the authority should reside in the agency that has direct responsibility for the administration of this and other portions of the highway program.

EXCEPTION TO REPAYMENT REQUIREMENT FOR SALES PROCEEDS

The preamble to the proposed rule invited comment on the question of whether, if a State sold former highway property but used the proceeds for other transportation projects, it should be excused from the repayment requirement normally attaching to sales proceeds. Only one comment, favoring such a provision, was received. We have determined that such a provision would be too difficult to administer fairly, and for that reason have not included it in the final rule.

STATE PAYBACK

One commenter mentioned that its State law required the State to repay its own highway account for the State share of the acquisition cost of property not used for highway purposes, and asked how the rule might deal with this situation. We view this problem as a matter of State law that is beyond the scope of these regulations.

DRAFTING INFORMATION

The principal authors of this document are Reid Alsop, Office of the Chief Counsel, FHWA and Robert C. Ashby, Attorney, Office of the General Counsel, OST.

Accordingly, title 23 of the Code of Federal Regulations is amended by adding a new part 480, as set forth below.

Issued at Washington, D.C.: November 13, 1978.

KARL S. BOWERS,
Federal Highway Administrator.

PART 480—USE AND DISPOSITION OF PROPERTY ACQUIRED BY STATES FOR MODIFIED OR TERMINATED HIGHWAY PROJECTS

Sec.

480.101 Purpose.
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480.117 Property management.
480.119 Intangible items of cost.

AUTHORITY: Pub. L. 95-599, 92 Stat. 2689 (23 U.S.C. 103(e) (5), (6)); Pub. L. 85-767, 72 Stat. 915 (23 U.S.C. 315); 49 CFR 1.48(b); Office of Management and Budget Circular A-102, attachment N (August 24, 1977).

§ 480.101 Purpose.

The purpose of the regulations in this part is to prescribe standards for the use and disposition of property acquired by States with the participation of Federal-aid highway funds when the highway project for which the property was acquired is modified or terminated, such that the property is no longer needed for the purposes of the highway project.

§ 480.103 Applicability.

(a) The regulations in this part are applicable to the use and disposition of property acquired with the participation of Federal-aid highway funds for any project on any Federal-aid system which has not been closed by the payment of a final voucher as of the effective date of this part when, because of the modification or termination of the project, the property is no longer needed for purposes of the highway project. With the exceptions stated in subsections (b) and (c) of this section, these regulations apply to any use or disposition made of such property, whenever it was acquired, after the effective date of this part.

(b) This part does not apply to portions of highway rights-of-way covered by Subpart C of 23 CFR Part 713.

(c) The provisions of §§ 480.107 and 480.111 of this part for the reuse of property without the requirement of a credit to Federal funds do not apply to property which has not been applied to a reuse under this part within 10 years of the modification or termination of the highway project in connection with which it was acquired.

(d) Nothing in this part shall be construed to affect or conflict with the obligations of States with respect to

advance acquisition of right-of-way pursuant to 23 U.S.C. 108(c).

§ 480.105 Definitions.

The following definitions apply for purpose of this part:

"Applied to a reuse under this part" means committed, as determined by the Administrator, to a reuse under sections 480.107 or 480.111 of this part;

"Intangible items of cost" means items having no physical existence or recoverable value, such as preliminary engineering or overhead;

"Real property" means land, and interests therein, including improvements, structures and appurtenances thereto, but excluding movable equipment and machinery;

"Tangible personal property" means any property, other than real property, having a physical existence, such as construction items, materials and equipment.

§ 480.107 Use of real property for other programs.

(a) When real property is no longer needed for the highway project for which it was acquired, because of the modification or termination of the project, the State may, subject to the provisions of this section, reuse the property without being required to make a credit to Federal funds for:

(1) A project under another Federal grant program, or

(2) A project under any State or local program the purposes of which are consistent with a program or programs authorized for support by the U.S. Department of Transportation. State and local transportation projects (except projects for toll roads), projects for public recreation or conservation purposes, programs for the restoration and revitalization of urban or rural areas, and other programs consistent with the public interest shall be deemed consistent with Department of Transportation programs for the purposes of this subsection.

(b) In order to reuse real property without being required to make a credit to Federal funds, the State shall submit to the Federal Highway Administrator the following information:

(1) A certification that property acquired after the effective date of these regulations was acquired with the intent, at the time of acquisition, of using it for highway purposes;

(2) A finding that the property is no longer needed for purposes of the highway project for which it was acquired;

(3) An explanation of the grounds for the finding;

(4) A description of the program for which the State proposes to use the property. In the case of a State or local program, the description shall include a justification of the program in terms of consistency with DOT programs. Each description shall also indicate whether any of the property involved will be transferred to any private party in connection with the proposed program. The State shall justify to the Administrator the necessity in the public interest for any transfer, without a requirement for a credit to Federal funds, to a private party;

(5) A certification that all reviews, approvals or concurrences by State, regional or local officials or planning organizations required under law for the proposal have been obtained, and that the State has consulted with and sought the comments of the State Historic Preservation Officer in the case of any proposed reuse which affects historic resources on or eligible for inclusion in the National Register of Historic Places;

(6) A certification that the rights under State law of persons owning property in the right-of-way immediately prior to such property being obtained by the State have been observed;

(7) A certification that the methods to be used to dispose of the property and the proposed substitute use for the property are in all other respects consistent with State law;

(8) An assurance that the approved reuse will be made expeditiously and that no major alteration in the proposed reuse will be made without the consent of the Administrator; and

(9) Any additional information requested by the Administration.

(c) Based on this submission, the Administrator shall determine whether or not the State is required to make a credit to Federal funds.

(d) The Administrator shall require a credit to Federal funds with respect to property the proposed reuse of which:

(1) Is inconsistent with any Federal statute;

(2) Involves property concerning which the certifications, findings and assurances required by subsection (b) of this section are not made;

(3) Proposes to use the property, or its value, to form part of the State or local matching share with respect to any Federal program; or

(4) Proposes to transfer the property to any private party, unless the Administrator determines that such transfer, without a requirement for a credit to Federal funds, is necessary in the public interest.

(e) If the Administrator determines that the assurance required by item (8) of subsection (b) of this section has not been observed, the Administrator may revoke his determination not to require a credit to Federal funds and direct the State to dispose of the property as provided in §§ 109 and 111(b) of this part.

§ 480.109 Other dispositions of real property.

(a) When real property is no longer needed for purposes of the highway project for which it was acquired, and the Administrator has determined under section 480.107 of this part that a credit to Federal funds is required, the State shall apply to the Administrator for disposition instructions. The Administrator shall instruct the State to dispose of the property in one of the following ways:

(1) Retain title to the property, and credit Federal funds in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the current fair market value of the property; or

(2) Sell the property, and credit Federal funds in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the sale proceeds (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). The State shall employ proper sales procedures which, unless otherwise provided by the Administrator, provide for competition to the maximum extent practicable and result in the highest possible return. The Administrator may require sales under this provision to be conducted according to guidelines provided by the Administrator.

§ 480.111 Disposition and use of tangible personal property.

(a) When a State no longer needs tangible personal property acquired in connection with a modified or terminated Federal-aid highway project, it shall use the property in connection with its other federally-sponsored activities in the following order of priority:

(1) Activities sponsored by the Department of Transportation;

(2) Activities sponsored by other Federal agencies.

(b) When the State no longer needs or cannot use the property as provided in subsection (a) of this section, the property may be disposed of or used according to the following standards:

(1) The State may use for any purpose or sell property with a project cost of less than $1,000 without making a credit to Federal funds.

(2) The State may use for any purpose or sell property with a project cost of $1,000 or more, after a credit to Federal funds in an amount computed by applying the Federal percentage of participation in the cost of its original acquisition to the sale proceeds. When a State sells property, it shall do so in a manner which maximizes competition and the return from the sale. The State shall be permitted to deduct and retain from the Federal share $100 or 10 percent of the proceeds, whichever

is larger, for selling and handling expenses.

§ 480.113 Use of credits to Federal funds.

Credits made to Federal funds pursuant to sections 109 and 111(b) of this part shall be credited to the State's Federal-aid apportionment to which the original acquisition of the property was attributable, in the manner set forth in 23 U.S.C. 118(b).

§ 480.115 Relocation assistance.

With respect to owner-occupants, tenants, businesses, and farm operations whose property has been acquired in connection with a federally assisted highway project, who are still in occupancy, and who could have qualified as displaced persons if they had moved prior to the date of modification or termination, the obligations of the Federal Highway Administration under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 et seq.) shall continue for that period of time after the date of modification or termination as is considered equitable by the Administrator, but in no event shall this period extend beyond the date the State sells or otherwise disposes of the property. If the Administrator determines under section 107 of this part that no credit to Federal funds is required, the State shall assure the Administrator that it or the Federal agency granting assistance to the substitute program will assume these obligations after the Administrator's approval with respect to any such persons, businesses, or farm operations displaced as a result of the original acquisition or reuse of the former highway property.

§ 480.117 Property management.

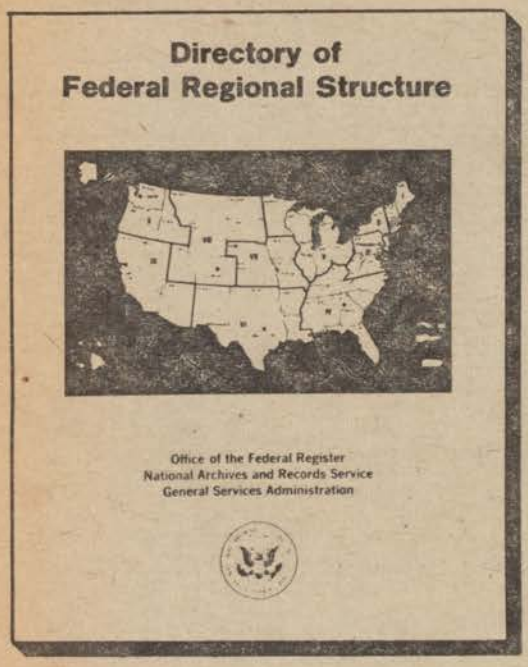
Rules or standards of property management normally applicable to property obtained with the participation of Federal-aid highway funds shall continue to apply to the management of property acquired by States in connection with a highway project after the modification or termination of the project. These rules or standards shall cease to apply to the property as of the date of a determination by the Administrator that no credit to Federal funds is necessary for a reuse of real property, upon the reuse of tangible personal property for another Federal program, or on the date the State sells or otherwise disposes of the property. FHWA may in the discretion of the Administrator participate in the costs of property management and in other costs related to the acquisition of the property or the modification or termination of the highway project that are incurred before such dates.

§ 480.119 Intangible items of cost.

States are not required to make a credit to Federal funds with respect to any intangible items of cost upon which the State expended Federal-aid highway funds in connection with a project which was modified or terminated.

[FR Doc. 78-32423 Filed 11-16-78; 8:45 am]

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