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Monday
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35033 **Protection of Human Subjects** HEW/Sec'y publishes report in support of research involving human in vitro fertilization and embryo transfer; comments by 8–17–79

35058 **Work and Income of the Aged** HEW/Sec'y solicits applications from public and private non-profit agencies, organizations, and institutions for grant awards on policy-related research projects; applications by 8–2–79

34943 **Former Federal Prison Inmate Accident Compensation** Justice/Federal Prison Industries adopts procedures for determining claims for injuries sustained while working in prison; effective 6–18–79

34977 **Veterans Education** VA proposes regulation regarding criteria for measuring courses involving independent study; comments by 7–18–79

34994 **Motor Common Carriers** ICC proposes to amend regulations to permit option of binding estimates for the movement of shipper's household goods; comments by 7–18–79

34992 **Toxic Gases in Commercial Motor Vehicles** DOT/FHWA proposes establishment of definite exposure limits; comments by 8–17–79



Highlights

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34960 **Federal Motor Carrier Drivers** DOT/FHWA changes criteria for placing drivers out of service; effective 6-18-79

35106 **New Construction and Substantial Rehabilitation Rental Projects** HUD/FHC proposes fair market rents for all market areas; comments by 7-3-79 (Part II of this issue)

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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.
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 78-CE-22-AD; Amendment 39-3491]

Airworthiness Directives; Beech Models E50, F50, G50, H50, J50, 65, A65, A65-8200 65-80, 65-A80-8800, 65-B80, 65-88, 70, C50, D50, D50A, D50B, D50C and D50E Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revision of final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD), AD 79-01-02, Amendment 39-3385, applicable to the above Beech Model airplanes, by revising the applicability statement to except those airplanes modified in accordance with STC SA444SW. This revision is required because the powerplant changes incorporated by this STC are so extensive as to make the inspections prescribed by this AD unnecessary and inappropriate.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT: Donald L. Page, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-3446.

SUPPLEMENTARY INFORMATION: Amendment 39-3385, AD 79-01-02 required various modifications and repetitive inspection of the powerplant installation and nacelles on certain Beech Model airplanes. Subsequent to this action, the FAA has determined that the modifications incorporated by STC SA44SW are so extensive as to make the inspections prescribed by the AD unnecessary and inappropriate. Therefore, the agency is revising Amendment 39-3385 by amending the AD applicability statement to except those airplanes modified in accordance with STC SA444SW.

Since this amendment is relieving in nature and imposes no additional burden on any person, notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days after the date of publication in the Federal Register.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Amendment 39-3385 (44 FR 1079, 1080), AD 79-01-02, of section 39.13 of Part 39 of the Federal Aviation Regulations [14 CFR 39.13] is amended as follows:

(1) Delete the existing applicability statement and in its place add the following new applicability statement:

Beech: Applies to: (1) Models E50, F50, G50, H50, J50, 65, A65, A65-8200, 65-80, 65-A80, 65-A80-8800, 65-B80, 65-88, and 70 airplanes except those airplanes modified in accordance with STC SA444SW, and (2) those Models C50, D50, D50A, D50B, D50C, and D50E airplanes modified per STC SA76SW.

This amendment becomes effective on June 4, 1979.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to Donald L. Page, Aerospace Engineer, Engineering and Manufacturing Branch, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3146.

Issued in Kansas City, Missouri on June 4, 1979.

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

[FR Doc. 79-18648 Filed 6-15-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 30

[Docket No. 79-CE-10-AD; Amendment 39-3492]

Airworthiness Directive; Cessna Models 500, 501, 550 and 551 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models 500, 501, 550 and 551 airplanes. The AD requires repetitive inspections of the wing main spar cap web stems at wing station 37.0. This action is necessary to detect and monitor fatigue cracks that may exist or develop in this area which can impair the ability of the spar cap to carry design loads if not detected and an approved repair incorporated.

EFFECTIVE DATE: June 21, 1979.

COMPLIANCE SCHEDULE: As prescribed in the body of the AD.

ADDRESSES: Cessna Citation Service Letter SL 57-2, Rev. 2, dated May 1, and SL 550-57-1, Rev. 1, dated May 1, 1979, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; Telephone (316) 685-9111. Copies of these service letters are contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and at Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Vincent R. Reinert, Chief, Airframes Unit, Engineering and Manufacturing District Office Number 43, Room 238, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-4219.

SUPPLEMENTARY INFORMATION: The FAA has become aware through service reports and results of the manufacturer's full scale wing cyclic testing of crack potential in the spar cap web stem area at wing station 37.0 on Cessna Models 500, 501, 550 and 551 airplanes. The manufacturer has issued Cessna Citation Service Letters SL 57-2, Revision 2, dated May 1, 1979, and SL 550-57-1, Revision 1, dated May 1, 1979, which prescribe inspections to detect and monitor these cracks. If cracks in

this area are not detected and an approved repair incorporated, impairment of the ability of the spar cap to carry design loads could result. If cracks are found, reduced inspection intervals are specified in the service letter with an appropriate crack length limitation to permit continued safe operation of the airplane until an approved repair is incorporated. In addition, incorporation of the approved repair is required if the crack limitation is exceeded. Accordingly, since the condition described herein is likely to exist or develop on other airplanes of the same type design, the FAA is issuing an AD applicable to Cessna 500, 501, 550 and 551 airplanes making compliance with the inspection procedures set forth in Cessna Citation Service Letters SL 57–2, Revision 2, and SL 550–57–1, Revision 1, mandatory.

Since a situation exists that requires the expeditious adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Cessna: Applies to Models 500, 501, 550 and 551 airplanes with 600 or more hours time-in-service.

Compliance: Required as indicated unless already accomplished.

(A) Within the next 100 hours time-in-service after the effective date of this AD and thereafter within each 600 hours time in service until the number of landings or time-in-service threshold for dye penetrant inspection in Table I is reached, visually inspect the upper and lower spar cap stems at Wing Station 37.0 in the areas specified in Cessna Citation Service Letter SL 57–2, Revision 2, dated May 1, 1979, or SL 550–57–1, Revision 1, dated May 1, 1979, as applicable for cracks and/or:

(B) Upon reaching or if at or beyond the dye penetrant inspection threshold specified in Table I, within 100 hours time-in-service or 100 landings, whichever occurs first, and thereafter within 600 hours time-in-service or 600 landings, whichever occurs first, dye penetrant inspect the upper and lower spar cap stem at Wing Station 37.0 in the areas specified in Cessna Citation Service Letter SL 57–2, Revision 2, dated May 1, 1979, or SL 550–57–1, Revision 1, dated May 1, 1979, as applicable, for cracks.

Table I

Model	Serial Nos.	Dye penetrant inspection threshold (Landings or time-in-service-hrs)
500	500-001 thru 500-349	4300
	500-350 and on	1300
501	501-001 and on	1300
550	550-001 and on	4300
551	551-001 and on	4300

(C) If, as a result of any inspection required by Paragraph A) or B) a crack of less than .3 inches in length is found in the upper spar cap stem, reduce the dye penetrant inspection interval on this spar cap to 200 landings or 200 hours time-in-service, whichever occurs first.

(D) If, as a result of any inspection required by Paragraph A) or B) a crack of less than .3 inches in length is found in the lower spar cap stem, reduce the dye penetrant inspection interval on this spar cap to 100 landings or 100 hours time-in-service, whichever occurs first.

Note.—The FAA encouraged compliance with the manufacturer's request that all cracks be reported to the Cessna Customer Service Department.

(E) If, as a result of any inspection required by Paragraph A), B), C) or D), a crack of .3 inches in length or longer is found in either spar cap, prior to further flight, repair or modify the wing in accordance with instructions obtained from Cessna Aircraft Company, Jet Marketing Division, Customer Service, P.O. Box 7706, Wichita, Kansas 67277.

(F) The time-in-service for initial and between repetitive inspections required herein may be adjusted up to 10 hours to facilitate accomplishing them concurrent with other scheduled maintenance on the airplane.

(G) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(H) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

Cessna Citation Service Letter SL 57–2, Revision 2 dated May 1, 1979, covers the subject matter of this AD.

This Amendment becomes effective June 21, 1979.

Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri on June 4, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

[FR Doc. 79-18647 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-SO-42; Amdt. 39-3490]

Airworthiness Directives; Piper Model PA-44-180 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires the replacement, on both engines, of the engine primer lines on certain Piper PA–44–180 airplanes. This AD is prompted by reports of broken primer lines and cracked or broken fittings that result in fuel leakage creating a potential fire hazard.

DATE: Effective June 21, 1979.

Compliance required as indicated.

ADDRESSES:

The applicable service bulletin may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

A copy of the Service Bulletin is contained in the AD Docket File and may be examined in Room 275, Federal Aviation Administration, Southern Region, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT:

Gil Carter, ASO–214, Propulsion Section, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763–7435.

SUPPLEMENTARY INFORMATION: There have been reports of broken primer lines and cracked and broken fittings on Piper Model PA–44–180 series airplanes which result in fuel leakage into the engine compartment near the engine exhaust manifolds thus creating a potential fire hazard. Since this condition is likely to exist or develop in other airplanes of the same type design, an Airworthiness Directive is being issued which requires the installation of new engines primer lines on certain Piper PA–44–180 airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Piper Aircraft Corporation: Applies to Model PA-44-180, serial numbers 44-7995001 through 44-7995190 airplanes certificated in all categories.

Compliance is required within the next 25 hours' time in service after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent a potential fire hazard due to fuel leakage from failed primer lines and cracked and broken fittings, accomplish the following on both engines:

(a) Install the fuel primer modification kit, Piper Part Number 763 908V in accordance with Piper Service Bulletin 634 dated December 28, 1978, or later revision approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

(b) Make an appropriate maintenance record entry.

An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

This amendment becomes effective June 21, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in East Point, Georgia, on June 4, 1979.

George R. La Caille,

Acting Director, Southern Region.

[FR Doc. 79-18649 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-SO-26]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area, Springfield, Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule designates the Springfield, KY, Transition Area. It will afford protected airspace for IFR aircraft using the new public use instrument approach procedure established for that airport by lowering the base of controlled airspace from 1200 to 700 feet AGL.

EFFECTIVE DATE: August 9, 1979.

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

FOR FURTHER INFORMATION CONTACT: Gerald S. Collins, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: An instrument approach procedure has been developed to enable aircraft operating in Instrument Flight Rule (IFR) weather conditions to conduct a safe approach for landing at Springfield-Lebanon Airport, KY. Consequently, adequate controlled airspace is required to provide airspace protection for IFR use of the procedure. This action is designed to meet that requirement as well as change the operating status of Springfield-Lebanon Airport from VFR to IFR. Notice to this effect was published in the **Federal Register** Thursday, April 19, 1979 (44 FR 23259). No objections were received from this Notice.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, August 9, 1979, by adding the following:

Springfield, Kentucky

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Lebanon-Springfield Airport (Latitude 37°38'02"N., Longitude 85°14'30"W.); within 3 miles either side of the New Hope, Kentucky, VORTAC, 089° radial extending from the 6.5-mile radius area to 14 miles east of the VORTAC.

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

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on June 8, 1979.

Lonnie D. Parrish,

Acting Director, Southern Region.

[FR Doc. 79-18650 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Information Security Program

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This amendment is necessary to comply with the provisions of Executive Order 12065, "National Security Information." This amendment sets forth guides and guidelines for classifying, declassifying and downgrading information and material under the NASA Information Security Program. This amendment also assigns responsibilities for the management and direction of the Program.

DATE: June 18, 1979.

ADDRESS: Director, Security Division, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Arnold K. Daue, telephone (202) 755-3400.

SUPPLEMENTARY INFORMATION: This regulation involves national security and is exempt from the procedures of 5 U.S.C. 553.

1. 14 CFR Part 1203 is amended by revising Subparts A through E and by adding new Subparts F and G.

PART 1203—INFORMATION SECURITY PROGRAM

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* * * * *

Authority: 42 U.S.C. 2451 et seq. and E. O. 12065.

Subpart A—Scope.

§ 1203.100 Legal basis.

(a) *E.O. 12065.* The responsibilities and authority of the Administrator of NASA with respect to the original classification of official information or material requiring protection against unauthorized disclosure in the interest of national defense or foreign relations of the United States (hereinafter collectively termed "national security"), and the standards for such classification, are established by Executive Order 12065 (43 FR 28949) and the Information Security Oversight Office Directive No. 1, September 29, 1978.

(b) *E.O. 10865.* Executive Order 10865 (24 FR 1583) requires the Administrator to prescribe by regulation such specific requirements, restrictions and other safeguards as the Administrator may consider necessary to protect:

(1) Releases of classified information to or within United States industry that relate to contracts with NASA; and

(2) Other releases of classified information to industry that NASA has responsibility for safeguarding.

(c) *The National Aeronautics and Space Act.* (1) Section 304(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.), states in part: "The Administrator shall establish such security requirements, restrictions, and safeguards as he deems necessary in the interest of the national security * * *"

(2) Section 303 of the Act states: "Information obtained or developed by the Administrator in the performance of his functions under this Act shall be made available for public inspection, except (i) information authorized or required by Federal Statute to be withheld, and (ii) information classified to protect the national security: *Provided*, That nothing in this Act shall authorize the withholding of information by the Administrator from the duly authorized committees of the Congress."

§ 1203.101 Other applicable NASA regulations.

(a) Subpart H of this Part, "Delegation of Authority to Make Determinations in Original Security Classification Matters."

(b) Subpart I of this Part, "NASA Information Security Program Committee."

(c) NASA Handbook 1620.3, "NASA Physical Security Handbook."

Subpart B—NASA Information Security Program

§ 1203.200 Background and discussion.

(a) In establishing a civilian space program, the Congress required NASA to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof," and for the withholding from public inspection of that information that is classified to protect the national security.

(b) To balance the public's interest in access to Government information with the need to protect certain national security information from unauthorized disclosure, Executive Order 12065 was promulgated. It designates the National Aeronautics and Space Administration as having certain responsibility for matters pertaining to national security, and confers on the Administrator of NASA, or such responsible officers or employees as the Administrator may designate, the authority for original classification of official information or material which requires protection in the interest of national security. It also provides for:

(1) Basic classification, downgrading and declassification guidelines;

(2) The issuance of directives prescribing the procedures to be followed in safeguarding classified information or material;

(3) A monitoring system to ensure the effectiveness of the Order;

(4) Appropriate administrative sanctions against officers and employees of the United States Government who are found to be in violation of the Order or implementing directive; and

(5) Classification prohibitions as discussed in § 1203.411.

(c) Executive Order 12065 requires the timely identification and protection of that NASA information the disclosure of which would be contrary to the best interest of national security. Accordingly, the determination in each case must be based on a judgment as to whether disclosure of information could reasonably be expected to result in identifiable damage to the national security.

§ 1203.201 Information security objectives.

The objectives of the NASA Information Security Program are to:

(a) Ensure that information is classified only when a sound basis exists for such classification and only for such period as is necessary.

(b) Prevent both the unwarranted classification and the overclassification of NASA information.

(c) Ensure the greatest practicable uniformity within NASA in the classification of information.

(d) Ensure effective coordination and reasonable uniformity with other Government departments and agencies, particularly in areas where there is an interchange of information, techniques or hardware.

(e) Provide a timely and effective means for downgrading or declassifying information when the circumstances necessitating the original classification change or no longer exist.

§ 1203.202 Responsibilities.

(a) The Chairperson, NASA Information Security Program Committee (Subpart I of this Part), is responsible for:

(1) Directing the NASA Information Security Program in accordance with NASA policies and objectives and applicable laws and regulations.

(2) Ensuring effective compliance with and implementation of Executive Order 12065 and the Information Security Oversight Office Directive No. 1 relating to security classification matters.

(3) Reviewing, in consultation with the NASA Information Security Program Committee, questions, suggestions, appeals and compliance concerning the NASA Information Security Program and making determinations concerning them.

(4) Coordinating NASA security classification matters with NASA installations, the Department of Defense, the Department of Energy and other Government agencies.

(5) Issuing Security Classification Guides for NASA programs and projects.

(6) Developing, maintaining and recommending to the Administrator guidelines for the systematic review covering 20-year old classified information under NASA's jurisdiction.

(7) Reviewing and coordinating with appropriate offices all appeals of denials of requests for records under sections 552 and 552a of Title 5, United States Code (Freedom of Information and Privacy Acts) when the denials are based on the records continued classification.

(8) Recommending to the Administrator appropriate administrative action to correct abuse or violations of any provision of the NASA Information Security Program, including notifications by warning letter, formal reprimand and to the extent permitted by law, suspension without pay and removal.

(b) All NASA employees are responsible for bringing to the attention of the Chairperson of the NASA Information Security Program Committee any information security problems in need of resolution, any areas of interest wherein information security guidance is lacking, and any other matters likely to impede achievement of the objectives prescribed herein.

(c) Each NASA official to whom the authority for original classification is delegated shall be accountable for the propriety of each classification (see Subpart H) and is responsible for:

(1) Ensuring that classification determinations are consistent with the policy and objectives prescribed above, and other applicable guidelines.

(2) Bringing to the attention of the Chairperson, NASA Information Security Program Committee, for resolution, any disagreement with classification determinations made by other NASA officials.

(3) Ensuring that information and material which no longer requires its present level of protection is promptly downgraded or declassified in accordance with applicable guidelines.

(d) Other Officials-in-Charge of Headquarters Offices are responsible for:

(1) Ensuring that classified information or material prepared within their respective offices is appropriately marked.

(2) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(e) Directors of Field Installations and, for Headquarters, the Director, Headquarters Administration Division, are responsible for:

(1) Developing proposed Security Classification Guides.

(2) Ensuring that classified information or material prepared in their respective installations is appropriately marked.

(3) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(4) Designating Security Classification Officers at their respective installations, to whom the responsibilities listed in paragraphs (e) (1), (2), and (3) of this section may be reassigned.

(f) The NASA Security Classification Manager, Security Division, NASA Headquarters, who serves as a member and Executive Secretary of the NASA Information Security Program Committee, is responsible for the NASA-wide coordination of security classification matters.

(g) The Director of Security is responsible for establishing procedures for the safeguarding of classified information or material (e.g., accountability, control, access, storage, transmission, marking, etc.) and for ensuring that such procedures are systematically reviewed and those which are duplicative or unnecessary are eliminated.

§ 1203.203 Degree of Protection.

(a) *General.* Upon determination that information or material must be classified, the degree of protection (security classification) commensurate with the sensitivity of the information must be determined. The lowest category of classification necessary to provide the appropriate degree of protection should be assigned. If the classifier has a reasonable doubt as to which security classification category is appropriate, or whether the material should be classified at all, the least restrictive designation should be used, or the information should not be classified.

(b) *Authorized Categories of Classification.* The three categories of classification, as authorized and defined in Executive Order 12065 are set out below. No other restrictive markings are authorized to be placed on NASA classified documents or materials except as expressely provided by statute or by NASA Directives.

(1) *Top Secret.* Top Secret is the designation applied to information or material the unathorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(2) *Secret.* Secret is the designation applied to information or material the unathorized disclosure of which could reasonably be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological develpments relating to national security.

(3) *Confidential.* Confidential is the designation applied to that information or material the unauthorized disclosure of which could reasonably be expected to cause identifiable damage to the national security.

Subpart C—Classification Principles and Considerations

§ 1203.300 General.

In general, the types of NASA-generated information and material requiring protection in the interest of national security lie in the areas of applied research, technology or operations.

§ 1203.301 Identification of information requiring protection.

Classifiers shall identify the level of classification of each classified portion of a document (including subject and titles), and those portions that are not classified.

§ 1203.302 Combination, interrelation or compilation.

An interrelationship of individual items, classified or unclassified, may result in a combined item requiring a higher classification than that of any of the individual items. Compilations of unclassified information are considered unclassified unless some additional significant factor is added in the process of compilation. For example: (a) The

way unclassified information is compiled may be classified; (b) the fact that the information is complete for its intended purpose may be classified; or (c) the fact the compilation represents an official evaluation may be classified. In these cases, the compilations would be classified.

§ 1203.303 Dissemination considerations.

The degree of intended dissemination, use of the information and whether the end purpose to be served renders effective security control impractical are considerations during the classification process. These factors do not necessarily preclude classification, but must be considered in order not to impose security controls which are impractical to enforce.

§ 1203.304 Internal effect.

The effect of security protection on program progess and cost and on other functional activities of NASA should be considered. Impeditive effects and added costs inherent in a security classification must be assessed in light of the detrimental effects on the national security interests which would result from failure to classify.

§ 1203.305 Restricted data.

Restricted Data or Formerly Restricted Data is so classified when originated, as required by the Atomic Energy Act of 1954, as amended. Specific guidance for the classification of Restricted Data is provided in "Classification Guides" published by the Department of Energy.

Subpart D—Guides for Original Classification

§ 1203.400 Specific classifying guidance.

Technological and operational information and material, and in some exceptional cases scientific information, falling within any one or more of the following categories must be classified if its unauthorized disclosure could reasonably be expected to cause identifiable damage to the national security. In cases where it is believed that a contrary course of action would better serve the national interests, the matter should be referred to the Chairperson, NASA Information Security Program Committee, for a determination. It is not intended that this list be exclusive; original classifiers are responsible for initially classifying any other type of information which, in their judgment, requires protection within the intent of Executive Order 12065:

(a) Information which provides the United States, in comparison with other nations, with a significant scientific, engineering, technical, operational, intelligence, strategic, tactical or economic advantage related to national security.

(b) Information which if disclosed would significantly diminish the technological lead of the United States in any military system, subsystem or component thereof, resulting in identifiable damage to such a system, subsystem or component thereof.

(c) Scientific or technological information in an area where an advanced military application that would in itself be classified is foreseen during exploratory development.

(d) Information which, if known, would: (1) Provide a foreign nation with an insight into the defense application or the war or defense plans or posture of the United States;

(2) Allow a foreign nation to develop, improve or refine a similar item of defense application;

(3) Provide a foreign nation with a base upon which to develop effective countermeasures;

(4) Weaken or nullify the effectiveness of a defense or military plan, operation, project, weapon system or activity which is vital to the national security.

(e) Information or material which is important to the national security of the United States in relation to other nations when there is sound reason to believe that those nations are unaware that the United States has or is capable of obtaining the information or material; i.e., through intelligence activities, sources, or methods.

(f) Information which if disclosed could be exploited in a manner prejudicial to the national security posture of the United States by discrediting its technological power, capability or intentions.

(g) Information which reveals an unusually significant scientific or technological "breakthrough" which there is sound reason to believe is not known to or within the state-of-the-art capability of other nations. If the "breakthrough" supplies the United States with an important advantage of a technological nature, classification also would be appropriate if the potential application of the information, although not specifically visualized, would afford the United States a significant national security advantage in terms of technological lead time or an economic advantage relating to national security.

(h) Information of such nature that an unfriendly government in possession of it would be expected to use it for purposes prejudicial to U.S. national security and which, if classified, could not be obtained by an unfriendly power without a considerable expenditure of resources.

(i) Information which if disclosed to a foreign government would enhance its military research and development programs to the detriment of U.S. counterpart or competitive programs.

(j) Operational information pertaining to the command and control of space vehicles, the possession of which would facilitate malicious interference with U.S. space mission, that might result in identifiable damage to the national security.

(k) Information which if disclosed could jeopardize the foreign relations or activities of the United States; for example, the premature or unauthorized release of information relating to the subject matter of international negotiations, foreign government information or information regarding the placement or withdrawal of NASA tracking stations on foreign territory.

(l) United States Government programs for safeguarding nuclear materials or facilities.

(m) Other categories of information which are related to national security and which require protection against unauthorized disclosure as may be determined by the Administrator. The Chairperson, NASA Information Security Program Committee, will promptly inform the Director, Information Security Oversight Office, General Services Administration (GSA) of such determinations.

§ 1203.401 Effect of open publication.

Public disclosure, regardless of source or form, of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosure requires an immediate reevaluation to determine whether the information has been compromised to the extent that downgrading or declassification is indicated. Similar consideration must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. In these cases, if a release were made or authorized by an official Government source, classification of clearly identified items may no longer be warranted. Questions as to the propriety of continued classification should be referred to the Chairperson, NASA Information Security Program Committee.

§ 1203.402 Classifying material other than documentation.

Items of equipment or other physical objects may be classified only where classified information may be derived by visual observation of internal or external appearance, structure, operation, test, application or use. The overall classification assigned to equipment or objects shall be at least as high as the highest classification of any of the items of information which may be revealed by the equipment or objects, but may be higher if the classifying authority determines that the sum of classified or unclassified information warrants such higher classification. In every instance where classification of an item of equipment or object is determined to be warranted, such determination must be based on a finding that there is at least one aspect of the item or object which requires protection. If mere knowledge of the existence of the equipment or object would compromise or nullify the reason or justification for its classification, the fact of its existence should be classified.

§ 1203.403 State-of-the-art and intelligence.

A logical approach to classification requires consideration of the extent to which the same or similar information available from intelligence sources is known or is available to others. It is also important to consider whether it is known publicly, either domestically or internationally, that the United States has the information or even is interested in the subject matter. The known state-of-the-art in other nations is an additional substantive factor requiring consideration.

§ 1203.404 Handling of unprocessed data.

It is the usual practice to withhold the release of raw scientific data received from spacecraft until it can be calibrated, correlated and properly interpreted by the experimenter under the monitorship of the cognizant NASA office. During this process, the data are withheld through administrative measures, and it is not necessary to resort to security classification to prevent premature release. However, if at any time during the processing of raw data it becomes apparent that the results require protection under the criteria set forth in this Subpart D, it is the responsibility of the cognizant NASA office to obtain the appropriate security classification.

§ 1203.405 Proprietary information.

Proprietary information made available to NASA is subject to examination for classification purposes under the criteria set forth in this Subpart D. Where the information is in the form of a proposal and accepted by NASA for support, it should be categorized in accordance with the criteria of § 1203.400. If NASA does not support the proposal but believes that security classification would be appropriate under the criteria of § 1203.400 if it were under Government jurisdiction, the contractor should be advised of the reasons why safeguarding would be appropriate, unless security considerations preclude release of the explanation to the contractor. NASA should identify the Government department, agency or activity whose national security interests might be involved and the contractor should be instructed to protect the proposal as though classified pending further advisory classification opinion by the Government activity whose interests are involved. If such a Government activity cannot be identified, the contractor should be advised that the proposal is not under NASA jurisdiction for classification purposes, and that the information should be sent, under proper safeguards, to the Director, Information Security Oversight Office, General Services Administration, Washington, D.C. 20405, for a determination.

§ 1203.406 Additional classification factors.

In determining the appropriate classification category, the following additional factors should be considered:

(a) *Uniformity Within Government Activities.* The effect classification will have on technological programs of other Government departments and agencies should be considered. Classification of official information must be reasonably uniform within the Government.

(b) *Applicability of Classification Directives of Other Government Agencies.* It is necessary to determine whether authoritative classification guidance exists elsewhere for the information under consideration which would make it necessary to assign a higher classification than that indicated by the applicable NASA guidance. Generally, the classification by NASA should not be higher than that of equivalent information in other departments or agencies of the Government.

§ 1203.407 Duration of classification.

(a) Except as permitted in paragraph (b) of this section, each original classification authority shall set a date or event for automatic declassification no more than six years later.

(b) Only officials with Top Secret classification authority listed in Subpart H may classify information for more than six years from the date of the original classification. This authority shall be used sparingly. In such cases, a declassification date or event, or a date for review, shall be set. This date or event shall be as early as national security permits and shall be no more than 20 years after original classification except as provided under the provisions of § 1203.603.

§ 1203.408 Assistance by installation security classification officers.

Installation Security Classification Officers, as the installation point-of-contact, will assist installation personnel in:

(a) Interpreting security classification guides and classification assignments for the installation.

(b) Answering questions and considering suggestions concerning security classification matters.

(c) Ensuring a continuing review of classified information for the purpose of declassifying or downgrading in accordance with Subpart E of this part.

(d) Reviewing and approving, as the representative of the contracting officer, the DD Form 254, Contract Security Classification Specification, issued to contractors by the installation.

§ 1203.409 Exceptional cases.

(a) In those cases where a person not authorized to classify information orginates or develops information which is believed to require classification, that person should safeguard the material as though it were classified until it has been evaluated and a decision made by an appropriate classifying authority. For NASA employees the classifying authority is normally the Installation Security Classification Officer. Persons other than NASA employees should forward, under appropriate safeguards, material in which NASA has primary interest to the NASA Information Security Program Committee, Security Division, Washington, DC 20546 for a classification determination.

(b) Information in which NASA does not have primary interest shall be returned promptly, under appropriate safeguards, to the sender in accordance with § 1203.405.

(c) Material received from another agency for a NASA security classification determination shall be processed within 30 days. If a classification cannot be determined during that period, the material shall be

sent, under appropriate safeguards, to the Director, Information Security Oversight Office, GSA, for a determination.

§ 1203.410 Prohibitions.

(a) Classification may not be used to conceal violations of law, inefficiency of administrative error; to prevent embarrassment to a person, organization or agency; or to restrain competition.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified under this Part 1203 until and unless the Government acquires a proprietary interest in the product. This Part 1203 does not affect the provisions of the Patent Secrecy Act of 1952 (35 U.S.C. 181–188).

(d) References to classified documents that do not disclose classified information may not be classified or used as a basis for classification.

(e) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of this Part 1203 or to prevent or delay the public release of such information.

(f) No document originated on or after December 1, 1978, may be classified *after* NASA has received a request for the document under the Freedom of Information Act or the mandatory review provisions of this Part 1203, unless such classification is consistent with this Part 1203 and is authorized by the Administrator or Deputy Administrator. Documents originated before December 1, 1978, and subject to such a request may not be classified unless such classification is consistent with this Part 1203 and is authorized by the Chairperson, NASA Information Security Program Committee, or by an official with Top Secret classification authority. Classification authority under this provision shall be exercised personally, on a document-by-document basis.

(g) Classification may not be restored to documents already declassified and released to the public.

§ 1203.412 Classification guides.

(a) *General.* A classification guide, based upon classification determinations made by appropriate program and classification authorities, shall be issued for each classified system, program or project. Classification guides shall:

(1) Identify the information elements to be protected, using categorization and subcategorization to the extent necessary to ensure that the information involved can be readily and uniformly identified.

(2) State which of the classification designations (i.e., Top Secret, Secret or Confidential) apply to the identified information elements.

(3) State the duration of each such specified classification in terms of a period of time or future event. When such duration is to exceed six years, the decision must be made by an original Top Secret classification authority and the specific reason for prolonging classification beyond the six-year period shall be provided in the guidance in accordance with the provisions of § 1203.407. If the reason for prolonging classification beyond six years would be the only cause for classification of the guide or would raise the level of the classification of the guide, it need by recorded only on the record copy of the guide.

(4) Indicate specifically, that the designations, time limits, markings and other requirements of Executive Order 12065 are to be applied to information classified pursuant to the guide.

(5) Be approved personally and in writing by an official with original Top Secret classification authority; the identity of the official will be shown on the guide. Such approval constitutes an original classification decision. Normally, all guides will be approved by the Chairperson, NASA Information Security Program Committee, whose office will maintain a list of all classification guides in current use.

(b) *Review of Classification Guides.* Classification guides shall be reviewed by the originator for currency and accuracy not less than once every two years. Changes shall be in strict conformance with the provisions of this Part 1203 and shall be issued promptly. If no changes are made, the originator shall so annotate the record copy and show the date of the review.

Subpart E—Derivative Classification.

§ 1203.500 Use of derivative classification.

Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, generate in new form or respond to information which is already classified or those who apply markings in accordance with a security classification guide issued by an authorized classifier. Persons who apply derivative classifications shall take care to determine whether their paraphrasing, restating or summarizing of classified information has removed all or part of the basis for classification.

§ 1203.501 Applying derivative classification markings.

Persons who apply derivative classification markings shall:

(a) Respect original classification decisions;

(b) Verify the information's current level of classification so far as practicable before applying the markings; and

(c) Carry forward to any newly created documents the assigned dates or events for declassification or review and any additional authorized markings. Where checks with originators or other appropriate inquiries show that no classification or a lower classification than originally assigned is appropriate, the derivative document shall be issued unclassified or shall be marked accordingly.

Subpart F—Declassification and Downgrading

§ 1203.600 Policy.

Declassification of classified information shall be given emphasis comparable to that accorded classification. Information classified pursuant to Executive Order 12065 and prior orders shall be declassified as early as national security considerations permit. Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or on the occurrence of a declassification event. When information is reviewed for declassification pursuant to this Part 1203 or the Freedom of Information Act, it shall be declassified unless the classification authority established pursuant to Subpart H determines that the information continues to meet the classification guidelines prescribed in § 1203.400 despite the passage of time.

§ 1203.601 Responsibilities.

Officials authorized original classification authority may declassify or downgrade information that is subject to the final classification jurisdiction of NASA and shall take such action in accordance with the provisions of this Subpart F.

§ 1203.602 Public interest vs. declassification.

It is presumed that information which continues to meet the classification requirements in § 1203.407(b) requires continued protection. In rare cases, however, the need to protect such

information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise concerning NASA information, they shall be referred to the Administrator; the Chairperson, NASA Information Security Program Committee; an official with Top Secret classification authority; or, in the case of Presidential papers, the Archivist of the United States. That official, after appropriate consultation with other agencies or Government components, will determine whether the public interest in disclosure outweighs the damage to national security that might be reasonably expected from disclosure and, if the determination is affirmative, declassify the information.

§ 1203.603 Systematic review for declassification.

(a) *General.* (1) Except for foreign government information as provided in Subpart G of this part, classified information constituting permanently valuable records of the Government, as defined by 44 U.S.C. 2103, and information in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification as it becomes 20 years old. Transition to systematic reviews at 20 years shall be implemented as rapidly as practicable and shall be completed by December 1, 1988.

(2) The Administrator may extend classification beyond 20 years, but only in accordance with §§ 1203.600, 1203.601 and 1203.602 and paragraph (b) of this section. This authority may not be delegated. When classification is extended beyond 20 years, a date no more than 10 years later shall be set for declassification or for the next review. That date and specified action shall be marked on the document. Subsequent reviews for declassification shall be set at no more than 10-year intervals unless a longer interval has been authorized by the Director of the Information Security Oversight Office.

(3) A request for extension of the period between subsequent reviews for specific categories of documents or information shall be submitted to the Chairperson, NASA Information Security Program Committee, and shall include personal certification that the classified information for which the waiver is sought was systematically reviewed as required, that a definitive date for declassification could not be determined, and that results of the review established an identifiable need to retain classification for a period in excess of 20 additional years and a recommendation concerning the interval before the next required review.

(4) The Chairperson, NASA Information Security Program Committee, shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 20-year old U.S. originated information and 30-year old foreign information. Such personnel shall:

(i) Provide guidance and assistance to National Archives employees in identifying and separating documents and specific categories of information within documents which are deemed to require continued classification; and

(ii) Develop reports of information or document categories so separated, with recommendations concerning continued classification.

(b) *Systematic Review Guidelines.* The Chairperson, NASA Information Security Program Committee, shall develop, in coordination with NASA organizational elements, guidelines for the systematic review for declassification of 20-year old classified information under NASA's jurisdiction. (See § 1203.700, Foreign Government Information.) The guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond 20 years is needed. These guidelines are authorized for use by the Archivist of the United States and, with the approval of the Administrator, by an agency having custody of the information covered by the guidelines. All information, except foreign government information, not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically at the end of 20 years from the date of original classification. The guidelines shall be reviewed at least every other year and revised as necessary unless earlier review for revision is requested by the Archivist of the United States. Copies of the declassification guidelines promulgated by NASA will be provided to the Information Security Oversight Office, GSA.

(c) *Systematic Review Procedures.* (a) All security classified records 20 years old or older, whether held in storage areas under installation control or in Federal Records Centers, will be surveyed to identify those that require scheduling for future disposition. Such scheduling must be accomplished by December 1, 1980.

(2) All NASA information or material in the custody of the National Archives and Records Service that is permanently valuable and more than 20 years old is to be systematically reviewed for declassification by the Archivist of the United States with the assistance of the personnel designated for the purpose pursuant to paragraph (a)(4)(i) of this section. The Archivist shall refer to NASA that information or material which NASA has indicated requires further review. In the case of 20-year old information or material in the custody of NASA installations, such review will be accomplished by the custodians of the information or material. The installation having primary jurisdiction over the information or material received from the Archivist or in its custody, shall proceed as follows:

(i) Classified information or material over which NASA exercises exclusive or final original classification authority and which is to be declassified in accordance with the systematic review guidelines developed under paragraph (b) of this section shall be so marked.

(ii) Classified information or material over which NASA exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines developed under paragraph (b) of this section, is to be kept protected, shall be listed by category by the responsible custodian and referred to the Chairperson, NASA Information Security Program Committee. This listing shall:

(A) Identify the information or material involved.

(B) Recommend classification beyond 20 years to a specific future event scheduled to happen or a specific period of time not to exceed 10 years or, in the alternative, recommend a subsequent review date not to exceed 10 years.

(C) State the reason for the recommended continued classification.

(iii) The Administrator shall consider and determine which category of information or material shall be kept classified and the dates for automatic declassification or subsequent review. The Archivist of the United States will be notified in writing of this decision.

(d) *Declassification by the Director of the Information Security Oversight Office.* If the Director of the Information Security Oversight Office, GSA, determines that NASA information is classified in violation of Executive Order 12065, the Director may require the information to be declassified. Any such decision by the Director may be appealed through the NASA Information Security Program Committee to the National Security Council. The

information shall remain classified until the appeal is decided or until 1 year from the date of the determination by the Director of the Information Security Oversight Office, whichever comes first.

§ 1203.604 Mandatory review for declassification.

(a) *Information covered.* All classified information, except as provided below, upon request by a member of the public or a Government employee or agency to declassify and release such information under the provisions of Executive Order 12065, shall be subject to review by the originating NASA organization for possible declassification in accordance with the procedures of this section. After review, the information or any reasonable segregable portion thereof that no longer requires protection shall be declassified and released unless withholding is otherwise warranted under applicable law.

(b) *Presidential Papers.* (1) Information less than 10 years old which was originated by the President, by the White House Staff, or by committees or commissions appointed by the President, or by others acting on behalf of the President, is exempted from mandatory review for declassification.

(2) Such information 10 years old or older is subject to mandatory review for declassification in accordance with procedures developed by the Archivist of the United States which provide for consultation with NASA in matters of primary subject interest to NASA.

(c) *Submission of requests for review.* Requests for mandatory review of classified information shall be submitted in accordance with the following:

(1) Requests originating within NASA shall, in all cases, be submitted directly to the NASA installation which originated the information.

(2) For most expeditious action, requests from other Governmental agencies or from members of the public should be submitted directly to NASA installations which originated the material, or, if the originating component is not known, the requestor may submit the request to:

(i) The Chairperson, NASA Information Security Program Committee; or the head of the NASA organization most concerned with the subject matter of the material requested; or

(ii) The office designated to receive requests for records under the Freedom of Information Act pursuant to Part 1206 of this chapter.

(d) *Requirement for processing.* (1) Requests which are submitted under the Freedom of Information Act shall be processed in accordance with Part 1206 of this chapter.

(2) Other requests for declassification review and release of information shall be processed in accordance with the provisions of this section, subject to the following conditions:

(i) The request is in writing and reasonably describes the information sought with sufficient particularity to enable the installation to identify it and does not involve a large number of documents originated by numerous classifying authorities and requiring extensive coordination for accomplishment of the requested review.

(ii) The requestor shall be asked to correct a request that does not comply with paragraph (d)(2)(i) of this section, to provide additional information or to narrow the scope of the request and shall be notified that no action will be taken until the requestor complies.

(iii) If the request requires the rendering of services for which fees may not be charged under Part 1206, but may be charged under 31 U.S.C. 483a (1976), the rates prescribed in § 1206.700 shall be used, if appropriate.

(e) *Processing of Requests.* Requests that meet the requirements of paragraph (d)(2) of this section will be processed as follows:

(1) NASA installation action upon the initial request shall be completed within 60 days.

(2) Receipt of the request shall be acknowledged promptly. The NASA installation shall determine whether, under the declassification provisions of this Part 1203, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement of the reasons for denial, a notice of the right to appeal the determination to the Chairperson, NASA Information Security Program Committee, National Aeronautics and Space Administration, Washington, DC 20546, and a notice that such an appeal must be filed within 60 days in order to be considered.

(3) All appeals of denials of requests for declassification shall be acted upon and determined finally within 30 days after receipt and the requestor shall be advised that the appeal determination is final. If continued classification is required under the provisions of this Part 1203, the requestor shall be notified of the reasons thereof.

(4) The declassification and release of foreign government information that is subjected to mandatory review under this section shall be determined only in accordance with § 1203.703.

(5) When a NASA installation receives a request for declassification of information in a document which is in the custody of the installation but was classified by another NASA installation or Government agency, the installation shall refer the request to the classifying installation or Government agency, with a copy of the document containing the information requested when practicable, and shall notify the requestor of the referral. When NASA receives such a referral, it shall process the request in accordance with the requirements of this section and, if so requested, shall notify the referring agency of the determination made on the request.

(f) *Prohibition.* No NASA installation in possession of a classified document may, in response to a request for the document under this section or under Part 1206 of this chapter, refuse to confirm the existence or nonexistence of the document unless the fact of its existence or nonexistence would itself be classifiable under this Part 1203.

(g) *Declassification of Transferred Documents or Material.*—(1) *Material Officially Transferred.* In the case of classified information or material transferred by or pursuant to statute or Executive Order to NASA in conjunction with a transfer of functions (not merely for storage purposes) for NASA's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, NASA shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(2) *Material Not Officially Transferred.* When any NASA installation has in its possession classified information or material originated by an agency which has since ceased to exist and that information has not been officially transferred to another department or agency, or when it is impossible for the possessing NASA installation to identify the originating agency, and a review of the material indicates that it should be downgraded or declassified, the possessing NASA installation shall be deemed to be the originating agency for the purpose of declassifying or downgrading such material. If it appears probable that another agency or another NASA organization may have a substantial interest in whether the classification of any particular information should be maintained, the possessing NASA

installation shall not exercise the power conferred upon it by this paragraph, until after consultation with any other agency or NASA organization having an interest in the subject matter.

(3) *Transfer for Storage or Retirement.* (i) Insofar as practicable, classified documents shall be reviewed to determine whether or not they can be downgraded or declassified prior to being forwarded to records centers or to the National Archives for storage. Any downgrading or declassification determination shall be indicated on each document by appropriate markings.

(ii) Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded or declassified by the Archivist of the United States in accordance with Executive Order 12065; the directives of the Information Security Oversight Office, GSA; and NASA guidelines.

(h) *Downgrading and Declassification Actions.*—(1) *Notification of changes in Classification or Declassification.* When classified material has been marked with specific dates or events for downgrading or declassification, it is not necessary to issue notices of such actions to any holders. However, when such actions are taken earlier than originally scheduled, or the duration of classification is shortened, the authority making such changes shall, to the extent practicable, ensure prompt notification to all addressees to whom the information or material was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify addressees to whom they have transmitted the classified information or material.

(2) *Posted Notice.* If prompt remarking of large quantities would be unduly burdensome, the custodian may attach declassification, downgrading, or upgrading notices to the storage unit in lieu of the remarking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items withdrawn from such storage units shall be promptly remarked. However, when information subject to a posted downgrading or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

(i) *Foreign Relations Series.* In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing 20 years after the event, NASA shall assist these editors by facilitating access to appropriate classified materials in its custody and by expediting declassification review of items from its files selected for publication.

Subpart G—Foreign Government Information

§ 1203.700 Identification.

In order to qualify as foreign government information, information must fall into one of the two following categories:

(a) Information provided to the United States by a foreign government or international organization of governments, such as the North Atlantic Treaty Organizatiuon (NATO), where the United States has undertaken an obligation, expressed or implied, to keep the information in confidence. The information is considered to have been provided in confidence if it is marked in a manner indicating it is to be treated in confidence or if the circumstances of the delivery indicate that the information be kept in confidence.

(b) Information requiring confidentiality produced by the United States pursuant to a written, joint arragement with a foreign government or international organization of governments. A written, joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record of the joint arrangement.

§ 1203.701 Classification.

(a) Foreign government information that is classified by a foreign entity shall either retain its original classification designation or be marked with a United States classification designation that will ensure a degree of protection equivalent to that required by the entity that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign government information that was not classified by a foreign entity but was provided to NASA with the expressed or implied obligation that it be held in confidence must be classified. Executive Order 12065 states a presumption of at least identifiable damage to the national security in the event of unauthorized disclosure of foreign government information. Therefore, such foreign government information shall be classified at least Confidential. However, at the time of classification, judicious consideration shall be given to the sensitivity of the subject matter and the impact of its unauthorized disclosure upon both the United States and the originating foreign government or organization of governments in order to determine the most appropriate level of classification. Levels above Confidential must be assigned by an original classification authority.

§ 1203.702 Duration of classification.

Foreign government information is exempt from the declassification and 20-year systematic review requirements of § 1203.603(b). Unless the guidelines for the systematic review of 30-year old foreign government information developed pursuant to § 1203.603(b) prescribe dates or events for declassification or for review for declassification:

(a) Foreign government information shall not be assigned a date or event for declassification unless such is specified or agreed to by the foreign entity.

(b) Foreign government information classified after December 1, 1978, shall be assigned a date for review for declassification at 30 years from the time the information was originated by the foreign entity or acquired or classified by NASA, whichever is earlier. Such information received undated shall be dated upon receipt.

§ 1203.703 Declassification.

(a) In weighing the public interest in disclosure against the need to protect foreign government information and confidential foreign sources, the need to protect such information shall be presumed to predominate.

(b) Following consultation with the Archivist of the United States and, where appropriate, with the foreign government or international organization concerned, and, with the assistance of the Department of State, NASA will issue guidelines for the systematic review of 30-year old foreign government information that will apply to foreign government information of primary concern to NASA. These guidelines are authorized for use by the Archivist of the United States and, with the approval of NASA, by an agency having custody of such information. The Chairperson, Information Security Program Committee, will initiate administrative functions necessary to effect review of these guidelines at least once every two years and submit recommendations to the Administrator based on these reviews. If, after applying the guidelines to 30-year old

foreign government information, a determination is made by the reviewer that continued classification is necessary, a date for declassification or for review no more than 10 years later shall be set. That action and date shall be marked on the document. Subsequent review dates shall be set at no more than 10-year intervals.

(c) Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 1203.603 except that foreign government information will be declassified only in accordance with the guidelines developed for that purpose under § 1203.702 and after consultation with other Government agencies with subject matter interest as necessary. In those cases where these guidelines cannot be applied to the foreign government information requested, the foreign originator normally should be consulted, through appropriate channels, prior to final action on the request. However, when the responsible NASA installation knows the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator is not necessary.

(d) Requests for mandatory review for declassification of foreign government information which NASA has not received or classified shall be referred to the Government agency having a primary interest. The requestor shall be advised of the referral.

Robert A. Frosch,

Administrator.

[FR Doc. 79-18974 Filed 6-15-79; 8:45 am]

BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2964]

Prohibited Trade Practices, and Affirmative Corrective Actions; Aluminum Company of America, et al.

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Pittsburgh, Pa. producer of aluminum building products and its subsidiary, Alcoa Building Products, Inc., to cease disseminating or participating in the dissemination of advertisements which contain fuel reduction, heat loss reduction, energy savings or thermal insulation representations regarding residential aluminum siding. The order also requires that the R-value for insulating material be disclosed in advertisements which merely use the term "insulated aluminum siding" for descriptive purposes.

DATES: Complaint and order issued May 11, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Building, 1240 East Ninth St., Cleveland, Ohio, 44199, (216) 522-4207.

SUPPLEMENTARY INFORMATION: On Friday, January 12, 1979, there was published in the **Federal Register**, 44 FR 2600, a proposed consent agreement with analysis In the Matter of Aluminum Company of America, a corporation, and Alcoa Building Products, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc.

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

Carol M. Thomas,

Secretary.

[FR Doc. 79-18921 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2966]

Prohibited Trade Practices, and Affirmative Corrective Actions; General Motors Corporation

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Detroit, Mich. motor vehicle manufacturer to cease misrepresenting the manufacturing source of engine options and the availability of standard or optional equipment. The order also requires the firm to make designated disclosures regarding the manufacturing source, ordering code, and availability of each engine option offered for the model years 1979 through 1981; notify dealers promptly of engine option substitutions; and provide them with the replacement parts and maintenance information necessary to service such equipment. Additionally, the company is prohibited from using any wholesale order system which could prevent dealers from designating specific options requested by purchasers.

DATES: Complaint and order issued May 18, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio. 44199. (216) 522-4207.

SUPPLEMENTARY INFORMATION: On Friday, January 26, 1979, there was published in the **Federal Register**, 44 FR 5457, a proposed consent agreement with analysis In the Matter of General Motors Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10-1 Availability of merchandise and/or facilities; § 13.90 History of product or offering; § 13.160 Promotional sales plans; § 13.205 Scientific or other relevant facts; § 13.235 Source or origin; 13.235-35 History. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures. Subpart-Misrepresenting Oneself and Goods—

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1650 History of product; § 13.1745 Source or origin; 13.1745–60 Maker or seller; § 13.1750 Style or type.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1854 History of products; § 13.1886 Quality, grade or type; § 13.1895 Scientific or other relevant facts; § 13.1900 Source or origin.

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

Carol M. Thomas,

Secretary.

[FR Doc. 79-18919 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-2968]

Prohibited Trade Practices, and Affirmative Corrective Actions; Inland Empire Roofing Contractors Association

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Spokane, Wash. roofing association to cease entering into agreements with others to establish and maintain terms of guarantees, prices, or other conditions of sale in connection with the sale of roofs and related services; suggesting that members adhere to any particular price, guarantee, or other condition of sale; or limiting by any means a member's right to give any guarantee, price or other term or condition of sale to its customers. The association is also prohibited from investigating and/or policing its members with regard to prices charged and guarantees imposed in the sale of their products and services.

DATES: Complaint and order issued May 22, 1979. [1]

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174 (206) 442–4655.

SUPPLEMENTARY INFORMATION: On Monday, March 19, 1979, there was published in the **Federal Register**, 44 FR 16441, a proposed consent agreement with analysis In the Matter of Inland Empire Roofing Contractors Association, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart-Coercing and Intimidating: § 13.367 Members. Subart-Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.430 To enhance, maintain or unify prices; § 13.470 To restain or monopolize trade. Subpart-Controlling, Unfairly, Seller-Suppliers: § 13.530 Controlling, unfairly, seller-suppliers. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–60 release of general, specific or contractual constrictions, requirements, or restraints. Subpart-Maintaining Resale Prices: § 13.1165 Systems of espionage.

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

Carol M. Thomas,

Secretary.

[FR Doc. 79-18922 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-2963]

Prohibited Trade Practices, and Affirmative Corrective Actions; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires an Anchorage, Alaska labor union local to cease entering into agreements or understandings which restrict signatory construction companies to deal only with subcontractors who agree with the same terms and conditions binding between the union and the contractors. Additionally, the agreement would prohibit the local from taking any action that would discriminate or economically injure non-compliers.

DATES: Complaint and order issued May 9, 1979. [1]

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle Wash. 98174. (206) 442–4655.

SUPPLEMENTARY INFORMATION: On Wednesday, July 19, 1978 there was published in the **Federal Register**, 43 FR 31022, a proposed consent agreement with analysis In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 959, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Coercing and Intimidating: § 13.370 Suppliers and sellers. Subpart-Combining or Conspiring: § 13.390 To control employment practice; § 13.395 To control marketing practices and conditions.

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

Carol M. Thomas,

Secretary.

[FR Doc. 79-18920 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1118

Investigations, Inspections, and Inquiries Under the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

ACTION: Final rules.

SUMMARY: In this document, the Commission sets forth rules to govern the scope and conduct of investigations, inspections, and inquiries under the Consumer Product Safety Act as well as procedures for disposing of matters by consent order agreements. The rules state the manner in which officers or employees of the Commission are authorized to enter and inspect premises; to have access to and copy documentary evidence; and to obtain information. These rules are intended to provide the Commission with an effective and efficient method of conducting investigations, inspections, and inquiries in order to determine whether there has been compliance with the Consumer Product Safety Act and the standards, rules, and regulations issued under the Act. In addition, the rules will inform the public of the Commission's procedures and the safeguards available during investigational activities.

EFFECTIVE DATE: July 18, 1979.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Consumer Product Safety Commission, Directorate for Compliance and Enforcement, Washington, D.C. 20207, Telephone No. (301) 492-6629.

SUPPLEMENTARY INFORMATION: On August 9, 1978, the Consumer Product Safety Commission published proposed Nonadjudicative Rules of Procedure for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act in the **Federal Register** (43 FR 35440). The Commission invited the public to submit written comments regarding the rules by September 22, 1978.

The Commission received numerous written comments from businesses, trade associations, law firms and others. Most of the commenters support the purpose of the proposal. The rules issued below, in final form, reflect changes made in the proposed rules in response to questions and suggestions raised by commenters as well as changes suggested by the Commission staff. Following is a discussion of major comments received and the Commission's responses to them.

Discussion of Major Comments

Inspections and the Fourth Amendment

The majority of the comments refer to the recent Supreme Court decision in *Marshall v. Barlow's Inc* 436 U.S. 307 (1978), and the possible impact of this decision upon the proposed rules. In *Marshall v. Barlow's Inc.*, the Supreme Court held that non-consensual inspections which are conducted by the Occupational Safety and Health Administration (OSHA) without a warrant or its "functional equivalent" violate the Fourth Amendment of the United States Constitution. The Fourth Amendment states in pertinent part: "The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause * * *"

Several commenters expressed the view that proposed §§ 1118.2(a) (1) and (2) and 1118.2(d) are in conflict with the *Barlow* decision in that these subsections would authorize Commission officers and employees to enter and inspect premises without first obtaining a search warrant. The Commission believes that the commenters have improperly construed *Barlow*. The Supreme Court ruled that where an OSHA inspector in the course of his/her duties is refused entry and inspection to business premises, OSHA must obtain a search warrant or its "functional equivalent" to obtain entry. The Court, however, did not indicate that OSHA must procure a search warrant prior to refusal of entry and/or inspection. On the contrary, the opinion expressly anticipates that "the great majority of businessmen can be expected in normal course to consent to inspection without a warrant." 436 U.S. 307, 314 (1978). If voluntary entry is refused, *Barlow* requires that OSHA obtain either a search warrant or its functional equivalent if it wishes to enter and inspect.

Section 16 of the Consumer Product Safety Act (15 U.S.C. 2065) authorizes officers or employees of the Commission to conduct inspections at reasonable times and in a reasonable manner for purposes of implementing the Act. The Commission has carefully considered this provision in light of the Supreme Court's decision in *Barlow*. The Commission in § 1118.2 has provided for the use of search warrants or their functional equivalent in situations where entry and/or inspection has been refused. Therefore, the Commission believes that these rules follow the *Barlow* decision, and has made no change in the rules issued below.

Several commenters stated that proposed §§ 1118.2(a) (1) and (2) and 1118.2(d) should make clear that an individual has the right to request that a warrant be obtained, and that it is not a violation of the Act or the rules for any person or firm to refuse entry or inspection to a Commission officer or employee who does not present a lawfully obtained search warrant. The Commission believes that the rules as proposed, adequately reflect the rationale of the Supreme Court in *Barlow*. Accordingly, the Commission declines to make the suggested revisions. However, the Commission has revised proposed § 1118.2(c) to provide for the inclusion of a statement in the notice of inspection that "the inspection will be conducted and the information provided with the cooperation of the person or firm being inspected."

Conduct and Scope of Inspections

Several commenters expressed the view that proposed §§ 1118.2(a) (1) and (2) should be revised to state that Commission investigators do not have the authority to inspect certain areas of a firm's facilities such as offices, file rooms and supply space where consumer products are neither manufactured nor held. An analysis of the applicable legislative history indicates that the Commission has the authority, in accordance with its obligation to protect the public health and safety, to investigate and inspect these and other areas of a factory, warehouse or establishment. House Commerce Committee Report No. 92-1153 (1972) at p. 43, clearly states: "Such inspection may extend to any portion of any premises or facility which may relate to the safety of such products." Therefore, the Commission declines to adopt the suggested changes.

One commenter suggested that proposed § 1118.2 be modified to show that the inspectional authority of the Commission does not extend to retailers. Although retailers have been excluded from the recordkeeping requirements of § 16(b) of the Act, they have not been exempted from the inspection provisions of § 16(a). House Committee Rep. No 92-1153 p. 44 (1972). Section 16, which pertains to entry and inspection of premises, grants to the Commission broad authority to conduct on-site inspections of any establishment where consumer products are held in connection with their distribution in commerce. Since retailers are establishments within the meaning of § 16, they are therefore subject to inspection by the Commission. Accordingly, the Commission believes that it has the statutory authority to inspect the business premises of retailers, and therefore, declines to make the suggested change.

Several commenters contended that the Commission lacks statutory authority to have access to records, books, documents, papers, packaging or

labeling as as provided in proposed § 1118.2(a)(3), without first promulgating a rule requiring such information to be kept and made available. Careful analysis of § 16 of the CPSA clearly indicates that the sole limitation on the Commission's authority to have access to and copy records is that said records be " * * * appropriate books, records and papers relevant to determining whether such manufacturer, private labeler or distributor has acted or is acting in compliance with this Act and rules under this Act. 15 U.S.C. 2065 (1972)." Furthermore, the legislative history of § 16 of the Consumer Product Safety Act indicates that the broad remedial purposes of the Act, a public safety statute, authorizes the Commission to have access to all books, papers, records and other relevant information. The Commission concludes that such authority is not dependent upon the prior promulgation of a Commission rule requiring the establishment and maintenance of such information. Accordingly, the Commission declines to make any substantive changes in § 1118.2(a)(3) to reflect such a limitation.

One commenter expressed the opinion that the scope of proposed § 1118.2(a)(3), exceeds the Commission's statutory authority, in that it provides for the copying of printed information. The Commission believes that this view is unduly restrictive. When § 16, which relates to inspections and recordkeeping, is read in conjunction with § 19(a)(3) of the Act, which makes it unlawful to fail or refuse to permit the copying of records, it is apparent that the Commission has the authority to copy information which shows or relates to the firm's compliance with the Act and the rules. Therefore, the Commission declines to modify § 1118.2(a)(3) in the manner suggested.

Another commenter suggested that the language of proposed § 1118.2(a)(3) purports to authorize access to and copying of virtually any data, whether or not such data relates to the firm's compliance with the Act or rules. Although such was not the intent of this provision, the Commission recognizes that the language of this subsection may give such an impression. Accordingly, proposed § 1118.2(a)(3) has been revised in the following manner to authorize access to and copying of only relevant information: "(3) to have access to and to copy all relevant records, books, documents, papers, packaging or labeling which: (i) Are required by the Commission to be established, made or maintained, or (ii) show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product, or that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the act and regulations, rules and others promulgated under the act, and * * *" The Commission believes that this language change will remove any possible ambiguity.

One commenter expressed the view that the Commission lacks statutory authority to inspect packaging and labeling of consumer products. The Commission believes that packaging and labeling are component parts of consumer products within the meaning of § 3(a)(1) of the CPSA (see 16 CFR 1115.4) and are therefore obtainable and subject to inspection to the same extent as other consumer products and components. Therefore, the Commission has not deleted "packaging" and "labeling" from § 1118.2(a)(3).

Several commenters argued that proposed § 1118.2(a)(4) exceeds the Commission's statutory authority in that it provides that the Commission may obtain information during the course of an on-site inspection by interviewing employees. These commenters would require the Commission to rely exclusively on compulsory process to obtain oral and/or written statements from employees. However, the Supreme Court in *Barlow* voiced the expectation that most inspections would be conducted with the consent of the person or firm involved. This expectation also applies to oral and written comments of employees. Although the Act and these rules provide methods for compelling answers to questions, the Commission expects that most questions will be answered by employees in a cooperative manner. To resort to compulsory process at the outset would create unjustified expense for both the Commission and the subject of the investigation. It may also generate antagonism and resistance towards the Commission. The Commission believes that employee cooperation should be sought and encouraged.

Another comment, similar to the preceding one, has stated that the seeking of oral information is intrusive, and that the same information is more easily obtainable by use of a subpoena. In response to the preceding comment, the Commission expressed its preference for relying on public cooperation in the first instance. The Commission does not believe it necessary at this time to change a long-standing regulatory enforcement procedure in the absence of compelling evidence that there has been an undue disruption of normal business activities. It is the practice of the staff to accommodate business firms to every extent possible to prevent the kind of disruptions referred to by the commenter. The Commission believes that the unnecessary issuance of compulsory process would be far more disruptive and expensive to the firms involved. Therefore, the Commission will continue first to seek and obtain oral information.

Other Comments

Definitions; Initiation of Investigations, Inspections and Inquiries

The Commission, on its own initiative, has, for the purpose of clarity, divided proposed § 1118.1(b) into two subsections: § 1118.1(b) and § 1118.1(c). Proposed § 1118.1(c) now appears as final § 1118.1(d).

One commenter objected to the phrase "includes but is not limited to" within the proposed definition of "investigation" in proposed § 1118.1(a)(1) (now final § 1118.1(a)(4)). The Commission believes that there should be no limitations on the types of investigations, inspections and inquiries that may be pursued in the future, so long as adequate notice and opportunity to be heard are afforded to the firms involved. The Commission has therefore declined the commenter's suggestion that the phrase be deleted.

Several commenters objected to the inclusion of retailers within the proposed definition of "firm" in proposed § 1118.1(a)(2) (now final § 1118.1(a)(3)). They argue that since retailers are excluded from the recordkeeping requirements of section 16(b), such retailers should not be included within the broad definition of "firm". Despite the fact that the recordkeeping requirement is not applicable to retailers, retailers are generally subject to the other provisions of the Act. Section 16(a)(1) of the Act authorizes the Commission to enter any establishment in which consumer products are held in connection with distribution in commerce. The definition of "distribution in commerce" includes holding consumer products for sale. Section 3(a)(6) of the Act defines a retailer as one to whom a consumer product is delivered or sold for purposes of sale or distribution to consumers. Thus, a retailer comes within the statutory scope of § 16(a)(1) of the Act. Therefore, the Commission declines to adopt the suggestion of the commenters to delete the word retailer from the definition of "firm". However, in order to clarify the applicability of the Act and

these rules to retailers, the Commission has added the following language to proposed § 1118.1(a)(2) "* * * except as otherwise provided by § 16(b) of the Act.

Trade Secrets

Several commenters have claimed that proposed § 1118.2 does not provide adequate protection against the disclosure of trade secrets and other confidential or proprietary information. The Commission points out that §§ 1118.2(c) and 3(c) of these rules exempt such information from disclosure to anyone except other officers or employees of the Commission who are concerned with enforcing or administering the Act. These two subsections paraphrase and restate the Commission's Freedom of Information Act Regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977), the Freedom of Information Act and apply the maximum protection provided for under the FOIA (15 U.S.C. 552) to all information obtained by the Commission. Accordingly, the Commission declines to modify § 1118.2 of the final rules.

Samples

Several commenters, including a number of trade associations and manufacturers, objected to proposed § 1118.2(a)(4)(ii). The commenters claim that this subsection authorizes the Commission to obtain samples of consumer products without payment. The Commission did not intend this subsection to have such an effect. Section 27(f) of the Act provides that the Commission "may require any manufacturer, distributor or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's or retailer's cost." Accordingly, the Commission has clarified final § 1118.2(a)(4)(ii) by adding the phrase "at manufacturer's, distributor's, or retailer's cost, unless voluntarily provided * * *"

Other commenters expressed the view that the Commission is only authorized to buy finished products and not components. Since § 3(a)(1) of the Act includes "components" within the definition of "consumer product" the Commission disagrees with the commenter. Therefore, the Commission believes that § 1118.2(a)(4) correctly interprets the statute and that the Commission has the authority to obtain components.

Compulsory Process

In order to clarify the fact that the Commission may initiate investigations, inspections or inquiries by either issuance of a notice of inspection or by seeking ex parte search warrants or using the compulsory processes enumerated in proposed § 1118.3, the staff has modified the language of § 1118.3 of the final rules.

One commenter objected to the language "including but not limited to" in proposed § 1118.3 as excessively broad. The Commission agrees with the commenter and has revised final § 1118.3 by adding the words "the following compulsory processes" after the phrase "including but not limited to."

Another commenter expressed the view that the use of the term "notice" in proposed § 1118.3(b) is unclear and could be construed to allow mail service of search warrants. Final § 1118.3(b) has been modified by deleting the words "of notice" from the subsection. Moreover, the phrase "the following compulsory processes" has been added to final § 1118.3(a) to make clear that the service involved refers solely to compulsory process and not to search warrants.

Several commenters suggested that proposed § 1118.3(b)(3) is probably unconstitutional in that it permits service of general or special orders by publication in the **Federal Register.** Other commenters stated that this means of service is unfair to small businessmen who do not subscribe to the **Federal Register.** The Commission is neither aware of any case law supporting the constitutional claim of the commenters, nor was any cited in the comment. However, in order to assure the commenter that service by publication will only be used as a last resort, the Commission has deleted the phrase "is impractical or" from final § 1118.3(b)(3). Therefore, the Commission does not believe that this form of service is unfair to small businessmen.

A few commenters complained that the date of service of compulsory processes in proposed § 1118.3(c) should be the date on which the document is received rather than the date on which the document is mailed. The commenters claimed that since it might take three or four days for process to be received by mail, such delay would unreasonably shorten the time period in which they are permitted or required to respond. Although the proposed rules provide for a three-day extension of time when service by mail is involved, the Commission believes that the commenter's views are well founded. The Commission has therefore modified § 1118.3(c) in the manner suggested by the commenter.

Subpoenas

One commenter suggested that proposed § 1118.4 is overbroad since it allows for discovery of documents beyond the authority granted in section 16 of the CPSA. The authority to issue subpoenas is granted by section 27(b)(3) of the CPSA. This section empowers the Commission to require the production of all documents relating to the execution of Commission duties. Accordingly, the Commission declines to make any change in final § 1118.4.

Investigational Hearings

Several commenters stated that the purpose of investigational hearings set forth in proposed § 1118.5(a) is too expansive in that it relates to "any matter under investigation." For this reason, the commenters claim that there is no guarantee that the hearings will be limited to matters in the public interest. The Commission did not intend that "any matter under investigation" be read in such a broad manner. Section § 1118.1 of these rules defines "investigation" as "an undertaking by the Commission to obtain information for implementing, enforcing or determining compliance with the Consumer Product Safety Act, and the regulations, rules and orders issued under that Act."

Therefore, the scope of an investigational hearing will be limited to the areas enumerated above, which are undoubtedly matters in the public interest. Moreover, a witness at an investigational hearing has the right to be represented by counsel and to object to any matter relevant to the hearing, as provided in § 1118.7(a.) In light of this built-in procedural safeguard and the inherent subject matter limitations of such investigations, the Commission believes that it is unnecessary to adopt the views of the commenters.

One commenter suggested that the language of proposed § 1118.5(a) be changed from "may order and by subpoena may compel" to "by subpoena may require" in order to comport with the statutory language of section 27(b)(3) of the CPSA. The Commission agrees with the commenter and has adopted the suggested language.

Another commenter expressed the opinion that only persons with legal training be allowed to preside at investigational hearings. Section 27(a) of the CPSA, which authorizes the Commission to conduct hearings provides no such limitation, either explicit or implicit, on the qualifications of presiding officials. However, the commenter can be assured that the

Commission will appoint persons with legal training to preside at Commission hearings when the Commission deems necessary. Therefore, the Commission declines to amend this section.

Another commenter argued that a Commissioner who participates in a hearing, investigation or inspection should be disqualified from participating in a subsequent decision on the same matter. The statutory language of section 27(a) of the CPSA provides that "a Commissioner who participates in * * * a hearing or other inquiry shall not be disqualified *solely* by reason of such participation from subsequently participating in a decision of the Commission in the same matter (emphasis added)." Accordingly, the Commission has decided not to incorporate the suggestion of the commenter. However, in order to clarify the meaning of proposed § 1118.5(b) and to track the language of the statute, the Commission has added the word "solely" to § 1118.5(b) of the final rules.

One commenter expressed the view that proposed § 1118.5(b) should be amended to provide that if a Commissioner is to participate in a Commission decision involving a matter in which he or she had previously participated at the investigational level, a written statement indicating why the Commissioner should not be disqualified should be included as part of the record. The Commission believes that the inclusion of such a written statement is unnecessary in view of the language of § 27(a) of the Act providing for a Commissioner to participate in a Commission decision after conducting a hearing or after inquiry regarding the same matter. Moreover, a person believing that a Commissioner has lost his or her objectivity may, of course, move to disqualify that Commissioner under the CPSC Adjudicative Rules, 16 CFR 1025.42(e)(2). Accordingly, the Commission declines to make the suggested change.

Another commenter claimed that proposed § 1118.5(d), which limits the release of the record of an investigational hearing in accordance with the Freedom of Information Act is in conflict with proposed § 1118.7(d) which allows any person who is required to appear at an investigational hearing or a deposition to obtain a copy of his/her testimony by paying the prescribed costs. To clarify that a person giving testimony may obtain a copy of the transcript, final § 1118.5(d) has been amended by adding the following language: " * * * except that any person required to give testimony or to be deposed may in accordance with § 1118.7(d) obtain a copy of his or her testimony or deposition."

Depositions

The Commission has modified proposed § 1118.6 in the same manner and for the same reasons stated in the comments pertaining to § 1118.5(d).

One commenter suggested that the language of proposed § 1118.6 should be modified to require that changes in depositions be made on the face of the document rather than on a separate document accompanying the deposition. The commenter's rationale for such suggestion is that the change would avoid the potential loss of such separate documents. The Commission concurs and has incorporated appropriate language into § 1118.6 of the final rules.

Several commenters objected to the language of proposed § 1118.6(b) which allows the Commission to reduce the time period in which a deposition must be signed to less than ten days. The commenters claim that such a practice may lead to harassment by the Commission. The Commission believes that circumstances may arise in which the public interest may require that a deposition regarding consumer safety be signed and submitted in less than ten days. However, the Commission has modified final § 1118.6(b) by providing that the Commission must state the reason for requiring a deposition to be signed in less than ten days.

Another commenter expressed the view that it is inappropriate for the Commission to establish rules of admissibility of evidence for the courts. The Commission agrees with this observation and has modified § 1118.6(b) of the final rules to clearly indicate that admissibility of such testimony in court is not governed by these rules.

Rights of Witnesses at Investigational Hearings and of Deponents at Depositions

The Commission, on its own initiative, has amended proposed §§ 1118.7(a)(4) and § 1118.7(e) to make clear that the conduct of witnesses at investigational hearings is subject to direction and regulation by the presiding official. The Commission believes that it has the statutory authority to so empower the presiding official.

The Commission has also substituted the term "representative" for the term "counsel" in final § 1118.7(a). The Commission believes that it is inappropriate to refer to laymen who are not admitted to practice before any bar as "counsel." Moreover, to insure that lay representatives have adequate knowledge of the business affairs of the firm, the Commission has limited persons who may serve as representatives to partners of the partnership or officers of the corporation whose activities are under investigation by the Commission during that proceeding.

Thirdly, the Commission, on its own initiative, has revised final § 1118.7(a)(4) to provide a witness or his or her attorney or representative with the opportunity to make a brief statement at the conclusion of the hearing regarding the position of the firm as to matters under investigation. Furthermore, the Commission has for the purpose of clarity, divided proposed § 1118.7(a)(4) into two subsections: § 1118.7(a)(4) and § 1118.7(a)(5).

Several companies and trade associations objected to the limitation in proposed § 1118.7(a)(1) which precludes individuals who have been subpoenaed to produce documentary evidence or give testimony at any investigational hearing or deposition from acting as counsel for another witness or deponent at the same proceeding. The Commission believes that the possibility exists that an individual who has been present during the testimony of a witness and is later called to testify at the same proceeding may be influenced by the previous testimony he or she has heard. Therefore, the Commission believes that the limitation of § 1118.7(a) is a reasonable one.

Several commenters expressed the view that proposed § 1118.7(a)(1) discriminates against firms with in-house counsel who normally testify regarding documents maintained by the firm. The Commission disagrees with the position of the commenters and suggests that another person could present the subpoenaed documents, thereby allowing the in-house counsel to act as legal representative of the firm. If the firm maintains more than one attorney, one lawyer could present the documents and another could act as counsel. Accordingly, the Commission declines to incorporate the suggested change in these rules.

One commenter stated that proposed §§ 1118.7(a)(3) and (4) do not provide a witness, deponent, their attorney or representative with the opportunity to object on the record to anything other than a question that has been posed. It was suggested that the right to object should be expanded to include any matter pertinent to the hearing. The Commission agrees with the commenter and has modified final § 1118.7(a)(1) to comply with the suggestion.

Another commenter suggested that proposed § 1118.7(b) be modified to require the Commission to issue a separate notice to firms under investigation, indicating the nature of the information to be sought from a deponent or witness at an investigational hearing. The Commission believes that administrative subpoenas issued pursuant to § 1118.3 serve this purpose. Such subpoenas specify in detail the information sought from each witness, the nature of the investigation, and all other factors relevant to the inquiry. Accordingly, the Commission declines to make the suggested modification.

One commenter stated that the term "reasonably available" in proposed § 1118.7(b), referring to the information to which a witness or deponent shall testify, is vague and may result in overreaching by the Commission. The Commission believes that this language, taken from similar provisions of the Federal Rules of Civil Procedure, adequately describes the matters to which a witness must testify, while providing the witness reasonable grounds for refusing to supply that information, if it is not available. Accordingly, the Commission has decided not to revise this subsection.

The same commenter suggested that the Commission be required "to notify the firm sufficiently in advance of the hearing or deposition of those matters and information to which testimony would be sought, to afford the firm a reasonable time to gather the requested * * * information for use of its agent or offices during his testimony." Under § 1118.10(a)(3), any firm may request an extension of time for the purpose of complying with compulsory processes, including investigational hearings and depositions. Therefore, the Commission believes that these rules provide an adequate period of time to gather requested information, and has therefore not modified this subsection.

Another commenter expressed the view that proposed § 1118.7(d) should provide that witnesses who testify under compulsory process should be allowed to keep a copy of their testimony at government expense. The Commission is of the opinion that the procedure contained in § 1118.7(d) by which a witness or deponents may obtain a copy of testimony given by paying the prescribed costs is adequate and reasonable. Such procedure comports with similar provisions of the Freedom of Information Act. Therefore, the Commission has not incorporated the suggested change in § 1118.7(d) of the final rules.

Written Interrogatories

One commenter questioned whether it was necessary for the rules to provide for both written interrogatories and general and special orders. After careful consideration, the Commission has concluded that no useful purpose will be served by providing for the use of written interrogatories. Any information obtainable through written interrogatories may also be obtained through general and special orders. Therefore, proposed § 1118.8 has been deleted. The number sequence of the rules which follow has been modified accordingly.

Modification of Terms for Compliance

The Commission believes that proposed § 1118.10(b)(2) and (3) both provide for an extension of time to limit or quash subpoenas and general or special orders. In order to eliminate this redundancy, § 1118.10(b)(2) has been deleted. Section 1118.10(b)(3) of the proposed rules now appears as final rule § 1118.9(b)(2).

Consent Order Agreements

The Commission on its own initiative has amended proposed § 1118.20(b) by adding subpart (4), which requires that a statement describing the alleged hazard, noncompliance or violation be included in a consent order agreement. This subpart was added in order to comport with provisions in the Interim Rules of Practice for Adjudicative Proceedings under the CPSA and the Flammable Fabrics Act, 42 FR 31431 (1977) (16 CFR Part 1025) and the Policy and Procedures Regarding Substantial Product Hazards, 16 CFR Part 1116 (43 FR 34988, August 7, 1978).

Additionally, the Commission believes that the language of proposed § 1118.20(b)(8) lacks clarity. The Commission has therefore modified this subsection to avoid any possible confusion.

One commenter suggested that the time period in which the Commission will notify a consenting party of its decision not to accept a consent order agreement on a final basis should be stated in proposed § 1118.20(c) of these rules. The Commission endeavors to inform a consenting party within a reasonable period of time of its decision not to accept agreements on a final basis. Accordingly, final § 1118.20(g) has been amended to provide that the Commission shall, within a reasonable time, issue and serve an order indicating its rejection of the consent agreement.

Another commenter observed that proposed § 1118.20(g) should include a provision requiring the Commission to state in writing the reasons for rejecting a proposal. The Commission does not believe that it is practicable for the Commission to set forth in detail the basis for rejecting a proposed agreement in each and every case. However, although the Commission declines to make the suggested change in § 1118.20(g) of the final rules, the Commission will make every effort to respond in writing where practicable.

On its own initiative, the Commission has revised the language of §§ 1118.20(f) and 1118.20(g) to clarify the procedure the Commission will follow in finally accepting or rejecting an agreement that has been tentatively accepted. If no public objections to the agreement are received within 15 days of placing the agreement on the public record in accordance with § 1118.20(e), the agreement is accepted by operation of law. Where the Commission receives one or more requests that it not finally accept an agreement, it shall make its final decision after considering the requests and reasons contained in them. The Commission's final decision will be made within a reasonable time following the end of the fifteen day comment period.

The Commission, on its own initiative, has added § 1118.20(h) to provide a procedure to vacate or modify an order issued pursuant to an agreement. The procedure is begun either by a petition filed by a party or by the Commission acting on its own initiative. The petition shall include the change sought and the reasons for it. The grounds for a petition are (1) false statements were relied upon by the Commission in accepting the agreement or (2) there has been a change in facts or law. Parties affected by the petition shall be allowed to submit a response to it. In deciding whether to grant the petition, the Commission shall consider the public interest.

Effective Date and Promulgation

Effective Date. These rules become effective July 18, 1979.

Promulgation

Accordingly, pursuant to the provisions of the Consumer Product Safety Act, §§ 16, 19 and 27, 86 Stat. 1222, 1224, and 1227, as amended, 90 Stat. 509; 15 U.S.C. 2065, 2068, and 2076, Chapter II of Title 16 is amended by adding a new Part 1118 as follows:

PART 1118—INVESTIGATIONS, INSPECTIONS AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

Subpart A—Procedures for Investigations, Inspections and Inquiries

Sec.
1118.1 Definitions, initiation of investigations, inspections, and inquiries delegations.
1118.2 Conduct and scope of inspections.
1118.3 Compulsory processes and service.
1118.4 Subpoenas.
1118.5 Investigational hearings.
1118.6 Depositions.
1118.7 Rights of witnesses at investigational hearings and of deponents at depositions.
1118.8 General or special orders seeking information.
1118.9 Motions to limit or quash subpoenas and general or special orders and delegation to modify terms of compliance.
1118.10 Remedies for failure to permit authorized investigations.
1118.11 Nonexclusive delegation of power.

Subpart B—Consent Order Agreements

1118.20 Procedures for consent order agreements.

Authority: Sec. 16, Pub. L. 92–573, 86 Stat. 1222 (15 U.S.C. 2065); sec. 19, Pub. L. 92–573, 86 Stat. 1224 (15 U.S.C. 2068); sec. 27, Pub. L. 92–573, 86 Stat. 1227 (15 U.S.C. 2076); as amended by Pub. L. 94–284, 90 Stat. 509.

Subpart A—Procedures for Investigation Inspections, and Inquiries

§ 1118.1 Definitions, initiation of investigations, inspections, and inquiries and delegations.

(a) *Definitions.* For the purpose of these rules, the following definitions apply:

(1) "Act" means the Consumer Product Safety Act (15 U.S.C. 2051, et seq.).

(2) "Commission" means the Consumer Product Safety Commission.

(3) "Firm" means a manufacturer, private labeler, distributor, or retailer of a consumer product, except as otherwise provided by § 16(b) of the Act.

(4) "Investigation" is an undertaking by the Commission to obtain information for implementing, enforcing, or determining compliance with the Consumer Product Safety Act and the regulations, rules, and orders issued under the Act. The term investigation includes, but is not limited to, inspections (§ 1118.2), investigational hearings (§ 1118.5), and inquiries; employing subpoenas (§ 1118.4), depositions (§ 1118.6), and general or special orders (§ 1118.9).

(5) The definition of the terms set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this part 1118.

(b) *Initiation of Investigations and Inquiries.* Investigations and inquiries will be initiated by the Commission in any manner authorized by law.

(c) *Initiation of Inspections.* An inspection as described in § 1118.2 is initiated when the Commission or its delegate authorizes the issuance of a written notice of inspection, described in § 1118.2(c).

(d) *Delegations of Authority.* The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement: the Solicitor, the Directors of the Divisions of Enforcement; the Solicitor, the Directors of the Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the directors of area offices, the power to initiate inspections in the same manner as the Commission.

§ 1118.2 Conduct and scope of inspections.

(a) After an inspection is initiated as set forth in § 1118.1, an officer or employee duly designated by the Commission shall issue the notice of inspection (hereinafter: notice). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be inspected, the Commission officer or employee is authorized for the purposes set forth in § 1118.1(a):

(1) To enter, at reasonable times, any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) To inspect, at reasonable times and in a reasonable manner, any conveyance or those areas of the factory, warehouse, or establishment where consumer products are manufactured, held, or transported and which may relate to the safety of those products; and

(3) To have access to and to copy all relevant records, books, documents, papers, packaging or labeling which: (i) Are required by the Commission to be established, made or maintained, or (ii) show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product, or that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules and orders promulgated under the Act, and

(4) To obtain: (i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product, and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm; (ii) samples of items, materials, substances, products, containers, packages and packaging, and labels and labeling, or any component at manufacturer's, distributor's or retailer's cost unless voluntarily provided; and (iii) information, both oral and written, concerning any matter referred to in the Act and these rules.

(b) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the course of the same inspection. Each inspection shall be commenced at and completed within a reasonable period of time.

(c) The notice of inspection shall include the name and address of the person or firm being inspected; the name and title of the Commission officer or employee; the date and time of the anticipated entry; pertinent extracts from the statutory provisions upon which the right to access is based; pertinent extracts from § 1118.2 of these rules setting forth the authority of Commission officers or employees and the types of information and items they are authorized to obtain; a statement that the inspection will be conducted and the information will be provided with the cooperation of the person or firm being inspected; a statement which sets forth the purposes of the inspection and the nature of the information and items to be obtained and/or copied; and a statement that those from whom information is requested should state in writing whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section 6(a)(2) of the Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be entitled to exemption from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10496, February 22, 1977) or as amended. Any statement asserting this claim of confidentiality must be in writing, and any request for exemption of the information from disclosure must be made in accordance with the

Commission's Freedom of Information Act regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended.

(d) If upon being presented with a notice by an officer or employee duly designated by the Commission, the person or agent-in-charge of the firm being inspected refuses to allow entry or inspection, the Commission may then seek a search warrant or take other appropriate legal action. If the person refuses to provide information, to allow access to or the copying of records, or to supply samples as provided in these rules, the officer or employee of the Commission shall complete the investigation to the extent that voluntary cooperation is provided. The Commission may take such additional action, including but not limited to seeking an ex parte search warrant, employing the compulsory process provided for in these rules, and/or taking other suitable legal action. If the person or agent in charge refuses to accept the notice upon its presentation, the officer or employee may affix the notice to a public entrance way on the premises and this shall constitute presentation of the notice.

§ 1118.3 Compulsory processes and service.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Commission may elect either to seek an ex parte search warrant and/or use any other reasonable means authorized by law to initiate investigations, inspections, or inquires to obtain information for the purposes set forth in § 1118.1(a), including but not limited to the following compulsory processes:

(1) Subpoenas;

(2) Investigational hearings;

(3) Depositions; and

(4) General or special orders.

(b) Service in connection with any of the compulsory processes in § 1118.3(a) shall be effected:

(1) By personal service upon the person or agent in charge of the firm being investigated, inspected or inquired of; or

(2) By certified mail or delivery to the last known residence or business address of anyone being investigated, inspected or inquired of; or

(3) In the case of general or special orders where personal service, mailing or delivery has been unsuccessful, service may also be effected by publication in the **Federal Register.**

(c) The date of service of any form of compulsory process shall be the date on which the document is received by mail, delivered in person or published in the **Federal Register.** In computing a period of time in which a party is required or permitted to act, the day from which the time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(d) These rules shall be referred to in any notice of compulsory process served upon a person or firm.

(e) Anyone submitting information in response to any of the compulsory processes referred to in §1118.3(a) should state whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section 6(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be exempt from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended. Any claim of confidentiality must be in writing, and any request for exemption from disclosure must be made in accordance with the Commission's Freedom of Information Act regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977), or as amended.

§ 1118.4 Subpoenas.

The Commission may issue to any person or firm a subpoena requiring the production of documentary evidence (subpoena duces tecum) and/or attendance and testimony of witnesses (subpoena ad testificandum) relating to any matter under investigation. Procedures regarding compliance with subpoenas and motions to limit or quash subpoenas are provided for in §1118.9.

§ 1118.5 Investigational hearings.

(a) The Commission by subpoena may require any person or firm to provide information at an investigational hearing. These hearings shall be for the purpose of taking the testimony, under oath, of witnesses and receiving documents and other data relating to any subject under investigation. The hearings shall be presided over by the Commission, by one or more of the Commissioners, by an administrative law judge, or by a duly designated officer or employee, who shall be referred to as the presiding official. The hearings shall be stenographically reported, and the transcript shall be made a part of the record.

(b) A Commissioner who participates in a hearing or other investigation, inspection, or inquiry shall not be disqualified solely by reason of that participation from subsequently participating in a Commission decision in the same matter.

(c) Investigational hearings shall be closed to the public, unless otherwise ordered by the Commission.

(d) The release of the record of the hearing shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations, except that a person required to give testimony or a deposition may, in accordance with §1118.7(d), obtain a copy of his or her testimony or deposition.

§ 1118.6 Depositions.

(a) The Commission by subpoena may require testimony to be taken by deposition at any stage of any investigation. Depositions may be taken before any person who is designated by the Commission and has the power to administer oaths. The person before whom the deposition is taken shall put the deponent under oath. The testimony given shall be reduced to writing by the person taking the deposition or under that person's direction and shall then be submitted to the deponent for signature unless the deponent waives the right to sign the deposition. All depositions shall be closed to the public, unless otherwise ordered by the Commission. The release of the record of such depositions shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations, except that the deponent may, in accordance with §1118.7(d), obtain a copy of his or her deposition.

(b) Any changes which the deponent desires to make shall be entered on the face of the deposition and shall state the reasons for such changes. The deposition shall then be signed by the deponent, unless the deponent waives the right to sign, cannot be found, or is unable or refuses to sign. The deponent must sign the deposition within 30 days of its submission to him or her, or within such shorter time period as the Commission may designate. Whenever a deponent is required to sign in less than ten days, the Commission shall notify the deponent of the reasons for such shorter time period.

If the deponent does not sign the deposition within the prescribed time period, the Commission designee shall sign it and state on the record the fact of the waiver of the right to sign or of the illness or absence of the deponent, or the deponent's inability or refusal to sign, together with the reason if any is given. The deposition may be used in any administrative proceeding, as provided by these rules, or any other proceeding, as allowed by applicable rules.

§ 1118.7 Rights of witnesses at investigational hearings and of deponents at depositions.

(a) Any person, agent, or officer of a firm, who is required to produce documentary evidence or give testimony as a witness at an investigational hearing conducted under provisions of § 1118.5 or as a deponent at a deposition taken under provisions of § 1118.6 may be accompanied by an attorney, or an officer or partner of the firm, who may act as representative for the witness or the deponent. However, a person who is subpoenaed to produce documentary evidence or give testimony at an investigational hearing or deposition cannot act as attorney or representative for another witness or deponent at the same proceeding. The term attorney refers to members of the bar of a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. The witness or deponent and his or her attorney or representative may act as follows during the course of an investigational hearing or deposition:

(1) A witness or deponent may confer, in confidence, with his or her attorney or representative concerning any questions asked of the witness or deponent. If the witness, deponent, or his or her attorney or representative objects to a question or any other matter relevant to the investigational hearing or deposition, the objection and basis for it shall be stated on the record. In the case of an objection based upon self-incrimination, the privilege must be asserted by the witness or deponent. If a witness at an investigational hearing refuses to answer a question or provide other information, the presiding official shall have the authority to immediately order the witness to answer the question or provide the information requested, except in circumstances where, in the discretion of the presiding official an immediate ruling would be unwarranted and except where a refusal is based upon the privilege against self-incrimination. Otherwise all objections shall be ruled upon by presiding official at the time the objection is made.

(2) Objections timely made under the provisions of § 1118.7(a) shall be noted on the record, shall be treated as continuing, and shall be preserved throughout the proceeding without the necessity of repetition during similar lines of inquiry.

(3) Except as provided by § 1118.7(a), counsel for a witness or deponent may not interrupt the examination of the witness or the deponent by making objections or statements on the record.

(4) Upon completion of the examination, any witness at an investigational hearing may clarify on the record any of his or her answers, or, if the witness is accompanied by an attorney or representative, the attorney or representative may examine the witness on the record as to answers previously given. In addition, the witness or his or her attorney or representative may make a brief statement at the conclusion of the hearing giving his, her or the firm's position with regard to matters under investigation. In order to prevent abuse of the investigational process, the presiding official shall have the authority to impose reasonable limitations on the period of time allowed for objections, clarification of answers, and statements of position.

(5) Upon completion of all testimony, a deponent may clarify on the record any of his or her answers. The attorney or representative for a deponent may examine that deponent on the record to clarify answers previously given.

(b) Any person, agent, or officer who is required to appear in person at an investigational hearing or at a deposition shall testify as to matters and information known and/or reasonably available to the person or firm involved.

(c) Any person, agent or officer who is compelled by subpoena to appear in person at an investigational hearing or at a deposition shall receive the same fees and mileage allowances as are paid witnesses in the courts of the United States.

(d) Any person, agent, or officer who is required to appear at an investigational hearing or at a deposition shall be entitled to retain a copy of any document submitted by him or her and, upon payment of lawfully prescribed costs, in accordance with the Commission's regulations under the Freedom of Information Act, shall be entitled to procure a copy of his or her own testimony as recorded.

(e) The presiding official shall take all necessary action to regulate the course of the hearing, to avoid delay and to assure that reasonable standards of orderly and ethical conduct are maintained. The presiding official, for reasons stated on the record, shall immediately report to the Commission any instance in which a witness or his or her attorney or representative has refused to comply with the presiding official's directions or to adhere to reasonable standards of orderly and ethical conduct in the course of the hearing. The Commission shall take whatever action is appropriate under the circumstances.

§ 1118.8 General or special orders seeking information.

The Commission may require by the issuance of general or special orders any person or firm to submit in writing any reports and answers to questions as the Commission may prescribe. The reports or answers shall be made under oath, and shall be filed within the time prescribed by the Commission. Procedures regarding compliance with general or special orders and motions to limit or quash such orders are provided for in § 1118.9.

§ 1118.9 Motions to limit or quash subpoenas and general or special orders and delegation to modify terms for compliance.

(a) The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor; the Directors of Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the General Counsel the authority:

(1) To negotiate and approve the terms of satisfactory compliance with subpoenas and general or special orders; (2) to impose conditions upon compliance with such compulsory processes; (3) and to extend the time for compliance and the time for filing motions to limit or quash.

(b) The person or firm served with a subpoena or general or special order may file a motion to limit or quash the subpoena or order. Any motion to limit or quash shall set forth the reasons why the subpoena or order should be limited or quashed and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. The motion must be received in the Office of the Secretary of the Commission within 10 calendar days of receipt of the subpoena or order unless: (1) The subpoena or order provides for a different time; or (2) the Commission, for good cause shown, grants an extension of time to file a motion.

(c) Upon receipt of a motion to limit or quash, the Office of the Secretary shall

immediately notify and transmit a copy to the appropriate staff member. Unless a different period of time is specified in the subpoena or order, the staff shall file an answer with the Office of the Secretary within 10 calendar days after receipt of the motion. A copy of the answer shall be served upon the moving party or the counsel of the moving party. No reply to the answer will be permitted.

(d) All motions to limit or quash shall be ruled upon by the Commision. The Office of the Secretary shall serve the decision on a motion to limit or quash upon the moving party or the counsel for the moving party and shall furnish a copy of the decision to the appropriate staff member. The Commission's decision is a final decision. Motions for reconsideration will not be received.

§ 1118.10 Remedies for failure to permit authorized investigations.

In the event a person or firm fails to comply with any investigative process authorized by these rules, the Commission may seek appropriate action within its authority under the Consumer Product Safety Act (15 U.S.C. 2051, et seq.)

§ 1118.11 Nonexclusive delegation of power.

No provision contained herein delegating any of the Commission's powers shall be construed as limiting the authority of the Commission to exercise the same powers.

Subpart B—Consent Order Agreements

§ 1118.20 Procedures for consent order agreements.

(a) For the procedure to be followed regarding consent order agreements involving section 15 of the Act (15 U.S.C. 2064), refer to the Commission's regulations relating to substantial product hazards (16 CFR Part 1115). For all other consent order agreements under the Consumer Product Safety Act, the provisions set forth below are applicable.

(b) The consent order agreement is a document executed by a person, or firm (consenting party) and a Commission staff representative which incorporates both a proposed complaint setting forth the staff's charges and a proposed order by which such charges are resolved. A consent order agreement shall contain the following provisions, as appropriate:

(1) An admission of all jurisdictional facts by the consenting parties;

(2) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's order;

(3) A statement that the agreement is in settlement of the staff's charges and does not constitute an admission by the consenting party that the law has been violated;

(4) A statement describing the alleged hazard, non-compliance or violation.

(5) A statement that the Commission's order is issued under the provisions of the Act (15 U.S.C. 2051, et seq.); and that a violation of such order may subject the consenting party to appropriate legal action.

(6) An acknowledgment that the consent order agreement only becomes effective upon its final acceptance by the Commission and its service upon the consenting party;

(7) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public;

(8) A statement that the consenting party shall comply with the provisions of the agreement and order;

(9) A statement that the requirements of the order are in addition to and not to the exclusion of other remedies under the Act.

(c) At any time in the course of an investigation, the staff, with the approval of the Commission, may propose to the person or firm being investigated that any alleged violation be resolved by an agreement containing a consent order. Additionally, such a proposal may be made to the Commission staff by such person or firm.

(d) Upon receiving an executed agreement, the Commission may: (1) provisionally accept it; (2) reject it and issue the complaint (in which case the matter will be scheduled for hearing in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, June 21, 1977 or as amended) and/or (3) take such other action as it may deem appropriate.

(e) If the agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the **Federal Register.** Any interested person may ask the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Any request must be received in the Office of the Secretary no later than the close of business of the 15th calendar day following the date of announcement in the **Federal Register.**

(f) If no requests are received, the agreement shall be deemed finally accepted by the Commission on the 16th calendar day after the date of the announcement in the **Federal Register.** Notice of final acceptance will be given and the order issued within a reasonable time.

(g) If the Commission receives one or more requests that it not finally accept an agreement, it shall, within a reasonable time, either finally accept or reject the agreement after considering the requests. The Commission shall promptly issue and serve an order indicating its decision.

(1) If the agreement is accepted, the Commission shall issue the complaint and order. The order is a final order in disposition of the proceeding and is effective immediately upon its service on the consenting party under these rules. The consenting party shall thereafter be bound by and take immediate action in accordance with the final order.

(2) If the agreement is rejected, the order so notifying the consenting party shall constitute withdrawal of the Commission's provisional acceptance. The Commission may then issue its complaint, may order further investigation, or may take any action it considers appropriate.

(h) An agreement that has been finally accepted may be vacated or modified upon petition of any party or the Commission's own initiative. The petition shall state the proposed changes in the agreement and the reasons for granting the petition. The Commission may modify or vacate where (1) false statements were relied upon in accepting the agreement or (2) there are changed conditions of fact or law. In deciding whether to grant a petition, the Commission shall consider the public interest. A petitioner, or the Commission when acting on its own initiative, shall serve a copy of the petition or notice of reconsideration, respectively, on all parties. Parties affected by the petition or notice of reconsideration may file a response within 10 calendar days. No replies shall be accepted. The Commission shall decide the petition or notice of reconsideration within a reasonable time and, by order, shall indicate its decision and its reasons.

Dated: June 13, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-18950 Filed 6-15-79; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1700

Exemption From Child Resistant Packaging Standards for Potassium Supplements in Effervescent Tablets, Each Containing No More Than 25 Milliequivalents of Potassium

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission issues a final amendment under the Poison Prevention Packaging Act (PPPA) to exempt potassium supplements in effervescent tablet form, each tablet containing no more than 25 milliequivalents of potassium from the special packaging requirements imposed by the act. The Commission is taking this action because of the low incidence of accidental ingestions of this drug by children as well as the lack of potential for serious illness or injury from the drug.

EFFECTIVE DATE: This amendment is effective June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Sandra Eberle, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492–6400.

SUPPLEMENTARY INFORMATION:

Background

Regulations issued under the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471–1476) establish child-protection packaging requirements for human oral prescription drugs in order to protect children from serious personal injury or illness resulting from handling, using, or ingesting these substances.

On September 13, 1973, the Commission received a petition from Mead Johnson, Evansville, Ind. (PP 74–18) to exempt its effervescent potassium supplement (K-Lyte) containing 25 milliequivalents (mEq) of potassium per tablet from the special packaging requirements of the human oral prescription drug regulation. On September 24, 1973, the Commission received a similar petition from Dorsey Laboratories, (PP 74–24) to exempt its effervescent potassium supplement, Klorvess, containing 20 mEq of potassium from the special packaging requirements of the human oral prescription drug regulation. The Commission granted both petitions, and proposed an exemption for potassium supplements in individually wrapped effervescent tablets, each tablet containing not more than 25 mEq of potassium.[1] (39 FR 5197, February 11, 1974.) At the same time, the Commission suspended the applicability of the special packaging requirement to this drug pending issuance of a final exemption, along with similar actions for a series of other drugs.

Potassium supplements are generally used to counter potassium deficiencies in the body caused by diuretics, diet deficiencies or other factors. Overdosages of potassium may result in listlessness, mental confusion, or muscle weakness in the extremities. Severe overdosages can result in cardiac arrest.

Response to Comments

Fifteen comments were received by the Commission in response to the proposed exemption; none discussed the specific issue of whether potassium supplements should be exempted. Some of the comments addressed the proposed exemptions of the other drugs listed in the February 11, 1974 **Federal Register** notice; these comments will not be discussed here.

Five comments discussed the general issue of whether any exemptions to the special packaging requirements should be granted. One commenter noted that exemptions should be granted only "with restraint" and that criteria other than toxicological issues should be examined. Two commenters suggested that manufacturers should be required to inform the public, through advertising and product labeling, of which drugs have been exempted and in what amounts. Other commenters envisioned the difficulties pharmacists might face in filling prescriptions for exempted drugs, in particular, in determining what quantities of a drug may be in regular packaging and what quantities require child-protection closures. Other respondents simply opposed any exemptions from the PPPA's requirements, citing the possibility of individual reactions, long term effects, and errors in compounding prescriptions, as justification for safety packaging for all oral prescription drugs. Some commenters expressed concern that consumers would be confused over the two categories of drug containers in the home; others felt that non-complying packaging would increase health care costs.

A summary of these comments and the Commission's detailed responses were published in the **Federal Register** on January 31, 1979 (44 FR 6340). In brief, the Commission determined that none of the general comments were convincing as to the point that exempting specific drugs which cannot cause serious personal injury or illness to children from the PPPA's special packaging requirements is unsafe or ill-advised.

Grounds for Exemption

The Commission bases its decision to issue a final exemption for potassium supplements in effervescent tablet form containing no more than 25 mEq of potassium per tablet, in part, on the lack of significant adverse experience reported by the National Clearinghouse for Poison Control Centers (NCPCC), the National Electronic Injury Surveillance System (NEISS), and other data sources, including in-depth investigations, death certificates, and consumer complaints on file at the Commission. Two cases of accidental ingestion of the substance were reported by the Commission's Poison Control Center Contract Data Base, but neither of these involved symptoms or required medical treatment.

The Commission also bases its decision on studies involving children exposed to effervescent potassium tablets containing 20 and 25 mEq of potassium conducted for Dorsey Laboratories and Mead Johnson, respectively. The studies indicate that children found the effervescent quality and the taste of the tablets repulsive; and consequently, did not ingest significant or toxic quantities of potassium. Of the 302 children studied by Mead Johnson, none consumed more than ½ tablet. Dorsey Laboratories evaluated the reactions of 200 children to their product and found that only one child ingested more than 1¼ tablets. The Commission's staff has analyzed and evaluated these test results and concur with the conclusion reached by the manufacturers that the substance's characteristics discourage ingestion by children.

The Commission has found potassium salts to be relatively low in toxicity. Normal blood plasma levels of potassium are 5 mEq/liters. Fainting and muscular weakness can occur at 7–8 mEq/liters and cardiac arrest at 9–10 mEq/liters. Commission scientists believe that ingestion of 1¼ 25 mEq tablets could yield plasma levels of 6 mEq/liters but only if one does not consider the fact that the normally functioning kidney rapidly eliminates excess potassium and maintains a

[1] On November 23, 1977, the Commission received an additional petition from Mead Johnson Laboratories (PP 78–1) to exempt its effervescent potassium supplement, Double-Strength K-Lyte (50 milliequivalents) from the special packaging requirements. Elsewhere in this issue of the **Federal Register** the Commission issues a proposed exemption from the child-resistant packaging requirements for potassium supplements in tablet form containing not more than 50 milliequivalents of potassium per tablet.

constant blood level unless a severe overdose is consumed very rapidly. Thus, even under a worst case situation, the expected blood plasma potassium level would be below the level associated with adverse toxic effects.

One of the petitioners, Dorsey Laboratories, cited from the scientific medical literature that potassium poisoning by ingestion is rare and that as much as 30 grams of the substance provides only gastric irritation. Acute toxicity by ingestion is unlikely since large doses induce only vomiting and, unless there has been prior kidney damage, absorbed potassium is excreted rapidly.

Comments From the Technical Advisory Committee

Nine responses on the petitions to exempt potassium supplements in effervescent tablets, each tablet containing no more than 25 mEq of potassium were received from the Technical Advisory Committee on Poison Prevention Packaging. Seven members recommended granting the petition on the basis of the low toxicity of the drug, the lack of injury data, and the fact that an amount sufficient to approach a toxic dose was not likely to be ingested by children. Of the two members recommending denial of the petition, one felt that more information was necessary, while the other noted that alternative packaging was available and that exemption from the regulations was unnecessary. That member of the TAC also noted that in one of the manufacturers' taste-tests, the one child who consumed more than 1¼ tablets was stopped from eating more than 1¾ tablets.

In response, the Commission believes that adequate information exists to make a decision on the petition in question. Regarding the availability of alternative packaging, the Commission points out that this is not a basis for denying exemption from the special packaging regulations. The requirement for special packaging is triggered because of a risk of serious personal injury or illness to children and the data indicates that this substance does not present such a risk. The Commission staff emphasizes that the blood serum level for the one child who ingested 1¾ tablets (approximately 1.4 grams of potassium) would be much lower than that expected to cause any serious personal injury or illness.

Finding

Having considered the petition and the comments on the proposal, human experience data from the National Clearinghouse for Poison Control Centers and the Commission's own data sources, the relatively low toxicity of the substance and children's inclination to ingest only small amounts, as well as having consulted with the Technical Advisory Committee on Poison Prevention Packaging established under section 6 of the Act, the Commission finds that potassium supplements in effervescent tablet form containing no more than 25 mEq of potassium per tablet does not create such a hazard to children that special packaging is required to protect them from serious personal injury or illness resulting from ingesting, handling, using the substance.

Effective Date

Since this rule grants an exemption, the delayed effective date provisions of the Administrative Procedure Act are inapplicable (5 U.S.C. 553(d)(1)). Accordingly, this exemption becomes effective on June 18, 1979.

Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see 16 CFR Part 1021; 42 FR 25494) provide that exemptions to an existing standard that do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment and environmental review of exemptions from regulations is, therefore, generally not required. (Section 1021.5(b)(1).) The rules also state that environmental review of rules requiring poison prevention packaging is generally not required. (Section 1021.5(b)(3).)

With respect to this exemption of potassium supplements from poison prevention packaging, the Commission finds that the rule will have no significant effect on the human environment and that no environmental review is necessary.

Conclusion and Promulgation

Having considered the petition, the comments on the proposal, and other relevant material, the Commission concludes that the final rule should be adopted as set forth below.

Accordingly, pursuant to the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, sections 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472–1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573), section 30(a), 86 Stat. 1231, 12 U.S.C. 2079(a)), the Commission amends 16 CFR 1700.14 by adding a new paragraph (a)(10)(vi) as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(vi) Potassium supplements in individually packaged effervescent tablets, each containing not more than 25 milliequivalents of potassium.

(Pub. L. 91–601, secs. 2(4), 3, Stat. 1670–72 (15 U.S.C. 1471(4)), 1472, 1474; Pub. L. 92–573, sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)).)

Effective date: June 18, 1979.

Dated: June 13, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-18063 Filed 6-15-79; 8:45 am]

BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Commission Review of Exchange Disciplinary or Other Adverse Action; Publication of Violations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission is adopting a new regulation § 9.12 which prescribes the manner in which an exchange is to make public its findings and reasons for acting whenever a person has been suspended, expelled, or disciplined by, or denied access to, the exchange. Under the new rule, exchanges are required to post promptly at the exchange a notice of each such action and to retain a record of the notices for public inspection. This regulation implements Section 18 of the Futures Trading Act of 1978, which requires exchanges to make this information public.

EFFECTIVE DATE: July 18, 1979.

FOR FURTHER INFORMATION CONTACT: William F. Tueting or Toby Kaczensky, Division of Trading and Markets, Commodity Futures Trading

Commission, 2033 K Street, N.W., Washington, D.C. 20581, telephone (202) 254-8955.

SUPPLEMENTAL INFORMATION: The Commodity Futures Trading Commission is adopting a new § 9.12 to implement section 18 of the recently enacted Futures Trading Act of 1978, Pub. L. 95-405, 92 Stat. 865, 874-75 (October 1, 1978). That Section amends section 8c(1)(B) of the Commodity Exchange Act by replacing the requirement that an exchange keep confidential the notice and reasons for the exchange action in disciplinary and access denial proceedings with the statutory requirement that an exchange

"* * * make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission." [1]

The Proposed Rule

The Commission sought public comment on a rule that was published in the **Federal Register** on February 1, 1979 (44 FR 6428). Under the proposed rule, almost all disciplinary actions were required to be made public by posting a notice near the trading floor and by making a written advisory available to the media as soon as the disciplinary action became effective or within five days after the affected person received notice of the action as provided in § 9.11. It was intended that publication in this manner would serve to deter others from violating exchange rules and to inform customers and members of the public who rely upon the futures markets of rule violations and disciplinary actions which may affect them.

The proposed rule also distinguished between those rule violations which were to be published in the above-described manner and certain minor infractions, that is, violations of rules of decorum, attire and similar rules which were to be subject only to limited publication. Under the proposed rule, an exchange could make these minor infractions public by maintaining a record of them at the exchange that would be available for public inspection.

[1] The Commission has previously adopted rules governing the procedures to be employed by exchanges for taking disciplinary actions. 17 CFR Part 8, 43 FR 41950 *et seq.* (September 19, 1978). Rules governing Commission review of exchange disciplinary and other adverse action have also been adopted. 17 CFR Part 9, 43 FR 59343 *et seq.* (December 20, 1978).

References in this document to Commission regulations (*e.g.*, § 9.11) are to Title 17 of the Code of Federal Regulations (*e.g.*, 17 CFR § 9.11 as published in the Federal Register).

The Comments

Six exchanges submitted comments in response to the proposal. While the exchanges generally supported the public policy underlying public disclosure of disciplinary actions, they suggested a number of amendments to the proposed rule. Based upon these comments as well as the Commission's independent re-evaluation of its proposal, the Commission has determined to adopt a regulation which differs in some respects from the proposed § 9.12. A discussion of the significant comments received and the major changes in the rule as adopted is set forth below.

(1) *Should disciplinary actions be made public before they become effective?*

The proposed requirement that exchanges make their findings public as soon as the disciplinary action is effective or within five days after notifying the affected person (as provided in § 9.11), whichever occurs first, evoked several comments. The exchanges did not believe disciplinary actions should be made public until after they become effective. One reason cited was that a person might appeal the exchange decision to the Commission. If the decision were reversed on appeal, the "harm" to the member caused by public disclosure could not be undone. Exchanges also asserted that the public purpose served by making the disciplinary actions public would still be achieved if disciplinary actions are published only after the disciplined person has exhausted his rights of appeal to the Commission and the penalty has been imposed.

The Commission does not believe that the publication of exchange penalties before they become effective will unfairly subject the disciplined member to harmful publicity. In the first place disciplinary penalties are often imposed as a result of a settlement to which both the exchange and the member agree. But even if the affected person wishes to contest the charges, he is still adequately protected under Commission rules since he must be afforded a hearing in which he will have the opportunity to present evidence and cross-examine witnesses. Furthermore, under both the proposed and the final versions of the rule, disciplinary information does not have to be made public until after the affected person has exhausted all rights of appeal within the exchange and the exchange action has become final.

Exchange disciplinary actions are, of course, somewhat analogous to administrative actions and judicial decisions. The Commission perceives no greater "harm" to an exchange member if the Commission should reverse the disciplinary action after the exchange's findings are made public than occurs when initial administrative or court decisions, which are a matter of public record, are reversed on appeal. Most importantly, the Commission finds that the public interest served by promptly disclosing disciplinary actions outweighs the private interest of the affected member. Among other things, speedy routine disclosure should help to prevent further rule violations by apprising all members of the self-regulatory efforts of the exchanges.[2] The Commission is therefore retaining the requirement that findings in exchange disciplinary actions be immediately made public.

(2) *Must all disciplinary actions be made public?*

Some exchanges commented that only the most serious violations and disciplinary actions should be made public. For example, it was suggested that only suspensions, expulsions, denials of access and rule violations of the magnitude of manipulation or attempted manipulation of a market should be disclosed. An alternative proposal was to expand the category of disciplinary actions and penalties for which limited publication is permitted by means of a record available at the exchange for inspection.

The plain language of section 8c(b) of the Act, as amended, requires an exchange to make public its findings whenever it suspends, expels, disciplines or denies any person access to the exchange. The Commission has determined, however, that it is not necessary to require exchanges to prepare an advisory to the media in connection with these actions since the press will have access to the information when it is posted at the exchange. The Commission has therefore modified its proposal by eliminating the requirement of an advisory to the media. Accordingly, § 9.12, as adopted, requires each exchange to make public all disciplinary actions by posting a notice at the exchange for a period of five days and thereafter to retain a record of the information for public inspection.

[2] As the Commission stated in its **Federal Register** release proposing § 9.12: "The general public and members of an exchange should be informed of the disciplinary actions taken by an exchange. Notice of these disciplinary actions would preclude an otherwise unknowing general public and/or members of an exchange from dealing with a member who has been suspended, expelled, or denied access to the exchange." 44 FR 6429 (February 1, 1979).

(3) *Effect of public disclosure of disciplinary actions on exchange rule enforcement programs.*

The Commission is disturbed by the comments of some exchanges that publication of less significant rule violations would have an adverse impact on their rule enforcement programs. One exchange stated that non-enforcement of its rules might be the most reasonable approach to such a requirement. Another commented that indiscriminate publication in the news media of every disciplinary action no matter how technical or minor the violation could lead to disrespect among exchange members for the actions of exchange disciplinary bodies. These comments are particularly troublesome since some exchanges viewed less significant rule violations as including all violations except those resulting in a suspension, expulsion or denial of access or violations of the magnitude of manipulation or attempted manipulation of a market.

In response to these comments, the Commission emphasizes that the publication requirements in Section 8c should not, and cannot, be read to relieve exchanges of their self-regulatory responsibilities under the Act. Exchanges may not relax self-regulatory programs or allow them to be circumvented by members who wish to avoid publication of disciplinary actions taken against them.

The Rule As Adopted

Regulation § 9.12 provides that whenever an exchange suspends, expels, or otherwise disciplines or denies any person access to the exchange, it must make its findings public. This rule applies to every disciplinary action within the meaning of § 9.12 regardless of whether the action is imposed pursuant to a settlement to which the disciplined person agrees or whether it is otherwise imposed by the exchange in accordance with its disciplinary procedures. Rule 9.12 also applies to all disciplinary penalties imposed for violations of rules of decorum attire or similar rules. It does not apply to warning letters issued pursuant to § 8.07(c), since warning letters issued in accordance with that section are not penalties and do not indicate that a finding of a violation has been made. See 43 FR 41956, 41963 (September 19, 1978).

In making its findings public an exchange must disclose at least the information contained in the notice called for by § 9.11(a)(1)–(4). An exchange is therefore required to make public: (1) The name of the person disciplined or denied access; (2) a statement of each rule found to have been violated or otherwise underlying the exchange's action or, in the event of a settlement, each rule which the exchange has reason to believe was violated; (3) the reason for the exchange's action; and (4) the action taken or penalty imposed.

In specifying the findings and reasons for the disciplinary action the exchange, at a minimum, should indicate the nature of the violation involved, *e.g.*, failure to meet minimum financial requirements or to have obtained a customer's consent to the execution of an offset trade in which the broker takes the other side. Where a person is found to have violated an exchange rule that encompasses several different types of violative conduct, the exchange should specify the particular violation that was committed. Thus, if a rule generally prohibits fictitious trades, it should be clear from the notice whether the disciplined person engaged in an accommodation trade, wash sale or some other type of fictitious trade. Of course, an exchange may also provide additional details, if it chooses, which might include dates, amounts (such as the number of contracts or accounts involved or the amount of undermargining) and the number of times a violation has occurred. Generally, the exchange should be guided by the public interest to be served by releasing this information. Where any serious violations are involved or where a particular market may be affected, an exchange should provide more information than would be required for a routine disciplinary matter. As provided in Section 8c(b) of the Act, as amended, an exchange may not disclose to the public the evidence underlying its findings.

For each disciplinary action or penalty subject to this regulation, the exchange is required to post a notice containing the required information in a conspicuous place on its premises to which the members and the public regularly have access. This notice must be posted as soon as the disciplinary action or penalty becomes effective or within five days after the exchange provides the notice required by § 9.11 to the person against whom the action was taken, whichever occurs first. After the notice has been posted for five consecutive business days it may be removed, but the exchange must maintain and make available for public inspection a record of the information in the notice.

This regulation is adopted pursuant to the Commission's authority in Sections 8a(5) and 8c of the Commodity Exchange Act, 7 U.S.C. 12a(5) and 12c (1976), as amended by the Futures Trading Act of 1978, Pub. L. No. 95–405 sec. 18, 92 Stat. 874–75 (1978). In consideration of the foregoing the Commission hereby adopts 17 CFR 9.12 to read as follows:

§ 9.12 Publication of disciplinary actions and rule violations.

Whenever an exchange suspends, expels, or otherwise disciplines or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(a)(1)–(4) of this chapter. As soon as the disciplinary action becomes effective or within five days after an exchange provides the notice required by § 9.11 to the person against whom the action was taken, whichever occurs first, the exchange shall disclose the required information by posting a notice in a conspicuous place on its premises to which the members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange shall maintain and make available for public inspection a record of the information contained in the disciplinary notice.

Jane K. Stuckey,

Secretary to the Commission.

June 13, 1979.

[FR Doc. 79-18870 Filed 6-15-79; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 2

[Docket No. RM78-16]

Procedure for Submission of Settlement Agreements

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is promulgating a rule which contains procedures for the submission of settlement agreements and Commission treatment of contested and uncontested offers of settlement. The rule defines for the first time the information to be included in offers of settlement and prescribes settlement procedures that enable the Commission to expedite consideration of settlements filed directly with the Commission or

certified by the presiding officers. By streamlining settlement procedures, it is expected that parties to proceedings before the Commission will find the settlement process a more attractive alternative to litigation.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Richardson, Federal Energy Regulatory Commission, Office of Opinions and Review, 825 North Capitol Street, N.E., Room 9216–C, Washington, D.C. 20426, (202) 275–4200.

Background

On July 24, 1978, the Commission issued a Notice of Proposed Rulemaking on Settlement Agreements, in which the Commission advanced for public comment revised procedures for the submission of offers of settlements.[1] Twenty-eight responses[2] to the Commission's request for written comments were received. The majority of those commenting supported the Commission's proposed rulemaking, and several commentors offered helpful suggestions for clarifying the proposed procedures.

The purpose of the proposed rule is to define in the regulations for the first time information which shall be included in offers of settlement and to prescribe settlement procedures that enable the Commission to expedite consideration of settlements filed directly with the Commission or certified by Presiding Officers, particularly uncontested settlements. By improving our settlement procedures and reducing the length of time presently required for processing settlements of all types, it is our hope that participants in proceedings before the Commission will increasingly seek the benefits of the settlement process to avoid the alternative of costly and often times lengthy litigation before the Commission. The direct costs of regulation are borne most often by the ultimate consumer but indirect or nonquantifiable costs arising from litigation due to uncertainty and delayed managerial decisions or opportunities foregone may be suffered by shareholders as well.

The Commission wishes to emphasize the importance of voluntary settlements to the orderly and expeditious conduct of its business. During the period when responsibility for administering the Natural Gas Act and the Federal Power Act was in the hands of the Federal Power Commission, that agency had a strong policy favoring the disposition of cases through settlements. The FPC and the courts recognized that the Commission could not possibly cope with the flood of business engendered by its jurisdictional statutes if the outcome of a substantial proportion of that business were not the result of voluntary settlements entered into by the parties. *See, Mitchell Energy Corp.* v. *FPC*, 519 F. 2d 36, 40 (5th Cir. 1975); *Texas Eastern Transmission Corp.* v. *FPC*, 306 F. 2d 345, 347 (5th Cir. 1962). We adhere to that view.

Enactment of the Natural Gas Policy Act of 1978, 92 Stat. 3351 (1978), and other portions of the National Energy Act will increase substantially the volume of adjudicative business which this Commission, as successor to the Federal Power Commission, must handle under both the old and the new energy legislation. These developments would seem to make it even more important for those charged with carrying on the Commission's business to do so with a view towards promoting settlements whenever they are in the public interest.

The Commission's Administrative Law Judges have a special responsibility in this respect. Both the Commission's rules of practice and procedure (18 CFR 1.18) and the Administrative Procedure Act (5 U.S.C. 556(c)(6)) authorize Administrative Law Judges to call the parties to a dispute together for the purpose of settlement of the issues.

The Commission is particularly desirous of having its Judges attempt to secure settlements in all cases where settlement is possible and would be in the public interest. The Administrative Law Judges are encouraged to use all of the tools and resources at their command to that end.

Summary of the Rule

The new rule expands upon the present rules regarding settlements by requiring all offers of settlement to be filed with the Secretary and by providing a means of expeditious Commission consideration of contested and uncontested offers of settlement. While clarifying the procedure applicable to offers of settlements, the amended § 1.18(e) does not alter § 1.18(a) of the present rule which gives wide latitude to participates in any proceeding to hold conferences to provide the opportunity for the submission and consideration of offers of settlement. Any party to a proceeding may submit at any time an offer of settlement to all parties, or request a conference for consideration of a settlement offer. the rule does, however, eliminate the current clause in paragraph (e) permitting Submission at any time of offers of settlement to the commission (or to staff counsel for transmittal to the Commission). The new § 1.18(e) also sets forth the information which at a minimum must be submitted by persons filing offers of settlement. An offer of settlement must now include a proposed Commission order accepting the settlement. The new rule also retains the privilege afforded offers of settlement and proposed stipulations not agreed to.

The new portions of § 1.18(e) provide that once a hearing has been ordered until the time the Presiding Officer certifies the record to the Commission, an offer of settlement must be filed with the Secretary of the Commission for transmittal to the Presiding Officer assigned the case, or, if a Presiding Officer has not yet been assigned, to the Office Director responsible for the assignment.[3] Offers of settlement will be filed with the Secretary for transmission to the Commission if a hearing has not been ordered or the case has been certified by the Presiding Officer.

In order to expedite the process after an offer of settlement is filed, the present provisions (§ 2.1) that an offer of settlement be noticed for comment in the **Federal Register** are replaced by new service provisions. Section 1.17(b) of the regulations requires that papers filed with the Commission be served upon persons designated on the official service list. However, in order to strike a balance between the need for expedition and the desirability of giving notice to those persons most likely affected by such an offer, new § 1.18(e)(1)(vi) provides that all offers of settlement filed with the Secretary of the Commission shall be served on all persons who were required by the Commission's rules to be served with the applications or pleadings initiating the proceeding. All persons served shall also be informed at the time of service the date on which comments are due on the offer of settlement. This procedure provides a greater opportunity for those persons who are not parties to the proceeding but who are most likely to be interested in a settlement to be apprised of its terms. They will now receive actual notice rather than constructive **Federal Register** notice of settlement offers.

The due date for comments will no longer be delayed until after notice of

[1] July 28, 1978, 43 FR 32814.

[2] Requests to file comments after the August 31, 1978, deadline are hereby granted.

[3] An Office Director is chosen rather than the Chief Administrative Law Judge because in certain cases the Commission may refer a matter to a Presiding Officer who is not an Administrative Law Judge and who is designated by the General Counsel or, for appeals for rulings of the Office of Hearings and Appeals, Department of Energy, by the Director of the Office of Opinions and Review.

the settlement offer is published in the **Federal Register**. Regardless of whether the settlement is filed for transmittal to the Commission or for transmittal to the Presiding Officer, comments on an offer of settlement must be filed with the Presiding Officer or the Commission, as appropriate, on or before 20 days of the filing of the offer of settlement. Replies are to be filed on or before 30 days after filing of the settlement offer. However, the Presiding Officer or the Commission may provide for a different deadline for comments or reply comments. Failure to file comments will be deemed a waiver of the right to file comments on the offer of settlement (§ 1.18(e)(2)). This time period for comments is shorter than the time which has been permitted previously.

The revision of the notice procedure is intended to reduce the time now consumed in obtaining comments necessary to determine whether a settlement is contested and to enable earlier review of a settlement for decision. If the comments indicate that a settlement offer is uncontested, or that at least a portion of it is uncontested and severable from the contested part of the settlement, the new rule permits quicker decisionmaking. If the settlement is transmitted to the Presiding Officer, the Officer is to certify the settlement and the filings and submittals and the formal record (if one is compiled) together with a statement that the settlement is uncontested (§ 1.18(e)(3)). the Commission will expedite consideration of uncontested settlements filed with the Secretary of the Commission for transmittal to the Commission or certified by a Presiding Officer.

Under the Commission's present rules, a Presiding Officer may certify a settlement even if the comments indicate that the settlement is contested. However, if the settlement is contested by a party to the proceeding, then the rule permits a Presiding Officer to certify a contested settlement or a contested portion of a settlement only in accordance with certain conditions imposed in order to assure that a sufficiently developed record exists on which a reasoned decision can be based. The Presiding Officer may certify such offer of settlement to the Commission only if the parties concur on a waiver of the initial decision or if no contested issue of material fact exists, if the Presiding Officer determines that the record contains substantial evidence to enable the Commission to reach a decision on the merits of contested issues, and if the parties have had an opportunity to exercise such rights as they may have with respect to the opportunity to present evidence and cross-examine opposing witnesses (§ 1.18(e)(4)(ii)). If these conditions are not present, the Presiding Officer may direct such further procedures as he deems appropriate, including certification of the settlement at a later time if the conditions are then met.

If the Commission staff is the only contesting participant, the Presiding Officer may exercise his discretion to certify the offer of settlement even if the above conditions are not met. In this regard, the Commission wishes to emphasize the importance it places on the role of the Commission staff in representing the public interest in proceedings before the Commission. The staff performs an important public function in developing the records and testing the case presented by the other parties. Where the staff has not had an opportunity to present evidence and to cross-examine the witnesses of other parties, the Commission expects that the Presiding Officer will consider very carefully the basis for certifying an offer of settlement opposed by the staff. In accordance with present procedure, this decision is left to the sound discretion of the Presiding Officer. However, the Commission would expect that in the exercise of this discretion the Presiding Officer will give careful consideration to the need to develop the record as well as the importance of expediting decision-making.

Settlements which are contested in whole or in part and which are filed with the Secretary for transmittal to the Commission may be considered and approved or disapproved if the record contains substantial evidence upon which to base a reasoned decision. If substantial evidence is lacking or the contested portion of the settlement cannot be severed from the remainder of the settlement for decision, the Commission may order proceedings before a Presiding Officer for receiving substantial evidence upon which a decision can reasonably be based or other appropriate procedures. (§ 1.18(e)(4)(i))

Section-by-Section Analysis and Comment Analysis

Section 1.18(e)(1)

This subparagraph is revised to provide new procedures for the filing offers of settlement with the Secretary of the Commission.

The new § 1.18(e) applies to offers of settlement filed on or after June 15, 1979 in any Commission proceeding other than a rulemaking of general applicability or an investigation under Part 1b of the Regulations. An offer of settlement includes any proposal to modify an offer of settlement.

Any participant to a proceeding may submit at any time an offer of settlement to the Secretary of the Commission or request a conference for purposes of discussing settlement. The Secretary will transmit the offer to the Presiding Officer, Office Director, or the Commissioners, as appropriate. A settlement offer must contain the offer itself, an explanatory statement, and references to documentary support for the offer. An offer of settlement shall also include a proposed Commission order accepting the settlement and disavowing any precedential value for the decision. The settlement offer must be served on all participants and on all persons required to be served with the applications or pleadings initiating the proceeding.

Any offer of settlement which is not approved by the Commission is privileged.

Florida Power & Light Company suggests that the Commission allow the party submitting an offer of settlement to include "any explanatory data it deems appropriate" in the offer of settlement. The definition of "offer of settlement" has been modified to include an "explanatory statement."

To avoid the confusion which Florida Power & Light foresees over what must be included in formal offers of settlement as opposed to preliminary offers of settlement prepared only for purposes of negotiation and conferences, the new rule provides for consideration by the Commission only of offers of settlement filed with the Secretary.

Exxon Corporation, Consolidated Edison Corporation, and Southern California Edison Corporation each noted that this section should provide more clearly that, before a hearing has been ordered, offers of settlement should be filed directly with the Commission and subparagraph (1)(ii) has been modified accordingly.

Exxon, Southern California Edison, and Tenneco also request that adjustments to offers of settlement, offers of settlement not agreed to, and accepted settlements be privileged, in the same manner that unaccepted offers of settlement are privileged. The Commission agrees, insofar as the comments refer to offers not approved by the Commission, and has changed the clause (v) to reflect this recommendation. The privilege cannot

be accorded to offers approved by the Commission.

Pennzoil Company, Tenneco Oil Company and Florida Power & Light Company request the Commission to change the word "participant" to "party". The term participant has been used as defined in § 1.1(f)(2) of the regulations, to include the Commission's staff, and to indicate a limited participation in proceedings by persons other than parties. The word "party" does not include staff.

The Public Service Commission of New York (PSNY), Tenneco, United Gas Company, and the Interstate Natural Gas Association of America (INGAA) [4] request that the Commission delete the sentence requiring the participants submitting the offer of settlement to "state whether the settlement is a package, with no severable parts, or whether any specific issues may be separated from the settlement for separate decision, should the need for a separate decision arise." The commentors believe that this requirement would hamper settlement negotiations, and could create contested issues which might otherwise more easily be settled. The Commission agrees that this could hinder settlement negotiations and accordingly accepts the recommendation to delete this sentence from the rule. However, we encourage those persons filing offers of settlement to decide and determine during negotiations if parts of settlements are severable and advise the Presiding Officer or Commission in order to permit a prompt decision on the uncontested parts of a settlement.

Section 1.18(e)(2)

This subparagraph provides for a date certain for the filing of comments and reply comments. It has been clarified to provide for the filing of comments on the offer of settlement with the Presiding Officer, if the offer of settlement has been filed for transmittal to the Presiding Officer, or with the Commission if the offer of settlement has been filed for transmittal to the Commission.

Exxon Corporation recommends that, rather than publishing a notice with the **Federal Register**, the Commission should allow each participant to comment on the offer of settlement within 10 days of its submission to the Presiding Officer or the Commission. The thrust of this recommendation is adopted. Notice in the **Federal Register** will no longer be required. Participants must submit comments to the Presiding Officer or to the Commission, as appropriate, within 20 days of the filing of the offer of settlement. An additional 10 days is allowed for filing reply comments. A participant's failure to file comments within that period of time will be deemed a waiver of its right to file comments.

Niagara Mohawk Power Corporation recommends that the comment procedure be used only if the settlement is opposed. Comments are necessary in order to determine if the offer of settlement is opposed or unopposed. It is important to note, however, that the participants may present their comments to the Presiding Officer orally, on the record. This procedure may be used in lieu of written comments to the Presiding Officer, and this procedure is encouraged.

Section 1.18(e)(3)

This subparagraph provides that uncontested offers of settlement before the Presiding Officer will be certified to the Commission together with the statement that the settlement is uncontested, any hearing record or pleadings which include support for the settlement offer. It also states that the Commission may approve uncontested offers of settlement upon a finding that the settlement appears to be fair and reasonable and in the public interest.

Florida Power & Light recommends that we change the language "the record, which shall include support for the offer of settlement" to "the evidentiary record as support for the offer of settlement." The company maintains that this change is necessary to insure that hearings are not held after an unopposed offer of settlement is filed. A modified verison of this recommendation is adopted.[5]

Both PSNY and Niagara Mohawk seek clarification of the word "support" when used in reference to unopposed offers of settlement in this subparagraph. Under the rule as modified, certification of an uncontested offer of settlement must include whatever matter in the record or pleadings supports the offer. However, as recommended by PSNY, it is a matter for the Presiding Officer to determine to what extent a compromise requires support in order for the Commission to make an adequate evaluation of the unopposed offer of settlement. The rule is clear, however, that substantial evidence is not required as support for unopposed offers of settlement.

INGAA suggests that the Commission specifically disallow comments to the Commission on an unopposed offer of settlement once that unopposed offer of settlement is certified to the Commission. This is unnecessary, since nothing in the rule allows or can be interpreted to allow the filing of such comments after certification of an unopposed offer of settlement by Presiding Officer. INGAA suggests that a certified offer of settlement should become a final Commission order if no adverse comments are received by the Commission within 35 days of certification. Under the new regulation the Commission plans to expedite unopposed offers of settlement. The Commission should not be bound by the recommended restriction. The Commission reserves its discretion to review each settlement agreement certified to it.[6] The requirement that an offer of settlement include a proposed Commission order will assist the Commission in acting expeditiously on unopposed settlement.

Section 1.18(e)(4)

This subparagraph provides for the handling of contested offers of settlement. Those filed with the Commission may be decided on the merits if the record contains substantial evidence on which to base a reasoned decision. If it does not, or if the contested issues cannot be severed, the Commission will order further procedures to obtain sufficient evidence or other appropriate procedures.

If comments on an offer of settlement were filed with the Presiding Officer who then determines that the offer was contested, the Officer may certify all or part of such offer to the Commission. However, if an offer was contested by any party, it may be certified only if (A) all parties concur on a motion for omission of the initial decision or the Presiding Officer finds that no contested issue of material fact remains; (B) the Presiding Officer determines the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and (C) all parties have had an opportunity to avail themselves of such rights as they may have with respect to the opportunity to present evidence and cross-examine

[4] INGAA's comments were supported by Tennessee Gas Pipeline Company, East Tennessee Natural Gas Company, Midwestern Gas Transmission Company, El Paso Natural Gas Company, Northern Natural Gas Company, and Great Lakes Transmission Company. United Gas Company also supports INGAA's comments, but filed its own additional comments.

[5] Tenneco requests that the Presiding Officer be given full discretion to require additional evidence in support of an unopposed offer of settlement. This is permitted by the rule.

[6] For this reason, the Commission provided in this rule that the Presiding Officer merely certify the settlement agreement to the Commission, rather than issue an initial decision approving an unopposed offer of settlement.

opposing witnesses. Severable, uncontested issues may be certified immediately to the Commission for decision.

Northwest Pipeline suggested additional procedures in lieu of those provided in the proposed rule which the Commission believes would add unnecessary and time-consuming steps in the proposed procedure by providing for notice of "partial certification" of a settlement and by disallowing certification of uncontested portions over one participant's objections.

Continental Oil Company recommends that the Commission allow a Presiding Officer to certify an offer of settlement even if one participant refuses to present evidence, to cross-examine other witnesses, or to waive its right to further hearing, if the Presiding Officer decides that there is adequate record evidence to decide the contested issues on the merits. The purpose of the rule is to require that each participant agree to the proposed offer of settlement, seek the appropriate administrative remedies available to him before the Presiding Officer, or waive its right to those remedies. Thus the rule reflects Continental's suggestions. If a party objecting to a settlement declines to pursue his right to present evidence or cross-examine, the party has had an opportunity to exercise his rights and the Presiding Officer may then certify the contested settlement to the Commission. Unless every party does this, one party, who has not voiced an objection to the offer of settlement or pursued its procedural rights before the Presiding Officer, may seek to oppose an offer of settlement before the Commission and delay the decision-making process. It is this situation which the Commission wishes to eliminate by amending the procedures for the submission of settlement agreements.

INGAA and United Gas Company recommend that, in the event that a participant opposes an offer of settlement, the participant present evidence as to the "substantial adverse impact on the public interest that would result if that portion of the settlement objected to is not modified." The Commission rejects this recommendation. This would be inconsistent with statutory requirements, as it places the burden of going forward on the contested issue on the participant contesting the issue. Both the Natural Gas Act and the Federal Power Act provide that a person filing an application for a change in rates, or for a certificate, must bear the burden of coming forward with evidence and proving that the approval of its application is just and reasonable or in the public interest. An offer of settlement does not modify that burden. It is for the offeror, not the offeree, to show that approval of the offer of settlement would conform to statutory requirements. The new rule specifically provides that as long as there is substantial evidence in the record on which a reasoned decision can be made on the contested issues, *and* each of the participants have been afforded due process of law, no further proceedings before the Presiding Officer are necessary, and he may certify the offer of settlement to the Commission.

Section 1.18(e)(5)

This subparagraph reserves to participants their procedural rights in the event that the Commission does to approve an uncontested offer of settlement as it is certified or filed with the Commission. Several parties argue that the word "Substantially" be deleted from this subsection, so that a participant will be deemed to have reserved its rights to a hearing if the Commission imposes any condition upon an offer of settlement. The Commission agrees and has modifed the proposed rule accordingly.

Miscellaneous

Mobil Oil Company and the Missouri Public Utilities Company both suggest procedures for expedited Commission review of certified offers of settlement. The Commission intends to give special and expedited consideration to all offers of settlement, once they are certified or filed with this Commission. *See* § 1.18(e)(3).

Effective Date

Section 553(d)(3) of the Administrative Procedure Act requires publication of a rule in the **Federal Register** not less than 30 days before the effective date of a rule unless good cause exists for an earlier effective date. The Commission finds that good cause exists to waive the effective date provisions of the Administrative Procedure Act. The rule is intended to simplify and expedite the Commission's settlement procedures. Both the Commission and regulated parties have an interest in facilitiating the settlement process so that an expeditious handling of settlements can result. Such expedition will reduce the Commission's caseload and also resolve disputes between parties faster. Accordingly, the Commission rule is effective June 15, 1979 and applies to offers of settlement filed on or after that date. Offers of settlement filed before June 15, 1979 will be considered under the Commission's settlement procedures in effect prior to promulgation of this rule.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O. 12009, 42 FR 46267; Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; Natural Gas Act, 15 U.S.C. 717 *et seq.*; Federal Power Act, 16 U.S.C. 792 *et seq.*; Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350; Public Utilities Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 317.)

In consideration of the foregoing, Parts 1 and 2, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 1—RULES OF PRACTICE AND PROCEDURE

1. Section 1.18 is amended by revising paragraph (e) to read as follows:

§ 1.18 Conferences; offers of settlement.

* * * * *

(e) *Procedures for submission of offers of settlement to Commission*—(1) *General*—(i) *Scope.* This paragraph applies to offers of settlement filed on or after June 15, 1979 in any proceeding before the Commission other than a rulemaking of general applicability or formal or preliminary investigation under Part 1b of this chapter. For purposes of this paragraph, the term "offer of settlement" includes any proposal to modify an offer of settlement.

(ii) *Submission of offer.* Any participant to a proceeding may submit at any time an offer of settlement or request a conference for purposes of discussing settlement. An offer of settlement must be filed with the Secretary of the Commission. The Secretary will transmit such offer to the presiding officer if such offer is filed after a hearing has been ordered and before the time the presiding officer certifies the record to the Commission, except that if a presiding officer has not yet been assigned, such offer shall be transmitted to the Office Director responsible for assignment of the presiding officer. (Such Office Director will assign a presiding officer upon receipt of the offer.) In any other case, the Secretary shall transmit the offer of settlement to the Commission.

(iii) *Contents of offer.* (A) An offer of settlement shall include a document embodying the settlement offer, an explanatory statement, references (including record citations if there is a

record) to all documents, testimony, exhibits which provide support for the offer of settlement, and a list of all schedules, contracts, documents or data relevant to the settlement. An offer of settlement shall also include a proposed order of the Commission accepting the settlement, which order shall include the following provision:

> The Commission's approval of this settlement shall not constitute approval of or precedent regarding any principle or issue in this proceeding.

(B) If it is a rate settlement that is being offered, the offer shall include the proposed settlement or tariff changes in a form suitable for inclusion in the filed rate schedules or tariffs together with a sufficient number of copies to conform with the filing requirements of these regulations.

(vi) *Service.* A copy of the offer of settlement shall be served on all participants listed on the official service list on file with the Secretary of the Commission and on all persons who were required by the Commission's regulations to be served with the applications or pleadings initiating the proceeding. The participant serving the offer of settlement shall notify those persons served of the date comments on the settlement are due.

(v) *Privilege.* Offers of settlement which are not approved by the Commission shall be privileged and shall not be admissible in evidence against any person claiming such privilege.

(2) *Comments.* Comment on an offer of settlement shall be filed with the Commission if the offer was transmitted to the Commission, or with the presiding officer in any other case. Comments may be filed on or before 20 days after the filing of the offer of settlement and reply comments may be filed on or before 30 days after filing of such offer, unless otherwise provided for by the Commission or the presiding officer. Failure to file comments will be deemed a waiver of the right to file comments on the offer of settlement.

(3) *Uncontested offers of settlement.* If comments on an offer were required to be filed with the presiding officer and such officer finds that the offer is uncontested, the presiding officer shall certify to the Commission the offer of settlement, a statement that the offer of settlement is uncontested, and any hearing record or pleadings which include support for the offer of settlement. If comments on an offer of settlement were required to be filed with the Commission, the Commission will determine whether the offer is uncontested. Any uncontested offer of settlement may be approved by the Commission upon a finding that the settlement appears to be fair and reasonable and in the public interest.

(4) *Contested offers of settlement.* (i) If comments on an offer of settlement were required to be filed with the Commission and the Commission determines the offer of settlement is contested in whole or in part, the Commission may reach a decision on the merits of the contested settlement issues if the record contains substantial evidence upon which to base a reasoned decision. If the Commission finds that the record is lacking in substantial evidence or that the contested issues cannot be severed from the offer of settlement, the Commission shall establish procedures before a presiding officer for the purpose of receiving substantial evidence upon which a decision on the contested issues can reasonably be based or take such other action as it determines to be appropriate. When contested issues are severable, the uncontested portions may be severed and decided in accordance with paragraph (e)(3) of this section.

(ii) If comments on an offer of settlement were filed with the presiding officer and such officer determines that the offer was contested in whole or part, such officer may certify all or part of such offer to the Commission; except that an offer contested by a party may be certified only if (A) either (*1*) all parties concur on a motion for omission of the initial decision as provided in § 1.30 of this chapter or (*2*) the Presiding Officer determines that there is no contested issue of material fact; (B) the presiding officer determines the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and (C) all parties have had an opportunity to avail themselves of such rights as they may have with respect to the opportunity to present evidence and cross-examine opposing witnesses. When the contested issues are severable, the uncontested portions of the settlement may be certified immediately to the Commission for decision as provided in paragraph (e)(3) of this section.

(5) *Reservation of rights.* The procedural rights of each participant are reserved if the Commission does not accept and approve, or approves subject to condition, the unopposed portion of the offer of settlement.

* * * * *

§ 1.18 [Amended]

2. Section 1.18 is amended in paragraph (f) by adding at the end thereof the following sentence: "Proposed stipulations not agreed to are privileged and shall not be admissible in evidence against any counsel or person claiming such privilege."

§ 1.30 [Amended]

3. Section 1.30(c)(1), is amended in the first sentence thereof by inserting "(except as provided in § 1.18(e)(4))," before "all other parties."

§ 1.30 [Amended]

4. In § 1.30(c)(3), the proviso is amended by inserting "(except as provided in § 1.18(e)(4))" after the word "who".

PART 2—GENERAL POLICY AND INTERPRETATIONS

§ 2.1 [Amended]

5. In § 2.1(a)(1), clauses (i) (C), (D) and (H), and clause (vii)(F) are revoked.

[FR Doc. 79-18924 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

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18 CFR Part 281

[Docket No. RM 79-15]

Implementation of Section 401 of the Natural Gas Policy Act

Cross Reference: For a document on implementation of Section 401 of the Natural Gas Policy Act issued by the Federal Energy Regulatory Commission, see FR Doc. 79-18786 in the Proposed Rules section of this issue.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Parts 404, 422

[Regs. 4 and 22]

Reference Changes to Reflect Transfer and Recodification of Medicare Regulations

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: On September 30, 1977, the regulations for the Medicare program under title XVIII of the Social Security Act, which were contained in 20 CFR Part 405, were redesignated as 42 CFR Part 405 (42 FR 52826). Therefore, we are modifying various references to 20 CFR Part 405 in the Social Security Administration's regulations to refer instead to 42 CFR Part 405.

As these are solely technical amendments which basically correct cross-references to reflect the recent redesignation of the Medicare regulations, we find that Notice of Proposed Rule Making and public comment in issuing these amendments are unnecessary, and good cause exists for waiving these requirements under the Administrative Procedure Act.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7455.

(Secs. 205(a) and 1102 of the Social Security Act, as amended; 53 Stat. 1362, as amended, 49 Stat. 647, as amended; (42 U.S.C. 405(a) and 1302).)

(Catalog of Federal Domestic Assistance Programs No. 13.802, Social Security—Disability Insurance Benefits; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Special Benefits for Persons Aged 72 and Over; 13.805, Social Security—Survivors Insurance.)

Dated: May 21, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: June 12, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Parts 404 and 422 of 20 CFR Chapter III are amended as follows:

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

§ 404.501 [Amended]

1. In § 404.501, paragraph (a)(7) is amended by changing the cross-reference from "(see §§ 405.350–405.351)" to "(see 42 CFR 405.350–405.351)."

§ 404.507 [Amended]

2. Section 404.507 is amended by changing the cross-reference in the first sentence from "(see §§ 404.506 and 405.355)" to "(see § 404.506 and 42 CFR 405.355)".

§ 404.924b [Amended]

3. Section 404.924b is amended by revising the last sentence in paragraphs (a) and (b) to read as follows: "In such hearing, the provisions of this Subpart J, Subpart F of Part 410, and Subpart N of Part 416 of this chapter and Subpart G of 42 CFR Part 405 shall be applied, as appropriate to such other claim."

PART 422—ORGANIZATION AND PROCEDURES

§ 422.130 [Amended]

4. Section 422.130 is amended by revising the last sentence in paragraph (a) to read as follows: "See 42 CFR Part 405, Subpart A, for conditions of entitlement to hospital insurance benefits and 42 CFR Part 405, Subpart B, for information relating to enrollement under the supplementary medical insurance benefits program."

§ 422.201 [Amended]

5. Section 422.201 is amended as follows:

(a) In paragraph (c), the cross references are changed from "§§ 405.720–405.750, §§ 405.1530–405.1570, and § 405.2060 of this chapter" to "42 CFR 405.720–405.750, 405.1530–405.1595, and 405.2060–405.2063";

(b) In paragraph (d), the cross-reference is changed from "see § 405.801 et seq." to "see 42 CFR 405.820–405.860"; and

(c) In paragraph (d) the cross-reference is changed from "see §§ 405.1809 et seq." to "see 42 CFR 405.1809–405.1890".

§ 422.203 [Amended]

6. Section 422.203 is amended as follows:

(a) In paragraph (a)(3), change the first cross-reference from "pursuant to § 405.1530 of this chapter" to "under 42 CFR 405.1531", and change the second cross-reference from "see § 405.1501(c) and (f)" to "see 42 CFR 405.1501(c) and (f)"; and

(b) In paragraph (b)(2), change the cross-references from "in section 405.1502 (b)(2), (c), (d)(2), and (e) (see §§ 404.918, 405.722, 405.1530, 405.1531, 405.2060, 410.631, and 416.1426 of this chapter)" to "in 42 CFR 405.1502(b)(2), (c), (d)(2), and (e) (see §§ 404.918, 410.631, and 416.1426 of this chapter and 42 CFR 405.722, 405.1530, 405.1531, and 405.2060)".

§ 422.205 [Amended]

7. Section 422.205 is amended as follows:

(a) In paragraph (a), the cross-reference "(see § 405.1532 of this chapter)" in the second sentence is changed to "(see 42 CFR 405.1532)" and the cross references following the last sentence are changed from "(For time and place of filing, see §§ 404.946, 405.722, 405.1562, 405.2060, 410.661, and 416.1462 of this chapter.)" to "(For time and place of filing, see §§ 404.946, 410.661, and 416.1462 of this chapter, and 42 CFR 405.724, 405.1562, and 405.2061.)";

(b) In paragraph (b), the cross-references in the first sentence are changed from "in accordance with §§ 404.947, 405.724, 405.2061, 410.662, 416.1463, or 416.1464 of this chapter" to "under §§ 404.947, 410.662, 416.1463, or 416.1464 of this chapter, or 42 CFR 405.724 or 405.2061"; and

(c) In paragraph (d), the cross-reference in this first sentence is changed from "as provided in Subpart O, Part 405 of this chapter in accordance with § 405.1563" to "under 42 CFR 405.1563".

§ 422.210 [Amended]

8. Section 422.210 is amended as follows:

(a) In paragraph (a), the cross-references in the second sentence are changed from "as provided in §§ 404.916e, 405.718d, 410.629e, or 416.1424d of this chapter" to "under §§ 404.916e, 410.629e, or 416.1424d of this chapter or 42 CFR 405.718d". The cross-reference in the sixth sentence is changed from "and § 405.1501(f)" to "and 42 CFR 405.1501(f)"; and

(b) In paragraph (c), the cross references in the third sentence are changed from "as set forth in §§ 404.916d, 405.718c, 410.629d, or 416.1424c of this chapter" to "under §§ 404.916d, 410.629d, or 416.1424c of this chapter or 42 CFR 405.718c".

9. Section 422.410 is amended by adding a new paragraph (k) to read as follows:

§ 422.410 Publications for sale.

* * * * *

(k) Health Care Financing Administration Rulings.

10. In § 422.430, paragraph (a)(3) is revised to read as follows:

§ 422.430 Materials available at district offices and branch offices.

(a) *Materials available for inspection.*

* * *

(3)(i) Social Security Administration regulations under the retirement, survivors, disability, and supplemental security income programs, i.e., Regulation No. 1 (Part 401 of this chapter), Regulations No. 4 (Part 404 of this chapter); Regulations No. 16 (Part 416 of this chapter); and Regulations No. 22 (this Part 422); and the Social Security Administration's regulations under Part B of title IV (Black Lung Benefits) of the Federal Coal Mine Health and Safety Act of 1969, Regulations No. 10 (Part 410 of this chapter); and (ii) Medicare Program regulations issued by the Health Care Financing Administration, 42 CFR Part 405.

* * * * *

§ 422.510 [Amended]

11. Section 422.510, paragraph (a), is amended as follows:

(a) By changing the cross-reference in the parenthetical phrase following the second sentence from "see § 405.102 of this chapter" to "see 42 CFR Part 405, Subpart A"; and

(b) By changing the cross-reference in the parenthetical phrase at the end of paragraph (a) from "see § 405.202 et seq. of this chapter" to "see 42 CFR Part 405, Subpart B".

[FR Doc. 79-18965 Filed 6-15-79; 8:45 am]
BILLING CODE 4110-07-M

DEPARTMENT OF JUSTICE

Federal Prison Industries

28 CFR Part 301

Inmate Accident Compensation; Final Rules

AGENCY: Federal Prison Industries, Justice.

ACTION: Final rules.

SUMMARY: This document contains final rules on the procedures for determining claims for inmate accident compensation of former Federal prison inmates for injuries sustained while working in prison. The rules authorize the Claims Examiner to make the initial determination on a claim for inmate accident compensation. The Claims Examiner now presents the claim to an Inmate Accident Compensation Committee. This practice occasions delays in the decision-making process due to difficulty in establishing a meeting time suitable to the Committee members or due to the difficulty in ensuring a quorum at the meeting. The final rules are intended to provide an earlier response to the claimant without affecting the quality of the review or placing any increased burden or responsibility on the claimant.

DATE: This amendment is effective June 18, 1979.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 910, 320 First Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTAL INFORMATION: By virtue of the authority vested in the Attorney General by 18 U.S.C. 4126 and delegated by the Attorney General at 28 C.F.R. 0.99 to the Board of Directors of Federal Prison Industries, Inc., Part 301 of Chapter III of Title 28, Code of Federal Regulations is hereby amended as set forth below. As this amendment places no increased burden on a claimant but is an amendment of procedures, the provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

Under current regulations (§ 301.12), the initial determination of a claim for inmate accident compensation is made by an Inmate Accident Compensation Committee. Before a claim is considered by the Committee, a Claims Examiner compiles all available evidence on the claim, reviews and evaluates the evidence, schedules a meeting of the Inmate Accident Compensation Committee, and presents the merits of the claim with a recommended disposition. Experience has shown that in performing these functions, the Claims Examiner becomes thoroughly familiar with the claim and is qualified to make the initial determination on the merits of the claim. Accordingly, § 301.12 is amended to reflect that the Claims Examiner is empowered to make the initial determination on the merits of a claim for inmate accident compensation. In accord with this change, §§ 301.6, 301.13, 301.19(c), and 301.23 are also amended. Section 301.6 is amended to required that an FPI Form 43, an Administrative Form 19 and the findings of the local Board of Inquiry be forwarded to the Claims Examiner, Federal Prison Industries, Washington, D.C. and not to the Office of General Counsel and Review. Section 301.13 is amended by substituting "Claims Examiner" for "Committee" in the first sentence of § 301.13(a) and in the first and second sentences of § 301.13(b). These changes reflect the fact that the Claims Examiner now makes the initial determination. § 301.19(c) is amended by deleting reference to the Associate Commissioner, since the role of the Associate Commissioner, which remains unchanged, is fully set forth in § 301.20. Section 301.23 is amended to read that the "Claims Examiner", as opposed to the Commissioner of Industries, is advised with respect to the need for further medical or hospital treatment, as the Claims Examiner is responsible for authorizing and approving payment for such treatment on behalf of the Corporation. In this section the word "assigned" has been substituted for "employed", to better reflect inmate work status.

The amendments expedite the review process without affecting the quality of the review. A claimant who is dissatisfied with the decision may appeal the decision to the Inmate Accident Compensation Committee and may request a further review by the Associate Commissioner. The amendments allow for an earlier response to the claim as they eliminate the difficulty previously encountered in arranging a meeting-time of the Committee convenient to the members. They also eliminate delays due to a lack of a decision-making quorum at a scheduled meeting.

In consideration of the foregoing, Part 301 of Title 28, Code of Federal Regulations is amended as set forth below. The effective date of these rules is June 18, 1979.

Dated: June 6, 1979.

Norman A. Carlson,
Commissioner, Federal Prison Industries, Inc.

PART 301—INMATE ACCIDENT COMPENSATION

1. By revising § 301.6 to read as follows:

§ 301.6 Report of death.

If a work-related injury results in death, an FPI Form 43, an Administrative Form 19, and the findings of the local Board of Inquiry will be promptly forwarded to the Claims Examiner, Federal Prison Industries, Inc., Washington, D.C. 20534.

2. By revising §§ 301.12 and 301.13 to read as follows:

§ 301.12 Processing of claims.

(a) A claim for inmate accident compensation shall be determined by a Claims Examiner, appointed by the Commissioner, Federal Prison Industries, Inc., under authority delegated to him by the Board of Directors of Federal Prison Industries, pursuant to 28 CFR 0.99. In determining the claim, the Claims Examiner will consider all available evidence. Written notice of the decision, including the reasons therefor, together with information as to the right to appeal the decision, shall be mailed to the claimant at his or her last known address.

(b) Appeal of the decision rendered by the Claims Examiner may be made to the Inmate Accident Compensation Committee (hereinafter referred to as the "Committee") appointed by the Commissioner, Federal Prison Industries, Inc., under authority delegated to him by the Board of Directors of Federal Prison Industries pursuant to 28 CFR 0.99. The Committee shall consist of four members and four alternates, with any combination of

three thereof required to form a quorum for decision-making purposes.

§ 301.13 Request for hearing or reconsideration, disclosure.

(a) Any claimant not satisfied with the decision of the Claims Examiner shall, upon written request made within 30 days after the date of issuance of such decision or thereafter, upon a showing of good cause, be afforded an opportunity for either a hearing before the Committee, or Committee reconsideration of the decision. A claimant may request a hearing or reconsideration by writing to the Inmate Accident Compensation Committee, Federal Bureau of Prisons, Washington, D.C. 20534.

(b) Upon receipt of claimant's request, a copy of the information upon which the Claims Examiner's initial determination was based shall be mailed to the claimant at his or her last known address. Where the Claims Examiner determines the release of information to the claimant or to the claimant's beneficiary is not in the best interest of the claimant or his beneficiary, the Claims Examiner may release the information to the claimant's or beneficiary's representative or personal physician upon receipt of both a written authorization from the claimant or beneficiary and a written request from the representative or personal physician. If the individual concerned is mentally incompetent, insane or deceased, the next-of-kin or legal representative must authorize in writing the release of records to the representative or personal physician.

3. By revising § 301.19(c) to read as follows:

§ 301.19 Representation of claimant.

* * * * *

(c) A representative appointed in accordance with paragraph (a) of this section may make or give, on behalf of the claimant he or she represents, any request or notice relative to any proceeding before the Committee. A representative shall be entitled to present or elicit evidence or make allegations as to facts and law in any proceeding affecting the claimant he or she represents and to obtain information with respect to the claim of such claimant to the same extent as such party. Notice to any claimant of any administrative action, determination, or decision, may be sent to the representative of such claimant, and such notice or request shall have the same force and effect as if it had been sent to the claimant.

4. By revising § 301.23 to read as follows:

§ 301.23 Medical treatment required following discharge.

If medical or hospital treatment is required subsequent to discharge from the institution for an injury sustained while assigned to Federal Prison Industries, Inc., or to an institutional work assignment, claimant should advise the Claims Examiner and if the cost of such treatment is allowed by the Corporation, advice to this effect and instructions for obtaining such services will be forwarded. The Corporation will under no circumstances pay the cost of medical, hospital treatment, or any related expense not previously authorized by it.

(18 U.S.C. 4126, 28 CFR 0.99 and by Board of Directors of Federal Prison Industries, Inc.)

[FR Doc 79-18897 Filed 6-15-79; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 367

[DoD Directive 5136.1] [1]

Assistant Secretary of Defense (Health Affairs); Revision of Reporting Relationship*

AGENCY: Office of the Secretary of Defense.

ACTION: Revision of final rule.

SUMMARY: This revision changes the reporting relationship of the Assistant Secretary of Defense (Health Affairs) with the Secretary of Defense in that the ASD(HA) will now report directly to the Secretary of Defense instead of reporting through the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) on certain manpower and logistic matters.

EFFECTIVE DATE: May 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, Telephone 202-695-4278.

SUPPLEMENTARY INFORMATION: In FR Doc. 79-5975 appearing in the **Federal Register** on February 28, 1979 (44 FR 11227) the Office of the Secretary of Defense published the Charter of the Assistant Secretary of Defense (Health Affairs) effective January 22, 1979. This revises § 367.4 which now reads as follows:

§ 367.4 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Report directly to the Secretary of Defense.

(2) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(3) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(4) Represent the Secretary of Defense, as an ex officio member, on the Board of Regents of the Uniformed Services University of the Health Sciences.

(5) Provide policy guidance to, and exercise direction, authority, and control over the Office of Civilian Health and Medical Program of the Uniformed Services consistent with 10 U.S.C. Chapter 55 "Medical and Dental Care" and DoD Directive 5105.46 [1], "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974.

(6) Provide policy guidance to, and exercise direction, control and authority over the Office of the Tri-Service Medical Information System.

(b) All DoD organizations shall coordinate all matters concerning the functions cited in § 367.3 with the ASD(HA).

June 13, 1979

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-18950 Filed 6-15-79; 8:45 am]

BILLING CODE 3810-70-M

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1517

Public Meeting Procedures of the Council on Environmental Quality

AGENCY: Council on Environmental Quality.

ACTION: Final Amendments to Procedures.

SUMMARY: These final amendments clarify and supplement the procedures followed by the Council in complying with the Government in Sunshine Act. The amendments reflect the Council's intention to conduct, open to public observation, bi-weekly meetings

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

involving Council discussions of agency business including, where appropriate matters outside the scope of these procedures. The amendments reflect the intent of the Council to conduct its official collegial business in accordance with the requirements of the Act. They also clarify that actions by the Council Chairman, acting as Director of the Office of the Environmental Quality, and Council actions involving advice to the President are outside the scope of the procedures.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Foster Knight, Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 2006, tel: (202)395–4616.

SUPPLEMENTARY INFORMATION: On March 16, 1979 the Council published in the **Federal Register** proposed amendments to its procedures implementing the Government in Sunshine Act [44 FR 16024, March 16, 1979] and requested public review and comments by April 16, 1979. The Council received only two comments. These comments concisely summarize the background and issues raised by the proposed amendments, and therefore are reprinted below without enclosures.

The Conservation Fundation,
1717 Massachusetts Avenue, N.W., Washington, D.C., April 3, 1979.

Mr. Nicholas C. Yost,
General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C.

Dear Mr. Yost: The comments below are offered in support of CEQ's amended rules for compliance with the Government in Sunshine Act [44 Fed. Reg. 16024, March 16, 1979]. These are my personal views and are not necessarily those of the Conservation Foundation.

CEQ's proposed rules rest on the assumption that CEQ's primary role is advisor to the President, and the requirements of the role are such as the preclude application of the carrying out those tasks lying outside its advisory role. I have written extensively about CEQ and have concluded that CEQ's advisory role is truly unique and merits protection. [See, e.g., "The Council on Environmental Quality," *Environmental Law Reporter*, 3 ELR 50051 (August 1973); *A National Policy for the Environment: NEPA and its Aftermath* (Bloomington: Indiana University Press, 1976); "The Council on Environmental Quality: The Need to Take a Second Look," *Natural Resources Journal*, 16:357 (April 1976); and (with Alan S. Miller and Frederick R. Anderson), "Comments on the Performance of the Council on Environmental Quality," in "The Council on Environmental Quality, Responses to a Committee Questionnaire," United States Senate Committee on Interior and Insular Affairs, 95th Congress, 1st Session, January 1977 (Committee Print).]

When first established, CEQ was designed primarily to be an advisor to the president. It was not to become involved in the day-to-day decision making of federal agencies but it was to provide a general evaluation of federal programs and to recommend, when appropriate, changes in program direction. While emphasizing the advisory role, NEPA's architects anticipated a second role for the Council, that of environmental ombudsman. CEQ was intended to be the body within the government to which citizens could turn for objective information on the state of the environment. This role was elaborated upon in executive order 11514, which granted the Council the power to convene public hearings on matters of environmental significance.

NEPA and executive order 11514 thus established a role conflict for CEQ. On the one hand the Council was directed to advise the president confidentially concerning ongoing federal programs. On the other hand, it was supposed to be a source of public information on environmental problems. Shortly after its creation, the Council had to choose. It could be restrained in its public information activities and in its public involvement in environmental controversies, in order to assure its continued welcome at the White House; or it could publicly reveal its views on a broad range of issues and face the possibility of being removed from effective participation in the formation of White House policy. As Chairman Russell Train stated in House oversight hearings in December 1970:

We cannot be, in a sense, the public ombudsman on environment and at the same time be the confidential advisors to the President on the development of policy. It is just an impossibility to fill both these roles.

CEQ is modelled explicitly after the Council on Edonomic Advisors. A study of the Council of Economic Advisors underscore the uncertainties and rivalries that characterize the *Economic Advice and Presidential Leadership: The Council of Economic Advisors*, Edward Flash concluded that the relationship between CEA and the president is moved more by the president's acceptance of CEA than by his dependence upon it, and it is more personal than institutional. The president relies on CEA for advice and CEA derives strength from its presidential affiliation, but this interdependence is asymmetric. For while the president is CEA's only source of strength, the president need not depend solely upon CEA for economic advice.

Because it has no constituency of its own, CEA has always sold its views rather than prescribed them; it lacks the power to impose its will on others. Its operations have been determined less by what the president wants it to do than by what he does not object to its doing.

The characteristics that Flash attributed to the CEA's presidential relationship would seem to apply in some measure as well as to the CEA's. The Council's advisory relationship with the president has limited its ability to take public actions. To preserve its entry to executive level deliberations, the Council has to be a "team player." The Council has wisely adopted the view that it cannot adopt tough public adversary stances concerning particular agency projects. Although in the Carter Administration the CEQ has been more outspoken than under previous administrations, it remains true that the Council's prevailing view is that more can be achieved through private exhortation than through public disparagement.

Based on this view of CEQ, I have concluded that the Council's amended guidelines strike the proper balance between the special advisory relationship CEQ has with the President and the requisites of the Government in Sunshine Act.

Sincerely yours,

Richard A. Liroff,
Senior Associate.

Pacific Legal Foundation,
1990 M Street N.W. Suite 500, Washington, D.C., April 16, 1979.

Mr. Nicholas C. Yost,
General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C.

Dear Mr. Yost:

In re: Proposed Amendments to CEQ Sunshine Regulations [44 Fed. Reg. 16024 (March 16, 1979).

CEQ has proposed to explicitly remove from the coverage of its Sunshine regulations all business of the Council involving advice to the President. It has further proposed to limit its regulations to what it terms "official collegial Council business"—that is, business requiring affirmative votes of Council members. There is no justification in the Sunshine Act for either of these limitations. With one minor exception, the Act applies to all Council business regardless of subject matter. The requirements of the Act are not triggered by the actual castings of Council-member votes on items of business; any matter in which two or more Council members are involved, regardless of whether or not votes are taken, falls within the scope of 5 U.S.C. § 552b(b).

In support of PLF's position, I have attached copies of two documents filed in PLF's pending action against CEQ regarding the Council's past failure to observe the Sunshine Act (D.D.C. Civil No. 79–116).

Yours Truly,

Sam Kazman,
Attorney.

Enclosures: Plaintiff's Memorandum of Points & Authorities in Opposition to Defendants' Motion for Summary Judgement; Memorandum of *Amicus Curiae* Senator Lawton Chiles in Support of Plaintiff's Opposition.

The Council has carefully considered these comments and has determined that the proposed amendments, which are supported by the first of these comments, should be adopted. Therefore the Council is publishing the

amendments to its public meeting procedures without change.

June 13, 1979.

Charles H. Warren,

Chairman, Council on Environmental Quality.

Sections 1517.1, 1517.2 and 1517.3 are revised to read as follows:

§ 1517.1 Policy and scope.

Consistent with the policy that the public is entitled to the fullest information regarding the decisionmaking processes of the Federal Government, it is the purpose of this part to open the *collegial* meetings of the Council on Environmental Quality to public observation while protecting the rights of individuals and the ability of the Council to carry out its primary responsibility of providing advice to the President. Actions taken by the Chairman acting as Director of the Office of Environmental Quality and Council actions involving advice to the President are outside the scope of this part. In addition to conducting the meetings required by this part, it is the Council's policy to conduct, open to public observation, bi-weekly meetings involving Council discussions of Council business, including where appropriate, matters outside the scope of this part. This part does not affect the procedures set forth in Part 1515 pursuant to which records of the Council are made available to the public for inspection and copying, except that the exemptions set forth in § 1517.4(a) shall govern in the case of any request made to copy or inspect the transcripts, recording or minutes described in § 1517.7.

§ 1517.2 Definitions.

For the purpose of this part—

(a) The term "Council" shall mean the Council on Environmental Quality established under Title II of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

(b) The term "meeting" means the deliberations of at least two Council members where such deliberations determine or result in the joint conduct or disposition of official collegial Council business, but does not include deliberations to take actions to open or close a meeting under §§ 1517.4 and 1517.5 or to release or withhold information under §§ 1517.4 and 1517.7. "Meeting" shall not be construed to prevent Council members from considering individually Council business that is circulated to them sequentially in writing.

(c) The term "official collegial Council business" means any Council action which by statute, regulation, Executive Order, or internal Council procedures requires an affirmative vote of at least two Council members in order to be taken on behalf of the Council. It shall include the adoption of regulations and shall not include advice to the President, nor actions taken by the Chairman acting as Director of the Office of Environmental Quality under the Environmental Quality Improvement Act of 1970.

(d) "Director" means the Chairman of the Council on Environmental Quality acting as the head of the Office of Environmental Quality pursuant to the Environmental Quality Improvement Act of 1970, Pub. L. 91–224, 42 U.S.C. 4371–4374.

§ 1517.3 Open meeting requirement.

(a) Every portion of every meeting of the Council is open to public observation subject to the exemptions provided in §§ 1517.4. Members of the Council may not jointly conduct or dispose of the business of the Council other than in accordance with this part.

(b) The Council will conduct open to public observation a bi-weekly meeting involving Council discussions of Council business including where appropriate matters outside the scope of this part. Such meetings will be noticed pursuant to § 1517.6.

(c) Members of the public may attend open meetings of the Council for the sole purpose of observation and may not participate in or photograph any meeting without prior permission of the Council. Members of the public who desire to participate in or photograph an open meeting of the Council may request permission to do so from the General Counsel of the Council before such meeting. Members of the public may record open meetings of the Council by means of any mechanical or electronic device unless the Council determines such recording would disrupt the orderly conduct of such meeting.

(Pub. L. 94–409; (5 U.S.C. 552b (g)))

[FR Doc. 79–18971 Filed 6–15–79; 8:45 am]

BILLING CODE 3125–01–M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1061

Emergency Energy Conservation; Fiscal Year 1979 Crisis Intervention Program

AGENCY: Community Services Administration.

ACTION: Amendment of rule.

SUMMARY: The Community Services Administration is amending the rule on its FY 79 Crisis Intervention Program published at 44 FR 4481 to reflect comments received from the public and from grantees operating the program. In general the amendments provide for a thirty-day extension from May 31, 1979 to June 30, 1979 during which eligible individuals can be certified for assistance in crisis situations arising prior to June 1, 1979 and a consequent extension of program termination and reporting dates.

EFFECTIVE DATE: This final rule is effective July 18, 1979, as a thirty-day waiting period would have been impractical and contrary to the public interest.

FOR FURTHER INFORMATION CONTACT: CSA grantees and program beneficiaries: Appropriate CSA Regional Office. Others: Community Services Administration, Office of Community Action, 1200–19th Street, N.W., Washington, D.C. 20506. Telephone: (202) 632–6503; Teletypewriter: (202) 254–6218.

(Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.)

Graciela (Grace) Olivarez,

Director.

Part 1061 of Title 45 of the Code of Federal Regulations is amended as follows:

(1) Section 1061.52–4 is revised to read as follows:

§ 1061.52–4 Duration of program.

(a) Grants will be effective January 1, 1979 and will have a termination date of August 31, 1979.

(b) No grant funds may be committed by grantees to provide assistance to certified households after June 30, 1979; and funds may only be committed during the period June 1 to June 30, 1979 for winter-related energy emergencies which placed eligible households in a crisis situation prior to June 1, 1979.

(c) Administrative funds may be committed until August 31, 1979.

(d) Grant funds which remain uncommitted by the grantee after August 31, 1979 shall be deobligated and returned by check to CSA for refund to the U.S. Treasury.

§ 1061.52–11 [Amended]

(2) Section 1061.52–11(b) is amended as follows:

Delete the date in the third sentence which now reads "July 1, 1979" and insert "October 1, 1979."

[FR Doc. 79–18992 Filed 6–15–79; 8:45 am]

BILLING CODE 6315–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 79-373]

Delegation Authority for Commercial Time Standards

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This action modifies the limitations in the delegation standard, Section 0.281(a)(7)(i), as it relates to the amount of political advertising matter proposed in application for radio licenses. Pursuant to the delegation rule, the Broadcast Bureau staff must refer to the Commission all applications in which a specified limit on commercial time proposals is exceeded. The rule as amended here permits additional time for political advertising in excess of the specified limit on commercial matter.

EFFECTIVE DATE: June 25, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202-632-7792).

SUPPLEMENTARY INFORMATION:

In the Matter of amendment of Part 0 of the Commission's rules concerning delegation authority for commercial time standards.

Adopted: June 7, 1979.

Released: June 13, 1979.

By the Commission: Commissioner Fogarty absent.

1. The Commission adopted a policy statement on April 26, 1976 (FCC-76-360), regarding the amount of time which can be devoted to political advertising in excess of the limits on commercial time for radio under the delegation standard in Section 0.281(a)(7)(i). We are taking this opportunity to codify that policy by amendment of our rules.

2. Section 0.281(a)(7)(i) provides that the staff has delegated authority to act on proposals for commercial time which do not exceed 18 minutes per hour, with exceptions up to 20 minutes per hour during no more than 10% of the station's total weekly hours of operation. Pursuant to the previously issued policy statement, the permissible limits for the proposal and for the exception have been extended during periods of high demand for political advertising by four additional minutes.[1] Also, instead of using the period of 10% of the station's total weekly hours of operation we now use the standard of 10% of the station's total operating hours in the applicable period when lowest-unit-charges[2] are mandated for political advertising. Thus in proposals pertaining to commercial matter, the new limits for delegated action by the staff during periods of high demand for political advertising are extended to permit up to an additional four minutes not to exceed 10% of the station's total operating hours in the lowest-unit-charge periods. In each case the additional time which must be devoted to purely political advertising applies both to non-seasonal (Section 0.281(a)(7)(i)) and seasonal (Section 0.281(a)(7)(ii)) markets. This change has not yet been incorporated into the delegation standard, Section 0.281(a)(7). The attached Appendix amends this section for the purpose of implementing the existing policy. The commencement of a separate rule making is not necessary to accomplish the amendment since the rule is procedural in nature. See Section 553(a)(3)(A) of the Administrative Procedure Act [5 U.S.C. 553(a)(3)(A)].

3. It is ordered, That effective June 25, 1979, Section 0.287(a)(7) of the Commission's Rules and Regulations is amended in the manner set forth in the Appendix.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In Section 0.281, subparagraph (a)(7)(i) is amended, present subparagraph (a)(7)(iii) is redesignated (a)(7)(iv), and a new subparagraph (a)(7)(iii) is added to read as follows:

§ 0.281 Authority delegated.

* * * * *

(a) *Applications*

* * * * *

(7) *Programming:* commercial matter.

(i) Commercial AM and FM proposals in non-seasonal markets exceeding 18 minutes of commercial matter per hour, or providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10 percent or more of the station's total weekly hours of operation.

(ii) * * *

(iii) During periods of high demand for political advertising proposals exceeding either: (a) an additional 4 minutes per hour of purely political advertising or (b) exceeding 10 percent of the station's total hours of operation in the applicable lowest-unit-charge period.

(iv) Commercial TV proposals exceeding 16 minutes of commercial matter per hour, or, during periods of high demand for political advertising, providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10 percent or more of the station's total weekly hours of operation.

* * * * *

[FR Doc. 79-18952 Filed 6-15-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Previously the permissible excess time during periods of high political demand was 22 minutes where the excess over 20 minutes is used for purely political advertising.

[2] The lowest-unit-charge periods are specified as 45 days preceding the date of a primary or primary runoff election and 60 days preceding the date of a general or special election.

47 CFR Part 1

[Gen. Docket No. 79-137; FCC 79-331]

Processing of Contested Broadcast Applications; Revised Procedures

AGENCY: Federal Communications Commission.

ACTION: Report and Order—Gen. Docket No. 79-137.

SUMMARY: The FCC adopted a Report and Order revising Part 1 of its rules and procedures to expedite the processing of contested broadcast applications, prior to and after designation for hearing. The amended rules, in substance, simplify and shorten the cut-off lists; eliminate the sending of "deficiency letters" as part of the processing procedure, except where the staff needs further information; restrict the predesignation voluntary amendments of applications; eliminate the current provision for predesignation issue pleadings; and require pleadings affecting issues to be filed with the Administrative Law Judge after designation. The Commission also modified its procedures for handling applicant showings dealing with community ascertainment surveys and financial qualifications. In connection with evaluating ascertainment surveys of community needs, the Commission modified the standards to be applied to all existing and future contested and uncontested applications by returning to the earlier policy requirement of "substantial compliance." A separate public notice containing the Commission's modified policy in this regard is being issued in conjunction with the Report and Order. The Report contains a section on implementation of the new procedures, which is intended to accomplish an orderly and equitable transition to the new procedures for the

vast majority of pending and new applicants.

The actions resulted from recommendations in a report entitled "Evaluation of Operation of New Predesignation Procedures in Processing of Broadcast Applications," and consideration of written comments on the report and the participation by the Commission, its staff and the public in a public symposium on the report.

Reconsideration petitions may be filed on or before July 18, 1979.

EFFECTIVE DATE: June 18, 1979.

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

FOR FURTHER INFORMATION CONTACT: Jerold L. Jacobs at (202) 632-6485.

Report and Order

Adopted: June 1, 1979.
Released: June 8, 1979.

By the Commission: Commissioner Brown concurring and issuing a Statement; Commissioner Jones absent.

In the matter of: revised procedures for the Processing of Contested Broadcast Applications; Amendments of Part 1 of the Commission's rules, Gen. Docket No. 79-137.

I. Introduction and Background

1. In its Report and Order on Adjudicatory Reregulation (Docket No. 20626), adopted March 17, 1976 (58 FCC 2d 865) and published in the **Federal Register** on April 8, 1976 (41 FR 14865), the Commission amended its procedures governing processing of contested broadcast applications in order to "reduce unwarranted 'delay' in the performance of its (adjudicatory) functions." In the "Conclusion" to the Report and Order, the Commission stated that it would " * * * continue to * * * (monitor) our processes to evaluate the results of these changes as well as to discover other sources of delay which can be eliminated." (*Report and Order*, supra, at para. 43; 58 FCC 2d 865, 878). In an effort to learn how the revised procedures were actually functioning in practice, the Commission, in 1978, contracted for a study and evaluation of the operation of the new procedures, with particular regard to their impact on the handling of mutually exclusive and other contested broadcast applications.

2. After the Contractor, Max D. Paglin,[1] submitted his Report entitled *"Evaluation of Operation of New Pre-designation Procedures in Processing of Broadcast Applications,"* the Commission scheduled consideration of the Report and its recommendations for the Agenda of its Open Meeting of March 15, 1979. Upon such consideration and review, the Commission concluded, tentatively, that adoption of the recommended revisions in its pre-designation and post-designation procedures would eliminate the delay problems which the Report found had been experienced and would improve the efficiency and effectiveness of its broadcast application processing system.

3. In light of the provisions of the Administrative Procedure Act exempting rules of procedure and practice from the notice and comment requirements of its Section 553 (see 5 U.S.C. 553(b)), it appeared that a rulemaking proceeding was not required before revised regulations of the nature recommended in the Report were adopted. Nevertheless, the Commission desired first to have the comments, on an informal but expedited basis, of interested organizations, government agencies and persons, including representatives of the Federal Communications Bar Association, the American Bar Association, the Association of Federal Communications Consulting Engineers and other practitioners, citizens organizations, the National Telecommunications and Information Administration (NTIA) (U.S. Department of Commerce), the Administrative Conference of the United States and interested Congressional Committee staffs.

4. Accordingly, the Commission issued a Public Notice, dated March 15, 1979 (FCC 79-159) [1a] releasing for informal public comment the Contractor's Report, together with an Executive Summary. Copies of the Report were sent to the above-mentioned groups for their information and comment, and it was stated in the Public Notice that additional copies were available for inspection and distribution in the Commission's Office of Public Affairs. The Notice requested that comments be submitted on or before April 6, 1979, in view of the existing situation with regard to application backlogs and delays, and the obvious need to take remedial action on an expedited basis. The Public Notice also stated the Commission's intention to hold a public symposium on April 17, 1979, after receipt of the written comments, to discuss the recommendations of the Report and to obtain, through a panel format, an exchange of views among the Commissioners, the staff, and outside groups on the proposed changes in the pre-designation and post-designation procedures.

5. Thereafter, by Public Notice dated March 22, 1979, the Commission announced that a public briefing session would be held on March 29 at the Commission's headquarters, in conjunction with the Federal Communications Bar Association's Continuing Legal Education Program. The briefing session was held as scheduled, at which the Contractor and members of the Commission's staff participated in answering questions and comments by the audience regarding the procedural revisions proposed in the Report, in an effort to assist those preparing to file written comments or intending to participate in the forthcoming symposium.

6. The Commission received written comments on the Report and its recommendations from thirteen organizations and interested practitioners and from two Government Agencies by the April 6th deadline.[2] Copies of the comments have been kept on file in the office of the Secretary for public inspection and reference.

7. On April 17, 1979, the Commission held a Public Symposium on the Report, as previously announced. The Commissioners were in attendance and participated in the questioning, and the presentations and colloquy were conducted by the Contractor and a panel composed of representatives of the Commission's Broadcast Bureau, the Office of Administrative Law Judges, the Federal Communications Bar Association and the American Bar Association. Following these presentations, other interested members of the Bar and the public were given an opportunity to comment on the Report's recommendations and to engage in an exchange of views with the panelists and the Commissioners. The proceedings were recorded and a

[1] The Contractor, Mr. Paglin, has had extensive experience with the Federal Communications Commission, serving some 28 years in positions of varied responsibilities, including that of trial attorney in Common Carrier and Broadcast, legal assistant to a Commissioner, Assistant General Counsel for Litigation, General Counsel, Executive Director and Special Assistant for Administrative Procedure.

[1a] Copies of the Report and the Executive Summary will be available for inspection in the Office of Public Affairs, Room 202, at the Commission's headquarters.

[2] Comments have been received from: Federal Communications Bar Association; Association of Federal Communications Consulting Engineers; members of the Communications Committee, Administrative Law Section, American Bar Association (though not the organization's official position); National Association of Broadcasters; Association of Independent Television Stations, Inc.; National Telecommunications and Information Administration (NTIA); Administrative Conference of the U.S.; McKenna, Wilkinson & Kittner, Esqs.; Cohen & Berfield, Esqs.; Stambler & Shrinsky, Esqs. (Bruce Eisen, Esq.); James E. Greeley, Esq.; Media Access Project; Business Communications, Inc.; Office of Communication of the United Church of Christ (Earle K. Morre, Esq.).

transcript of the Symposium has been made a part of the public documentation in this matter. The written comments and the dialogue during the Symposium have afforded the Commission a valuable airing of views on the need for urgent revisions in the procedures by which contested broadcast applications are processed, in order to assure that the public's business is being handled efficiently and with dispatch. Some of the modifications suggested by the written and oral comments will be quite useful in accomplishing the objectives sought, and some will be adopted as indicated in more detail below.

II. Findings of Contractor's Report on Pre-Designation Procedures in Processing Contested Broadcast Applications

8. Before proceeding to a discussion of the Report's findings and recommendations, it should be noted that the Report was given wide dissemination to those organizations and persons whose activities and interests would be affected by its proposals, and whose expertise would be most beneficial to the Commission in commenting on the proposed revised procedures. Thus, it would seem unnecessary to reiterate in detail the Report's findings and conclusions as to what happened under the current pre-designation procedures. In the interest of brevity, therefore, the Contractor's Report, together with its Executive Summary, will be incorporated by reference and made a part of the documentation associated with this Docket.

9. As has already been indicated, the Commission has reviewed the Report and its recommendations and has accepted it as a valid evaluation of the current situation regarding the processing of contested broadcast applications. A brief summary of the Report's findings and conclusions would, however, be useful at this point to serve as background for the more detailed discussion of, and determination on the specific recommendations for procedural revisions dealt with below.

10. One of the principal aspects of the Commission's 1976 adjudicatory re-regulation effort was the amendment of its rules pertaining to the processing of mutually exclusive broadcast applications. It established a new pre-designation procedure whereby competing applicants would perfect their applications within a specified period after the cut-off date for the filing of mutually exclusive applications, and would participate in the framing of issues against each other before the applications were designated for hearing. The declared objective of these new procedures was to "promote the expeditious and early preparation of cases * * * and to "* * * encourage (the) earliest possible specification of issues and disclosure of (competitive) positions." Although it was realized that the new procedures would impose "a greater burden on the processing line staff with attendant manpower implications," the Commission felt that:

> * * * greater emphasis on pre-designation procedures will result in substantial time savings during the hearing process. Moreover, early preparation of their own cases and analysis of their opponent's case should result in greatly increased numbers of buy-outs and mergers. This early analysis of the strengths and weaknesses of cases can be expected to encourage early settlement with accompanying savings in time and money expended during a hearing. *(Notice of Proposed Rulemaking, Docket 20626,* FCC 75-1250, 40 F.R. 54436, 54439, November 14, 1975).

The procedures were also designed to function as a part of other modifications of the rules providing for rigid time limits for responses to "deficiency letters" sent out in the initial processing of the applications, proposals for narrow framing of issues in the designation order, and the shift of jurisdiction over interlocutory petitions to enlarge, modify or delete hearing issues from the Review Board to the Administrative Law Judges.

11. The Contractor's study involved an extensive analysis of the new pre-designation procedures as they have actually functioned in operation, and was based on close examination of Commission records and data, and comprehensive interviews and conferences with Commission staff and practicing attorneys who have had actual experience with the pre-designation procedures. In essence, the Report concluded that the current procedures for processing contested broadcast applications have failed to accomplish their intended purpose of eliminating delay and simplifying and expediting the pre-designation process; and that, in fact, the new procedures have resulted in greater delays and may, if allowed to continue in their present form, result in a serious breakdown of the system.

12. Accordingly, the Report recommended that the present procedures be replaced by a streamlined, expedited system of processing contested broadcast applications which eliminates or replaces those elements in the process which have resulted in extensive delays amounting to two years or more before such applications are even reached for designation for hearing. The recommendation would, in substance, simplify and shorten cut-off lists; eliminate the sending of "deficiency letters" as part of the processing procedure, except where the staff needs further information; restrict the pre-designation voluntary amendments of applications; eliminate the current provision for pre-designation issue pleadings; require pleadings affecting issues to be filed with the Administrative Law Judge after designation; and encourage the issuance of brief Memoranda Opinions and Orders of designation for hearing.

13. The Report also suggested an innovative approach for the handling of community ascertainment surveys and financial qualifications, as a further step in expediting the process. The Contractor recommended consideration of a procedure whereby, after the applicant makes a satisfactory threshold showing in its application of compliance with the Commission's requirements and policies for conducting a proper community ascertainment survey and in demonstrating financial capability to build and operate the proposed station—which showing passes the muster of Commission review—these two factors would no longer be subject to the adversary pleading or hearing process, absent a strong and persuasive showing by other parties of misrepresentation, gross omission or later developing circumstances.

14. These recommendations will be considered in the light of the written comments and the views expressed during the Symposium.

III. Discussion of Report's Recommendations for Procedural Revisions; Consideration of Comments in Written Filings and at the Public Symposium

15. The comments which were filed were unanimous in commending the Commission for undertaking this effort to improve its processing of broadcast applications, and urged the Commission to adopt new procedures as soon as possible, taking into consideration the views expressed in some of the comments as to suggested modifications.

16. The specific recommendations in the Report will now be addressed substantially in the order in which they appeared in the document.

A. Revision of Processing Line Procedures

17. *Revision of Cut-off List Procedures*—The Report recommended that the existing cut-off list procedures and notices be repealed, and that there be substituted a simplified Public Notice system of publication of tenders, and, later, of acceptances for filing of applications. The Notice of Acceptance for Filing would contain an announcement that applications desiring to be considered as in conflict with those on the list, or petitions to deny, would have to be filed within a date certain and stated, i.e., that date being set on the basis of requiring filing within thirty days after publication in the **Federal Register**, plus "lag time" for transmittal to the **Federal Register** and publication.

18. The Federal Communications Bar Association (FCBA) approved of the proposal to revise the current cut-off procedures; however, they suggested that a specific cut-off date be specified in the Commission's Public Notice, i.e., 45 days from publication of the Notice of acceptance for filing of the lead application to govern the cut-off date for filing mutually exclusive applications and petitions to deny. They also contended that the Commission should delete the practice of publishing such Notices of Acceptance for Filing in the **Federal Register**, since it was not required by statute and only added a delaying factor. The Association of Independent Television Stations (AITV) also concurred in the proposal, but contended that the proposed time frame for preparation and filing of competing applications was too short, and that the Commission should provide at least 90 days from public notice of the *tender* of the first application for the filing of competing applications.

19. The Commission believes that the shortened cut-off list procedure recommended in the Report will serve to expedite the application processing system. It also agrees that specifying a date certain in the Commission's Public Notice for the filing of mutually exclusive applications and petitions to deny (which, in fact, was contemplated in the Report's recommendation) will be useful in alerting the interested segments of the public, and it will therefore incorporate this feature in the revised regulations. In order to make the modified process more effective and expeditious, the Commission will continue the present practice of periodic publication of notices regarding the tender of new applications and the acceptance of applications for filing, but will publish such lists on a more frequent basis.

20. During the Symposium, the additional suggestion was made by members of the Bar that the Commission consider dropping its current practice, as provided for in §§ 1.571–1.573 of the rules, of additionally publishing in the **Federal Register** the cut-off lists for AM, FM and TV applications. It was contended that the wide distribution of Commission public notices is sufficient to alert potentially interested persons and organizations, without the added delay of publication in the **Federal Register**, since the latter was not required by statute. It is true that our Public Notices are made available at Commission headquarters for distribution to the broadcast industry, the Bar, consulting engineers and the Washington offices of some citizens groups. In addition, our rules require the publication in local newspapers for specified repeated periods of announcements as to the filing of applications for new, modified or renewed broadcast facilities; and, where existing stations are the applicants, for broadcast announcements regarding the applications. These latter rules are obviously designed for the benefit and information of the local communities. The recommendations in the Report regarding expedited cut-off lists did not contemplate abandoning publication in the **Federal Register**, and we have no present information of the extent to which the **Federal Register**, is relied upon by the general public for information on the filing of broadcast applications. Although our Consumer Assistance Office maintains an extensive direct mailing list to citizens groups througout the Nation on Commission activities and action, broadcast application filings are not part of such releases. Accordingly, and in the present circumstances, we will continue our current practice and will publish in the **Federal Register** the proposed new Public Notices regarding acceptance of applications, with the proposed announcement of a specific cut-off date for filing mutually exclusive applications and petitions to deny. We will leave open for future inquiry the question of the feasibility of deleting from our Rules the requirement for additional publication in the **Federal Register**.

21. *Elimination of "Deficiency Letters"*—The Report found that the existing practice of sending "deficiency letters" to mutually exclusive applicants as part of the processing procedure, as provided in § 1.571(k), was another cause of extensive delay in the ultimate processing of these applications to designation for hearing. It was estimated, on the basis of the information gathered in the Report, that elimination of the need for the staff to send out "deficiency letters" to applicants, and await responses, amendments and further analysis, could save anywhere between 60 and 100 days of processing time. It was also felt that elimination of this practice would discourage the filing of so-called "skeleton" applications, and would eliminate the burden on the staff of having to review such applications and correspond with the applicant on the existence of defects in the applications which require correction. The elimination of the regular sending of deficiency letters, as part of the pre-designation process, would, of course, not preclude the Commission or the staff from requiring the applicant to submit additional information where necessary, as prescribed by Section 308 of the Communications Act and § 1.514(b) of the rules. The Report also referred to the present practice of sending letters out on uncontested applications where further information was required or where the applications, as filed, were incomplete or insufficient, in order to permit these applicants to amend or cure the problem by further submissions. It was proposed that the Commission's present policy and practice in these types of unopposed applications be continued, in the discretion of the staff, so as to assist the applicant in obtaining a grant and instituting a new or expanded service in the community, where there is no opposition or conflict.

22. These proposals regarding the elimination of deficiency letters were strongly endorsed by FCBA in their written comments and in the Public Symposium; however, they stated that their position was based on the assumption that Commission requirements would be spelled out with clarity so that applicants would have sufficient information to file complete and adequate applications. There were further comments in the Symposium by one participant that the Commission should provide for at least one letter notice to the applicant as to the deficiencies in his proposal, but that thereafter he should be bound by his submissions.

23. The Commission will adopt the proposal as recommended in the Report, since we agree that elimination of the deficiency letters will not only discourage the filing of less than optimum applications, once the industry realizes that the staff will no longer be required to point out errors in the application, but it will also serve to

expedite the process. We are convinced from the contents of the Contractor's Report that the deficiency letters have been the cause of much delay, and their elimination should serve to expedite the application processing considerably. Accordingly, the rules will be amended to eliminate for the future the sending of deficiency letters in contested application situations. The staff will be given discretion to continue their present practices with regard to unopposed applications, where the circumstances appear to warrant such efforts.

24. *Revision of Application Amendment Procedures Pre-Designation and Post-Designation*—The Report detailed the reasons for the long delays experienced under the current amendment procedures, due to the backlogs, the extended time lags between cut-off and designation for hearing and the provisions of the rules (§ 1.522) allowing amendments prior to designation for hearing. It was found that, during the protracted period while the applications were pending, involving as much as a year or two, the applicants filed numerous amendments, due to changes in circumstances or to respond to opponents' issue petitions alleging defects in their applications. This then necessitated repetitive processing by the staff to re-examine the amended application to determine whether new matters were raised requiring additional deficiency letters or the specification of issues for hearing. Opposing applicants were likewise then required to scrutinize carefully the amended application to re-assess the competitive posture. In the latter situation, the amendments were sometimes followed by new petitions requesting additional issues on alleged defects in their opponent's amended cases, and this then led to a new cycle of cross pleadings, again requiring further consideration and evaluation by the staff. Even though these subsequent pleadings were not authorized by the rules, there appeared, in the early experience under the new procedures, to be no way to cut them off, short of Commission action designating the matter for hearing, particularly when the pleadings were usually accompanied by requests for waiver of the rules, which had to be entertained.

25. Another problem involved in the Commission's liberal amendment policy in mutually exclusive broadcast cases was expressed in terms of presenting a conflict of two public interest objectives—i.e., on the one hand, the Commission's desire to have a choice among applicants whose qualifications represented the optimum in ultimate service to the public; but, conversely, the liberal allowance of amendments encourages the filing initially of "skeleton applications" and constantly changes "the litigation facts," thus interfering with an early stabilization of the comparative factual situation which must ultimately go to hearing. The inevitable result of "the system" was to create more and more delay.

26. In the face of these circumstances, the Report recommended a substantial change in the voluntary amendment procedure. It recommended that the § 1.522 procedures for amendments to applications prior to hearing be revised to permit "amendments as of right" in only two situation—first, within a specified period (approximately 30–45 days) after public notice in the **Federal Register** of the acceptance for filing of the last-filed mutually exclusive application (i.e., pre-designation); and, second, within a similar specified period after publication in the **Federal Register** of the Order of Designation for Hearing (i.e., post-designation). The Report proposed that, with regard to pre-designation amendments, the Public Notice of Acceptance for Filing of applications mutually exclusive with the first filed applicants would have until a date certain and stated to file amendments as of right to their respective applications. With regard to post-designation amendments, the Report proposed that the Designation Order would specify a date of which the parties could file amendments to respond to hearing issued raised in the Order, that date being similarly between 30–45 days after publication in the **Federal Register.** The resolution of such issues would then be handled, as at present, by the Administrative Law Judge by way of motion for summary decision or other appropriate procedure. All other amendments were to be submitted to the presiding Administrative Law Judge, by petition for leave to amend, showing good cause.

27. It was also proposed in the Report that amendments required by § 1.65, to update an application, will be allowed at times other than those specified above, provided that no comparative advantage is claimed thereby; and, further, that amendments ordered by the Commission, pursuant to § 1.514(b), were not to be affected by these proposals. The objective of these restricted amendment rights was to discourage the filing of minimally acceptable applications and to eliminate the burden on the staff of having to review and analyze the applications repeatedly, each time they were amended, to see whether they raised new issues.

28. In their written comments to the Report, the Federal Communications Bar Association agreed in principle with the need for restricting voluntary amendments to pending applications, but disagreed with the proposal for a fixed period allowing amendments as of right following designation and allowing amendments as of right after the cut-off date. The Bar Association asserted that amendments should be allowed in both instances only for good cause shown, it being of the view that the "as of right" phrase might encourage post-designation amendments beyond those necessary to address matters of basic qualifications *first* raised in the designation order. A further comment by a member of the Bar in his written filing recommended that all amendments pertaining to basic qualifications should be permitted as of right until 30 days after designation. During the Symposium, a member of the Bar urged that amendments be allowed prior to designation, after advice from the staff in a deficiency letter, but that the applicant not be permitted to offer amendments regarding his basic qualifications after the matter was designation for hearing.

29. We have considered the proposals in the Report regarding pre-designation and post-designation amendments, and we propose to adopt the Report's recommendations regarding the restriction of amendments during the pre-designation phase of the pendency of the application. As is indicated in the Report in some detail, there is an urgent need, in the interests of expedition, to have a "stable application situation" for the staff to be able to work on the application as early as possible.[3] Likewise, we agree with the position taken in the Report as to the need to discourage the filing of "skeleton applications" and the need to avoid having the staff repeatedly review constantly amended applications. On the other hand, the proposal to allow one opportunity for amendment to any of the applications after the deadline for filing petitions against any *later* filed application[s] represents an effort to give the first filed applicant at least a fair opportunity to amend his application, after the filing by the competitor, but still to limit the filing of repeated amendments. We also agree

[3] In this connection, and because of past abuses, as also indicated in the Report, we are authorizing the staff hereafter to return without consideration unauthorized amendments and other pleadings not authorized by our Rules. Any late filed pre-designation amendment will be considered only upon a showing of good cause.

that, in the circumstances, the current requirements of §§ 1.65 and 1.514 of our rules will still apply in order to have the applicants keep their applications updated in accordance with then prevailing circumstances.

30. With regard to the proposals for revision in the post-designation procedures, the current system, which allows amendments of applications within 15 days after publication of the hearing order, is designed to eliminate the necessity for evidentiary hearings on designated issues which can be cured by amendments. On the other hand, as is indicated in the Report, there is also a need to secure a stable situation as soon as possible, so that the parties and the staff can proceed with the hearing on the remaining and necessary issues. We are inclined, however, to agree with the comments of FCBA that the Report's original proposal of automatic amendments after issuance of a hearing order, standing along, might still encourage the parties to file amendments on matters other than those first raised in the designation order. It would seem that this would also serve to defeat the efforts in the other proposals to encourage the initial filing of the best possible and most complete application. Nevertheless, we would want to accelerate and expedite the hearing process, and it is our view that setting a time limit after the designation order is issued for filing such amendments would enhance and expedite the process.

31. We will therefore adopt a modification of the Report's original proposal regarding the allowance of amendments post-designation—i.e., amendments will be allowed after the issuance of the designation order but must be filed within 30 days after publication of the order in the **Federal Register**, or a date certain to be specified in the order. A petition for leave to file an amendment which is not limited to an attempt to resolve an issue first raised in the designation order must be based on a showing of good cause. As is currently the practice, the petition for leave to amend, after designation, would be presented to the Administrative Law Judge for action; thereafter, an appropriate motion for summary decision or deletion of the issue after allowance of the amendment would be in order.

B. *Revision of Procedures for Handling Hearing Issues*

32. The Report describes in considerable detail how the 1976 procedures providing for pre-designation cross pleading on issues actually functioned in operation, the delay problems which were experienced, the inordinate level of litigiousness which the procedures seemed to encourage, the lack of decisional significance of many of the issues parties attempted to raise against their opponents, and the virtual defeat of the objectives originally intended of expediting the process. The Report also refers to the Commission's own ultimate realization of the abuses to which the new pre-designation issued pleading process had been put when, in the *Indianapolis* multi-party designation Order (In re *Peoples Broadcasting Corporation*, et. al., BC Docket Nos. 78–243–247), the Commission felt compelled to admonish the parties regarding the filing of petitions in the proceeding which were:

> * * * characterized by large numbers of unsupported requests for issues as well as numerous requests which can only be described as frivolous. Though totally without merit, these requests must be answered by opposing counsel, analyzed by our staff and ultimately considered by us. The time and energy wasted in this process in large part defeat the very aims which our new procedures seek to achieve * * *. (*Peoples Broadcasting, supra*, FCC 78–511, at para. 36; 68 FCC 2d——).

33. The Report pointed out the particularly adverse effect of these new procedures on those applicants with a high level of public interest qualifications (as traditionally recognized by the Commission and the Courts) but with limited resources. The opinion was expressed by practitioners that the pre-designation pleading procedures lent themselves to potential abuse by allowing one party, with substantial resources at his disposal, to "plead the others to death"; and that the process itself, in a hotly contested multi-party case, could force the withdrawal of the small, locally-owned and integrated, non-media applicant, or others who had ownership by minorities seeking entry into the field, even before the process had served its ultimate purpose of selection of the applicant who would best serve the public interest, based upon an adjudicatory record.

34. The Report accordingly recommended that the existing procedures for pre-designation pleadings and cross-pleadings to specify issues against opponents in mutually-exclusive and contested broadcast application cases (§§ 1.584 and 1.229) be repealed. To the limited extent that petitions to deny or motions to dismiss were filed against opponents' applications, they would be handled by the staff in the course of processing the applications upon the issues to be designated for hearing. The Report recommended that all pleadings relating to motions to enlarge, modify, or delete issues are then to be presented, after designation, to the presiding Administrative Law Judge, in accordance with § 1.243(K) of the rules.

35. The comments, with one exception, strongly endorsed the proposal to repeal the existing procedures regarding pre-designation issue pleading, contending that the current system contributed to extensive delays. The Comments also supported the recommendations that the presiding officers, who had familiarity with, and control of the case should handle the issues problem, and that the more significant ALJ rulings on such matters should be published in the manner and for the reasons described in the Report. The sole objection (by the Association of Independent Television Stations) was based on their contention that parties should have the opportunity, through the adversary process, to challenge defects in an opponent's case.

36. The Commission is persuaded by the Report and the comments that the pre-designation issue pleading process has not only not accomplished its original purposes—of expediting cases, simplifying issues and encouraging settlements—but has had the opposite effect. As the Report points out, the first two contested cases to go through the entire process from filing to designation under the new procedures (Vancouver and Indianapolis) [4] took two years for processing and involved a voluminous proliferation of pleadings on contested issues, amendments, etc. But when the Commission came to consider the cases on designation, the hearing Order rejected all but a handful of the issues requested by the parties as not being decisionally significant.

37. Accordingly, we accept the Report's recommendation and the urgings of the comments, and will direct the deletion of the pre-designation issue pleading procedures in all pending cases and in all future cases.[5] The rules will be revised as required. Parties will have an opportunity to renew requests for issues, where warranted, to the Administrative Law Judge, after designation, as indicated below. We would expect, however, that such requests would be limited to matters of substantial decisional significance. Petitions to deny

[4] In re *Rose Broadcasting Company*, et al., BC Docket Nos. 78–209, 211–212 (Vancouver); and *Peoples Broadcasting Corporation*, et al., BC Docket Nos. 78–243–247 (Indianapolis).

[5] The actual implementation of the revised procedures in pending cases is set forth below in Section IV of this Report and Order.

and motions to dismiss filed against applications, and other informal objections, will be handled by the staff in the course of application processing, as at present.[6]

38. All pleadings relating to motions to enlarge, modify or delete hearing issues are to be presented, after designation, to the presiding Administrative Law Judge in accordance with the existing § 1.243(k) of the rules, preferably at the pre-hearing conference stage and within 30 days after the designation order has been published in the **Federal Register**. The new procedures regarding post-designation settlement of the hearing issues shall become a part of the pre-hearing procedures methodology, set forth in §§ 1.246–1.251 and 1.291–1.298 (Interlocutory Actions in Hearing Proceedings). No other revisions of the regulations would appear to be required, for the authority presently exists in the Administrative Procedure Act and the Commission's Regulations for the ALJs to handle the hearing issues in the manner proposed.

39. It is contemplated that the Administrative Law Judges, using their existing authority, would make full use of the available and appropriate pre-hearing techniques, such as informal conferences, oral arguments, and submission by the parties of memoranda of law, to dispose expeditiously of all pending pleadings involving issues prior to the commencement of the evidentiary hearing. We would expect that such disposition would not only take cognizance of Commission policy as contained in the *Fidelity* and *Atlantic Broadcasting* cases, referred to more fully below, but would also apply strictly the test of substantial decisional significance to the outcome of the case, in ruling on requests for issues.

40. The Report also made the point, with which we agree, that in order that the effectiveness of the Commission's review process be enhanced, ALJ rulings on decisionally significant matters or complex issues at the interlocutory stage should normally be contained in written orders. However, in the interests of expedition, ALJs should be encouraged to avail themselves, where appropriate, of the discretion afforded by § 1.298(b), which provides that:

> In the discretion of the presiding officer, rulings on interlocutory matters may be made orally at the hearing. The presiding officer may, in his discretion, state his reasons on the record or subsequently issue a written statement of the reasons for his ruling, either separately or as part of the initial decision.

41. The Report also referred to the probable need for an expanded and regularized system of publishing those Memoranda Opinions and Orders by Administrative Law Judges on significant interlocutory matters. It was thought that, with the proposed expansion of consideration of issue pleadings by ALJs, there would be an increase in the number of rulings which might be useful as guides in other cases, both to other presiding officers and to the Bar, although not binding as precedent as such. It was also felt that publication and distribution of the more significant rulings might serve to advance consistency amongst ALJs in ruling on pleadings which involved similar problems.

42. We note that, after the comments and the discussion during the Symposium along these lines, the Office of Administrative Law Judges made arrangements, which were announced in a Public Notice, dated April 23, 1979 (P.N. 16682), to establish a file in the FCC Library for ready inspection containing a copy of each Order and each Memorandum Opinion and Order issued by the Administrative Law Judges. However, we believe that the recommendations in the Report for publication and distribution of significant rulings may better achieve the intended objectives. We will therefore direct the Executive Director, acting in conjunction with the Office of Administrative Law Judges and the Office of Public Affairs, to oversee the establishment of procedures to carry out these purposes in a manner they deem most efficient and cost-effective.

C. Reiteration of Commission Policy on Post-Designation Modification of Hearing Issues

43. The Report pointed out that as a central part of the proposed revised system of handling post-designation hearing issues, it was required that the Commission reiterate the policies expressed in *Fidelity Radio, Inc.*, 1 FCC 2d 661 (1965) and *Atlantic Broadcasting Co.*, 5 FCC 2d 717 (1966). Those cases established the parameters of the authority of the Review Board (and now, presumably, the ALJs) to consider or permit the enlargement, modification or deletion of hearing issues. The Commission there directed that subordinate officials should look to see whether specific reasons were stated for its action or inaction in a designation order; and that if the designation order contained a reasoned analysis of a particular matter, the subordinate officials were to be bound by that analysis, in the absence of additional information on the subject previously unknown to the Commission. However, where the designation order did not contain such reasoned analysis with respect to the merits of the particular matter, the subordinate official was to make such an analysis and rule on the merits of the petition so that the hearing could be conducted in an expeditious manner.

44. The Report recommended that if the Commission should adopt the recommendations for a simplified, streamlined designation process and for allowing the Administrative Law Judges to handle all post-designation petitions seeking to modify the issues designated for hearing, the principles of *Fidelity* and *Atlantic* should be re-emphasized as controlling in the circumstances, so as to preclude unnecessary relitigation of matters dealt with in the hearing Order. It was contemplated that staff review and Commission consideration of the application, its amendments and any pleadings filed, as expressed in the Memorandum Opinion and Order of designation for hearing would, in the interest of expedition, be observed at the further levels of litigation as dispositive, in the absence of demonstrated showings of information or data which were not before the Commission at the time of designation. The Report also recommended that, with the deletion of the pre-designation issue pleadings procedure, the Commission's order designating the applications for hearing could be quite brief and concise, thereby eliminating some of the delay encountered in the preparation of lengthy Memorandum Opinions required under the previous procedures.

45. The comments filed by FCBA and ABA supported the principle of continued emphasis on *Fidelity* and *Atlantic*. However, they were concerned that the additional recommendation for brief designation orders might work at cross purposes with the objectives of *Fidelity* and *Atlantic* to preclude further litigation. They recommended that the Memorandum Opinions and Orders of designation for hearing should continue the practice of "reasoned analysis" so as to serve the original objectives of the *Fidelity* case; and, further, that where there was no reasoned analysis in the designation order, the parties should be permitted to request issues before the Administrative Law Judge.

46. The Commission believes the discussion in the comments to be well taken. It proposes to direct the Broadcast Bureau processing staff to handle the preparation of designation

[6] To discourage needless filings, the rules will also be amended to emphasize that the failure to file an opposition or a reply to a petition or motion will not necessarily be construed as an admission of any fact or argument contained in a pleading.

orders with precision, dealing with the issues presented in a concise manner; but, at the same time, fully discussing the bases and rationale for rejecting an issue requested, for example, in a petition to deny. Likewise, there should be similar treatment of the "reasons then obtaining" for designating an issue for hearing, based on the application and other information before the staff for review. We would expect that a thorough staff review of the application would permit the making of findings indicating those areas where the applicant had made a satisfactory showing of compliance with Commission regulations and policies and so concluding in the designation order. Where an unresolved issue was presented, the reasons for including it as a ground for hearing would similarly be set out in the terms expressed in *Fidelity*. We do not necessarily see any conflict between adhering to the principles of *Fidelity*, where required, and the preparation of succinct findings in a Memorandum Opinion and Order designating a matter for hearing.

D. Revised Procedures for Review of Community Ascertainment Surveys and Financial Qualifications

47. These recommendations of the Report for revised approaches to the handling of ascertainment of community needs and financial qualifications sparked the most intense interest in the written comments and the Public Symposium. It should be noted that the Report prefaced its discussion and recommendations in these areas with a reference to the recent and current discussions and writings, as well as proposed legislation, relating to proposals for "deregulation" of radio broadcast stations in various contexts, including reassessing the need for ascertainment surveys; substantial revision in the comparative hearing process; and other proposals for "modernizing" and improving the regulatory system governing the licensing of broadcast stations. The Report stated that, until such time as the Commission issued revised policy formulations which were upheld by the Courts, or until legislation was passed, there were a number of specific procedural and organizational proposals which could be considered as interim measures designed to expedite the processing system. These measures would deal with the manner in which certain of the qualifying and comparative criteria are reviewed by the staff and litigated by the parties.

48. The Report stated further that its study and experience had shown that a great deal of adversarial time and effort was being spent on certain of the qualification factors which perhaps ought not to be the subject of contention amongst the contesting applicants in a multi-party case. Two of the qualification and comparative factors which the Report contended would lend themselves to new approaches were the community ascertainment surveys and financial qualifications.

49. *Revised Procedure for Review of Community Ascertainment Surveys*—At present, the Commission policies in this area are contained in its Regulations, Application Forms and in its *Primer on Ascertainment of Community Problems by Broadcast Applicants*, published in February 1971 (27 FCC 2d 650) after a rulemaking proceeding.

50. The Report found that, under the existing pre-designation procedures and issue pleading, the ascertainment surveys are often the subject of minute item-by-item attack by opponents as to sufficiency, compliance with Commission requirement and precedent, etc., as well as cross-examination during the hearing. Even after hearing and Initial Decision, questions as to the adequacy of the survey conducted by the Initial Decision grantee and compliance with the requirements of the *Primer* and its interpretations have been the subject of extensive review by the Review Board.

51. The Report therefore suggested that, until the Commission modifies its policies regarding the need for community needs ascertainment by radio and TV broadcast stations, consideration be given to a revision of its procedures so as to remove the community ascertainment survey showing from the adversary arena. Under the suggested revised procedure, applicants would be required to make a threshold showing in their applications of compliance with the basic requirements laid down by the Commission in the *Primer* as to the method of conducting a satisfactory and sufficient ascertainment survey and formulating the program proposal thereon, in the same manner as is presently required, with whatever extensions or modifications the Commission thought necessary in the light of past and recent experience. The applicants' showing in this area would then be examined for acceptability by the staff in its initial processing. If found deficient, an issue on ascertainment would be included in the hearing order; and, if not cured by post-designation amendment, the issue would go to evidentiary hearing. If found, however, to be satisfactory, the ascertainment survey could not then be made the subject of adversary pleading or testimony at the hearing stage, short of a persuasive showing, by motion before the ALJ to enlarge issues, of misrepresentation or gross omission of some decisionally significant area which would make the survey totally unacceptable, on the basis of facts not theretofore known to the Commission or the parties or not apparent on the face of the application. In other words, once an applicant has met the Commission's basic requirements, a competing party should be placed under a heavy burden of demonstrating that an ascertainment issue was critical to a valid decision in the case, before it could be added to the hearing. Any attempt to add a "comparative ascertainment efforts" issue, which has only rarely been done in the past, should likewise be required to demonstrate its vital role in the outcome of the case. The Report asserted that removal of the ascertainment process from the adversarial mode to a situation where only the applicant and the staff are involved would represent a substantial saving in time, money and effort over the existing procedure to the great benefit of the public and the Commission.

52. The written comments filed by FCBA, NAB, ABA and NTIA, and the discussions at the Symposium generally supported the approach and objectives of the Report's recommendation as a laudable effort to remove the ascertainment factor from the adversary arena, in the interests of eliminating delay and expediting the processing of contested broadcast applications. However, the thrust of the reaction from both the Commission staff and outside groups was that a critical element necessary for the success of expedited procedures here was that the Commission should reconsider its policy in *Voice of Dixie, Inc.*[7] In that case, the Commission indicated that it would require strict compliance with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). The comments stressed that, in order that the community ascertainment showings not be subjected to unnecessary litigation and time consuming delays for even trivial variations, the Commission should indicate that it was reconsidering the *Voice of Dixie* policy; and that it should direct the staff to return to the earlier standard that substantial compliance with the requirements of the primer

[7] *Voice of Dixie, Inc.*, 45 FCC 2d 1027 (1974); reconsideration denied, 47 FCC 2d 526 (1974).

would be the test for examining ascertainment showings to determine satisfactory compliance with Commission policy. It was pointed out that, as indicated in the Report, the ascertainment showings had been the source of much "nitpicking" in competitive multi-party cases, to no decisional avail but with considerable delay as a consequence. Accordingly, the parties urged the Commission to reconsider the policy declared in *Voice of Dixie*.

53. The Commission has given this matter very careful consideration, because of its importance in the efficient conduct of our adjudicatory process. We are likewise cognizant of contemporary efforts, of a related nature, which we have recently been considering in an effort to improve the entire process of the regulation of broadcast licensing. Indeed, on May 8, 1979, the Commission held an extensive open meeting in which it discussed with its staff the various possibilities of looking toward potential elimination of certain regulatory requirements in radio broadcasting.[8]

54. Upon such consideration we are convinced that, in the current circumstances, the regulatory process will, in fact, be improved and enhanced if we adopt the recommendations in the Report regarding the future procedures for the review of community ascertainment surveys, and if we reconsider the impact of some of our past regulatory policies. We will, however, adopt a modification of the criteria referred to in the Report's recommendation, described in para. 51, above. The test to be used regarding the nature of the showing required to reopen the question of the adequacy of the ascertainment survey, by way of a motion to enlarge issues, will be limited to misrepresentation or gross omission of some decisionally significant area which would make the survey totally unacceptable. As to our past regulatory policies, we have determined, from the contents of the Report and the presentations in the comments and the Symposium, that our policy in *Voice of Dixie*, requiring strict compliance with the *Primer* on ascertainment, should no longer be the criterion for passing upon the adequacy of an applicant's showing in this regard. Rather, we will return to the previous body of precedent which identified substantial compliance as being sufficient.[9] These criteria shall be applied at all levels of the adjudicatory process hereafter and to all pending applications and proceedings where the question arises.

55. For the guidance of all concerned, and for their more immediate reference and information, a separate Policy Statement will be issued encompassing these determinations. In light of the broad distribution of the Report and its recommendations in these areas, and the extensive comments by interested parties, we see no need for further notice and comment proceedings before implementing these new criteria. This Report and Order and the Policy Statement will, of course, be published in the **Federal Register**. Should there be any substantial need, the statute and our own procedures provide for the filing of petitions for reconsideration, though we must observe that a persuasive showing will need to be made as to why the matter should be reconsidered in these circumstances.

56. *Revised Procedure for Review of Financial Qualifications*—The Report recommended that a similar approach, as with ascertainment, be considered in the area of financial qualifications. Although the Communications Act provides that the Commission may make an affirmative finding that the applicant is financially qualified to construct the proposed station, the Commission's policies as to what showings are required to meet the basic test of financial qualifications have varied over time.[10]

57. Further, the Report stated that, although the applicant's financial showing is not one of the categories of comparative criteria in multi-party contested cases, the pre-designation issue pleading procedures have permitted some competing parties to attempt to raise questions about their opponent's finances which can only be characterized as litigation over trivia. The Report asserted that, after an applicant had passed the muster of staff review of his financial showing, the minute adversarial examination of his finances by his opponents, whether in the pre-designation stage or at the hearing, had proven not only to be non-productive in most instances, but had prejudiced those applicants who had limited resources to begin with, such as the small aspirants and minority groups. The question was therefore asked: Should not the factor of financial qualifications be a matter solely between the Commission and the applicant, since it is not likely to be a basis for comparative or relative merit, once the basic financial requirements for construction and operation are met. The Report accordingly recommended that financial qualification should not be made the subject of hearing issues as adversarial pleading, unless the initial staff review of the application indicated that the applicant was, in fact, incapable of effectuating his proposal, or if a persuasive and convincing showing to the same effect was made by an opponent after designation.

58. The Report therefore proposed that the Commission consider adopting a procedure similar to that suggested above for ascertainment, whereby the financial qualification showing would be removed from adversary contention, absent the demonstrated existence of defects in the applicant's proposal. In like manner, the mutually-exclusive applicants would be required to make a threshold showing in their applications of compliance with the Commission's requirements, as contained in its application forms and declared policies, of financial capability to construct and operate the proposed station. This showing would then be reviewed by the staff in the course of processing the applications; if found to be satisfactory, the statutory findings to the effect that the applicants are financially qualified would be recited in the designation order, and that would dispose of that qualification factor. If the staff review showed the applicant's financial proposal to be defective, a hearing issue in that regard would be specified, and if not cured by post-designation amendment, the issue would go to evidentiary hearing. Parties would be limited in raising questions about an opponent's financial qualifications to demonstrating in a persuasive and convincing manner, by motions before the ALJ to enlarge issues, that the opponent's proposal could not be realistically effectuated. Such motions would be based primarily on facts not apparent on the face of the application and its supporting documents or not theretofore known to the Commission or the parties. Under such a system, the Report contended, the application process should be far more efficient and expeditious, and, equally if not more important, the community should get its new service instituted more rapidly than at present.

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[8] See FCC News Release, May 8, 1979 (Mimeo No. 17390) entitled "FCC to Consider Full Range of Deregulation Options for Radio Broadcasting."

[9] *Greenfield Broadcasting Corp.*, 30 FCC 2d 774, 22 RR 2d 497 (1971); *New Broadcasting Corp.*, 37 FCC 2d 662, 25 RR 2d 561 (1972); *Mahoning Valley Broadcasting Corp.*, 39 FCC 2d 52, 25 RR 2d 873 (1972); *The Evening News Association*, 35 FCC 2d 366, 24 RR 2d 667 (1972); *The Outlet Co.*, 38 FCC 2d 355, 25 RR 2d 1077 (1972); and *RadiOhio, Inc.*, 38 FCC 2d 721, 26 RR 2d 327 (1972).

[10] See, e.g. Commission Public Notice, May 11, 1979, FCC 79-299, "New Financial Qualifications Standard For Broadcast Television Applicants," where the Commission changed the financial showing requirement for construction and operating costs from one year without revenues (the *Ultravision* test) to a 90 day requirement for new applicants.

59. The comments, with one exception, likewise supported the Report's recommendation on handling the financial qualifications factor, as did the presentations in the Symposium. We agree with the findings in the Report regarding the problems created by our current procedures in this area, and we will adopt the recommendation to institute the "threshold showings" criterion set forth in the Report.

60. To the extent that parties wish to contest the adequacy or correctness of the staff's initial conclusions as to the applicant's financial capabilities—using the Commission's financial requirements policy test—they will have the opportunity to present their contentions to the Administrative Law Judge by way of petitions to enlarge issues. The test to be used regarding the nature of the showing required to reopen the question of the adequacy of the applicant's finances will be similar to the criterion set forth in para. 54, above, *i.e.*, will be limited to a showing of misrepresentation or gross omission of some decisionally significant item which would render the proposal totally defective.

61. In this regard, some of the comments emphasized the need for the Commission to make substantive changes in its policies and to afford the industry with clearer guidelines, in these and other areas, as a means of enhancing the process. As indicated above, the Commission is currently in the process of re-examining the entire spectrum of its regulatory policies in broadcast licensing. We are of the opinion that any such revisions of substantive policy should await the completion of the Commission's deliberations in these areas. Meanwhile, we believe that a useful first step can be taken by adopting the revised procedures recommended in the Report for limiting the adversarial use of the community ascertainment and financial qualification factors, except in the circumstances indicated.

IV. Implementation of Revised Procedures

62. One remaining problem to be addressed is the manner and extent to which the revised procedures we are adopting are to be applied to pending applications which are already somewhere in the processing "pipeline," and which have been the subject of varying degrees and steps of processing.

63. We believe that the most orderly and equitable transition for the vast majority of applicants will result by applying the new procedures as follows:

(1) If an application has been accepted for filing under the existing procedures but has not yet appeared on a cut-off list, it will be placed on a new "Public Notice of Acceptance for Filing," and the time to file competing applications or petitions to deny will be specified in the Notice.

(2) If an application has already appeared on a cut-off list, and a competing application has been filed and accepted, but there has been no notification under existing §§ 1.522 and 1.584 of the rules of deadlines for filing amendments and issue pleadings, such applicants when reached for processing will be notified on an *ad hoc* basis and be given an opportunity to file amendments but not issue pleadings.

(3) Those mutually exclusive applications as to which deadlines have passed for the filing of amendments and issue pleadings under existing §§ 1.522 and 1.584 of the Rules, will be designated for hearing without further opportunity for pre-designation amendment.

(4) Applications tendered for filing but not yet accepted and all future applications will be fully subject to the new procedures.

64. Any questions concerning the procedural status of any case should be directly addressed to the processing staff of the Broadcast Bureau's Broadcast Facilities Division (tel. no. (202) 632-6485).

65. In addition, it should be noted that those applications filed prior to the effective date of the 1976 adjudicatory re-regulation rules, i.e., July 1, 1976 (as later amended) were to be governed by the prior procedures which, among other things, allowed only 15 days for amendments after designation for hearing. In the interest of uniform treatment, we will provide that *all* pending applications not yet designated for hearing will be afforded the post-designation amendment rights allowed under the new procedures.

66. With the adoption of the categories for implementation suggested above, the transition to the new and improved procedures for processing contested broadcast applications will be hastened.

V. Administrative and Personnel Resource Impact of Revised Procedures

67. In the course of his study, the Contractor presented the Commission with some separate data and recommendations dealing with the problems of staff resources and workload in the Broadcast Facilities Division devoted to application processing, in the Hearing Division and in the Office of Administrative Law Judges.

68. It was pointed out that, with the adoption of the expediting procedures which were recommended, it was likely that many more contested cases would be designated for hearing in a shorter period of time than at present. There was some apprehension expressed that caseloads for the Hearing Division and individual ALJs may be substantially increased when the backlogged applications begin to come through for hearing which might again result in delays, particularly in multi-party cases. The revised procedures on handling hearing issues might have a similar effect. Whether the latter would necessarily result in greater delays is not so certain, since no new responsibilities are being introduced. The Administrative Law Judges and the Hearing Division are already handling a considerable amount of such interlocutory matters as petitions on amendments and issues as part of the hearing process. In addition, we are confident that the proper use by the presiding officer of the available authority and techniques for control and expeditious handling of the hearing will serve to expedite the hearings and prevent undue delays. Likewise, the observance of discipline and restraint in all levels of processing, trial and review in the adjudicatory process—that is, a concentration on matters of substance and issues of vital decisional significance—is essential to the successful operation of these new procedures.

69. Nevertheless, to assure that the process does not again result in extensive delays, we are directing that an interim management oversight mechanism be set up, by the Executive Director working in conjunction with the Broadcast Bureau and the Office of Administrative Law Judges, to monitor the flow of cases being designated for hearing, the individual caseload levels and the phased progress of the hearings at the ALJ stage. Then, if it appears that hearing cases are getting bogged down or unduly delayed at certain stages because either the Hearing Division or the ALJs are becoming overburdened by their caseloads, the Commission will be in a position to take prompt steps to remedy the situation. Depending upon the needs shown to exist, such measures might take the form of emergency personnel assistance or more permanent organizational, procedural or personnel undertakings. We will expect the staff to keep us advised periodically of developments in the in the operation of the new procedures.

VI. Conclusion

70. During the Symposium, several of the participants expressed some skepticism as to the possible success of the recommeded procedures in accomplishing their objective of expediting the process. Their opinions were based on what they perceived as an unrealistic reliance on cooperation by the parties and their counsel in implementing the new procedures. Their position was that counsel's duty to his client required him to exhaust every available remedy and procedural device to fully protect the client's interests; thus, efforts to restrict his right to file pleadings on his client's behalf may not be successful.

71. The Report recites at length the consequences of our current procedures which have allowed just such latitude, probably because of concern for the requirements of "due process." Interviewees were quoted as characterizing the resultant delays of two years or more encountered in the processing of contested applications as "unconscionable," as well they might. We feel it incumbent upon us to observe, in response, that underlying all attempts at improvement in procedures, including those recommended in the Report, is the urgent need for the exercise of discipline and restraint by all concerned in the process. As the Report correctly points out, the public is entitled to have the Commission carry out its statutory mandate to "* * * conduct its proceedings in such manner as will best conduce to the proper dispatch of its business and to the ends of justice * * *" (Communications Act, Section 4(j).) To subject applicants and the public to delays of the magnitude shown in the Report, if it results from inefficiencies, inadequacies or defects in the process itself, amounts to an abnegation of the Commission's responsibility to serve the public. We believe that the effective and expeditious dispatch of the Commission's business is, in itself, an integral part of the public interest.

72. In the exigencies of the current situation of backlogs and delays, those who would use the Commission's process must recognize that practices and procedures originating in earlier and less critical eras must sometimes give way to the larger needs of the public interest, particularly at a time when the Commission's resources are burdened almost to the breaking point. The administrative hearing process itself, as well as some of its component parts, have come under attack as no longer serving their original purposes as an efficient method of regulatory decision-making. The time-honored procedures of trial-type evidentiary hearings, with extensive pleadings, discovery, cross-examination, etc., have been criticized as an outmoded mechanishm for the resolution of issues presented to administrative agencies. In our 1976 adjudicatory re-regulation revisions, we took a number of steps which were designed to improve the hearing process. But, however that debate may ultimately be settled, by legislation or otherwise, it is clear that our procedures for handling contested broadcast applications can no longer be saddled with a philosophy of "trial by combat."

73. We agree with the Report's admonition that the pressures of current and future backlogs, and the urgency of seeking reforms to expedite the application process, require self-restraint; that the parties' showings and the Commission's consideration of "the record"—in all phases of application processing, hearings and the review stages— should be limited to matters of substance and to issues of fundamental decisional significance. To quote the Report, "What has been referred to as the 'flyspecking' of applications and evidentiary showings and lengthy litigation over frivolities should not be condoned, either by the ALJs, the Review Board or the Commission itself * * *" (Report, p. 40).

74. We would hope and expect that practitioners before the Commission and our staff will, in fact, lend their best efforts to this joint undertaking in our common interest and that of the public. The Commission, for its part, will give its utmost cooperation in attempting to assure the success of these and simular recommendations which will lead to reform and improvements in our procedures. We would welcome the assistance of all interested persons and organizations in a continuing effort to make the Commission's procedures more efficient and effective.

75. For the purposes of this particular proceeding, and to implement the revisions in procedures which the Commission is here adopting, there is attached an Appendix containing the specific amendments to our rules of practice and procedure designed to carry out the determinations of this Report and Order.

76. Authority for adoption of the amendments set out in the attached Appendix below is contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Because the amendments are procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

77. Accordingly, it is ordered, effective June 18, 1979, that Part 1 of the rules is amended as set out in the Appendix below.

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

Federal Communications Commission.[1]

William J. Tricarico,

Secretary.

Appendix

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.227(b)(1) is revised to read as follows:

§ 1.227 Consolidations.

(a) * * *

* * * * *

(b)(1) In broadcast cases, except as provided in subparagraph (5) of this paragraph, no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended, if amended so as to require a new file number, is substantially complete and tendered for filing by the close of business on the day preceding the day designated by Public Notice published in the **Federal Register** as the day any one of the previously filed applications is available and ready for processing.

* * * * *

2. Section 1.229 (b) and (d) are revised to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

(a) * * *

* * * * *

(b) Such motions must be filed within 15 days after the issues in the hearing have been published in the **Federal Register.** In comparative broadcast proceedings (including comparative renewal proceedings), however, such motions shall be filed within 30 days after the designation order has been published in the **Federal Register.** Any person desiring to file a motion to modify the issues after expiration of the above specified periods shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause in shown for the delay in filing. Motions for modification of issues which are based on new facts or newly discovered facts

[1] See attached Concurring Statement of Commissioner Brown.

shall be filed within 15 days after such facts are discovered by the moving party.

* * * * *

(d) Such motions, opposition thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

3. In § 1.522, paragraph (a)(2) and paragraph (b)(2) are revised, and Note 1 is added as follows:

§ 1.522 Amendment of applications.

(a) * * *

(2) Subject to the provisions of §§ 1.525, 1.571(j), 1.572(b), 1.573(b), and 1.580, mutually exclusive broadcast applications may be amended as a matter of right by the date specified (not less than 30 days after publication) in the FCC's public notice announcing the acceptance for filing of the last-filed mutually exclusive application. Subsequent amendments prior to designation of the proceeding for hearing will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 1.514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

(b) * * *

(2) In comparative broadcast cases (including comparative renewal proceedings), amendments relating to issues first raised in the designation order may be filed as a matter of right within 30 days after that Order is published in the **Federal Register**, or by a date certain to be specified in the Order.

* * * * *

Note 1—When two or more broadcast applications are tendered for filing which are mutually exclusive with each other but not in conflict with any previously filed applications which have been accepted for filing, the FCC, where appropriate, will announce acceptance of the earliest tendered application and place the later filed application or applications on a subsequent public notice of acceptance for filing in order to establish a deadline for the filing of amendments as a matter of right for all applicants in the group.

4. Section 1.564(c) is revised to read as follows:

§ 1.564 Acceptance of applications.

* * * * *

(c) At regular intervals the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing. Pursuant to §§ 1.571(c), 1.572(c), and 1.573(d), such notice shall be published in the **Federal Register** and shall establish a cut-off date (no less than 30 days from the date of publication) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing until a statement establishing compliance with the local notice requirements of § 1.580 has been received by the FCC.

5. In § 1.571, paragraph (a) and subparagraph (a)(1) are revised; subparagraph (a)(3) is deleted; paragraph (c) is revised; and paragraph (d) is deleted and designated [reserved].

§ 1.571 Processing of standard broadcast applications.

(a) Applications for AM broadcast facilities are divided into two groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change is any increase in power, or any change in frequency, hours of operation, or station location: Provided, however, That the FCC may, within 15 days after the acceptance for filing of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of §§ 1.580 and 1.1111 pertaining to major changes.

* * * * *

(3) [Deleted]

* * * * *

(c) Applications for new stations or for major changes in the facilities of authorized stations are processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and are drawn by the staff for study, the lowest file number first. Thus, the file number determines the order in which the staff's work is begun on a particular application or group of conflicting applications. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the Commission will periodically publish in the **Federal Register** a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

(d) [Reserved]

* * * * *

6. Section 1.572(c) is revised to read as follows:

§ 1.572 Processing of television broadcast applications.

* * * * *

(c) Applications for television stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically publish in the **Federal Register** a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

* * * * *

7. Section 1.573(d) is revised to read as follows:

§ 1.573 Processing of FM and noncommercial educational FM broadcast applications.

* * * * *

(d) Applications for FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically publish in the **Federal Register** a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

* * * * *

8. In § 1.580, the section title is revised and paragraphs (i) and (j) are deleted

and reserved and redesignated as § 1.584 (see item 9 below).

§ 1.580 Local Notice of the filing of broadcast applications.

* * * * *

(i) [Reserved]

(j) [Reserved]

* * * * *

9. Section 1.584 is retained as a Section number, but the title "Pleadings to Specify Issues" is deleted. The new title is "Petitions to Deny" and the new rule text reads as follows:

§ 1.584 Petitions to deny.

(a) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or if amended so as to require a new file number pursuant to §§ 1.571(j), 1.572(b), 1.573(b) or § 1.574(b)) for which local notice pursuant to § 1.580 is required: *Provided,* Such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a public notice pursuant to the provisions of §§ 1.571(c), 1.572(c) or § 1.573(d), establishing a "cut-off" date, such petitions must be filed by the date specified. In the case of applications for renewal of license, petitions to deny may be filed at any time up to the last day for filing mutually exclusive applications under § 1.516(e). Requests for extension of time to file petitions to deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

(b) The applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 except that as to a petition to deny an application for renewal of license, an opposition thereto may be filed within 30 days after the petition to deny is filed, and the party that filed the petition to deny may reply to the opposition within 20 days after the opposition is due or within 20 days after the opposition is filed, whichever is longer. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

(c) Untimely petitions to deny, as well as other pleadings in the nature of a petition to deny, and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration.

10. In § 1.591, Note 1 is deleted, and paragraphs (b) and (c) are revised to read as follows:

§ 1.591 Grants without hearing of authorizations other than licenses pursuant to construction permits.

* * * * *

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the FCC will not consider any other application, or any application if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other application was substantially complete and tendered for filing by: (1) The close of business on the day preceding the day designated by Public Notice published in the **Federal Register** as the day the listed application is to be available and ready for processing; or (2) the date prescribed in § 1.516(e) in the case of applications which are mutually exclusive with applications for renewal of license of broadcast stations.

(c) If a petition to deny the application has been filed in accordance with § 1.584 and the FCC makes the grant in accordance with paragraph (a) of this section, the FCC will deny the petition and issue a concise statement setting forth the reasons for denial and disposing of all substantial issues raised by the petition.

Concurring Statement of Commissioner Tyrone Brown

Re: Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 73 of the Commission's Rules

I fully support the thrust of the Commission's action in adopting revised rules and procedures to expedite the processing of contested broadcast applications for new facilities. By adopting the recommendations of the Contractor's Report we will, in substance, simplify and shorten the current cut-off list procedures; eliminate the sending of "deficiency letters" as part of the processing procedures, except where the staff needs further information; restrict the pre-designation voluntary amendment of applications; eliminate the current provision for predesignation issue pleadings; and require pleadings affecting issues to be filed with the Administrative Law Judge after designation.

I applaud the efforts and results of the Contractor, Max Paglin, who has performed yeoman's work and has produced a truly important procedural reform embodied in one of the best written documents I have seen in my tenure as a Commissioner. The current procedures encourage delay and waste of Commission and party resources and also have an adverse impact on applicants and petitioners who do not possess deep pockets. The procedural changes the Contractor recommends can be expected to ameliorate these problems and make a substantial dent in our current backlog of applications for new broadcast facilities. I endorse this part of the "Paglin Report" without reservation.

The second portion of the Contractor's Report causes me some concern and is the impetus for this concurring statement. Under the revised "procedures" adopted today, the Commission changes the groundrules for handling the review of applicants' community ascertainment and financial qualifications showings. Under the new procedures, applicants need only make a threshold showing of substantial compliance with FCC policies and rules to pass initial Commission muster.

Several points are worth emphasizing. First, the procedures and polices we have adopted today apply only to applications for *new* broadcast facilities against which mutually-exclusive applications or petitions to deny are filed. Except to the extent certain filing deadlines are conformed, no changes are intended in the procedures or policies applied to renewal applications.

Second, the requirement of a threshold showing of "substantial compliance" for *financial* showings causes me little concern because the adequacy of such showings is fairly easy to determine and we have been applying a "substantial compliance" test. However, the same is not the case with ascertainment.

At least since the decision in *Voice of Dixie, Inc.* 45 FCC 2d 1027, *recon. denied,* 47 FCC 2d 526 (1974), the Commission has applied a "strict compliance" test to measure the adequacy of ascertainment showings submitted by applicants for new facilities. The procedures adopted today purport to return to the pre-*Voice of Dixie* "substantial compliance" test as a measure of the adequacy of an applicant's ascertainment showing. Based upon the comments made on the Paglin proposals and my understanding of the standards applied before the *Voice of Dixie* case, I would have no problem with reversing that case and returning to a policy of "substantial compliance." In my opinion, the real purpose of ascertainment is to require that broadcasters have contact and dialogue with their communities. The mechanistic approach to ascertainment, and therefore the nit-picking approach to challenging ascertainment, serve no real purpose. Thus substantial compliance with the purpose of ascertainment should be all that we need require.

However, we must make clear what we mean by substantial compliance. There may be some confusion about the standard to be applied by our staff and in the adjudicative process in determining whether there has been substantial compliance. This is so because, while the test is intended to be that

applied before the *Voice of Dixie* decision, the Report and Order adopted today suggests otherwise in at least one passage. In adopting the Contractor's recommendation (with minor modifications) we noted that:

"The test to be used regarding the showing required to reopen the question of the adequacy of the ascertainment survey, by way of motion to enlarge issues, will be limited to *misrepresentation* or *gross omission* of some *decisionally significant* area which would make the survey *totally unacceptable*." (Par. 54; emphasis added).

My initial opinion was that this standard for *review* of the staff's action was one which would permit acceptance of ascertainment showings only minimally complying with the *Primer* and other Commission policies. For if the staff determined that the application substantially complied with our policies (a determination in which "only the applicant and the staff are involved") even if it did not, it seemed to me that a review standard requiring a showing of "misrepresentation or gross omission of some decisionally significant area which would make the survey totally unacceptable" in most instances precluded any further examination of the showing.

However, to the extent that that language suggested a standard other than that which existed prior to *Voice of Dixie*, it is not so intended by the Commission. In discussion at the meeting at which we adopted this Report the staff assured us that the review standard permitted an ALJ to enlarge issues if a showing was made that the applicant's ascertainment survey did not substantially comply with our policies. And the tests for substantial compliance are those applied before the *Voice of Dixie case*. (See *Report and Order*, note 9). Also reassuring are subsequent passages in the Report and Order at paragraph 54: "(W)e will return to the previous body of precedent which identified substantial compliance as being sufficient. These criteria shall be applied *at all levels of the adjudicative process* * * *" (emphasis added).

I am also concerned that insufficient notice was given to interested parties about the change in the Commission's policy regarding the acceptability of ascertainment showings. The focus of the Report and the discussions both outside and within the Commission have been on the procedural aspects of the Report and the efforts to ameliorate the backlog in applications for new broadcast facilities. Since the procedural changes as well as the Commission's reversal of the *Voice of Dixie* policy apply to petitions to deny new applications, I considered urging the Commission to submit the Report for further public comment with a special emphasis put on the ascertainment issue.

I am persuaded, however, that the backlog situation in processing our new applications compels us to move as quickly as possible and that we have technically complied with all notice and comment requirements. Moreover, those interested groups which have not commented in this proceeding but might have done so if it were clear that a change in the ascertainment compliance standard was intended, still have an opportunity to comment by filing for reconsideration of the Commission's action.

One final point. The changes made today are procedural in nature and are not intended to eliminate the substantive ascertainment requirements or the procedural requirements of the *Primer*. *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). Nor are they intended to denigrate the requirement of substantial compliance with the *Primer*. Finally they are not intended to affect the ascertainment showings required of renewal applicants who are subject to the renewal *Primer*. *Ascertainment of Community Problems by Renewal Applicants*, 57 FCC 2d 248 (1975), *recon. granted in part*, 61 FCC 2d 1 (1976). The Commission is looking into the substance of ascertainment and the *Primer* requirements in another proceeding. I am sure the Commission intends the staff to apply the existing rules in the interim, and interested parties should be guided accordingly.

[FR Doc. 79-18916 Filed 6-15-79; 8:45 am].

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

General Information, Regulations, and Definitions; Matter Incorporated by Reference

[Docket No. HM-22; Amdt. No. 171-48]

49 CFR Part 171

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to update the reference in 49 CFR 171.7(d)(1) to the ASME Boiler and Pressure Vessel Code in order to recognize the 1977 edition of the ASME Code and the addenda thereto through December 31, 1978.

EFFECTIVE DATE: July 18, 1979.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Standards Division, Office of Hazardous Materials Regulation, Department of Transportation, 2100 Second Street, S.W., Washington, D.C., 20590, telephone 202-755-4902.

SUPPLEMENTARY INFORMATION: On April 23, 1979, the MTB published a notice of proposed rulemaking in the **Federal Register** (44 FR 23880), proposing to update the ASME code reference in § 171.7(d). The basis for this proposal was a petition from the Compressed Gas Association requesting that the reference be updated to reflect current improvements in the standard. The MTB has reviewed the complete standard and concurs with the improvements except for the provisions on ultrasonic testing of welds (paragraph UW-11(a)(7)).

Since publication of this notice, the MTB has not received any comments on this docket. Therefore, the ASME code through 1977 and the addenda published thereto through December 31, 1978, will be referenced in § 171.7(d) with the exception of paragraph UW-11(a)(7) as proposed by the notice.

In consideration of the foregoing, Title 49, Code of Federal Regulations, § 171.7(d)(1) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(1) ASME Code means section VIII (Division I) and IX of the 1977 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code," and addenda thereto through December 31, 1978, except paragraph UW-11(a)(7) of the code does not apply.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this final rule will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034), nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is available in the docket.

Issued in Washington, D. C. On June 7, 1979.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 79-18682 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 395

[BMCS Docket No. MC-86; Amdt. No. 78-6]

Drivers Declared Out of Service

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Regulations (FMCSR) are being amended by changing the criteria by which a driver may be placed out of service. With some exceptions, upon detection, a driver will be declared out of service for 8 consecutive hours for not having drivers' logs current on the day of examination and the prior 7 consecutive days. In the past, drivers who complied with the request to produce a log and who were found to be

in violation of the hours of service rule were removed from service, while drivers who failed to produce a log were usually given a citation since no out of service criteria were violated. Thus, these drivers were allowed to continue highway operations in a possibly fatigued state. With this change, drivers failing to produce current logs will be placed out of service and not be allowed to continue driving on the highways.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety, (202) 426-9767, or Mr. Gerald M. Tierney, Attorney, Motor Carrier and Highway Safety Law Division, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) was published on March 8, 1979, at 44 FR 12717 setting forth a proposal to declare a driver out of service for 8 consecutive hours for not having produced a driver's log current on the day of examination and the prior 7 consecutive days. An exception was provided in the event that the only failing was not having a log current on the day of examination and the prior day. In those instances, it was proposed that the driver would be given the opportunity to update the logs to the current duty status. Essentially, the earlier proposal is being adopted.

Background

Under prior requirements, drivers who failed to produce logs upon request of a special agent of the Federal Highway Administration (FHWA) were not placed out of service but were merely cited for a violation of the hours of service regulations. Thus, in certain circumstances, the intent of the present hours of service regulations, which are designed to protect the driver and the motoring public by removing fatigued drivers from operating on the highways, was circumvented.

Upon review, several sources indicated that a problem existed in the area relating fatigued drivers, non-current logs and excessive driving times. For instance, the Bureau of Motor Carrier Safety (BMCS) statistics for 1976 and 1977 indicated that a significant percentage of drivers did not have current logs. Of the driver violations found during roadside inspections in the year 1976, 20 percent were categorized as "no log" violations and 11 percent were categorized as "log not current" violations. Similarly, in 1977, 19 percent were categorized as "no log" violations and 13 percent were categorized as "log not current" violations. In addition, it had come to our attention that several States having hours of service requirements also suspected that drivers were exceeding the driving limitations of the States. Moreover, the Department of California Highway Patrol has proposed a statute for introduction regarding drivers' hours of service. The California statute is intended to give a traffic officer authorization to place out of service a driver who does not possess records or who has exceeded the hours of service requirements. The proposed statute which provides for presumption of a violation of driving limits when records are not made available upon demand by authorized personnel should result in placing these drivers out of service for an appropriate rest period.

Comments to the NPRM

Approximately 40 comments were received concerning this proposal. These comments have been carefully considered. Approximately 60 percent of the respondents were in favor of the proposal indicating that this action would improve consistent enforcement of the FMCSR.

The Director believes, on the basis of information provided in this rulemaking, that there is a strong possibility that drivers who do not prepare the driver's log and violate hours of service requirements pose a threat to other users of the highway. The objective of the logging requirements is to permit drivers, carriers, and responsible Federal and State authorities to monitor the hours of service to ensure that drivers do not work or drive for longer periods than are permitted. The FMCSR limit the number of hours a driver may work or drive within any specific period. The purpose of the limitation of hours of service is to remove from the highways the risks to safety posed by a fatigued driver and thus help to ensure that people are not needlessly killed or injured in highway accidents caused by fatigued drivers of commercial trucks and buses. Neither a driver nor a carrier can ensure compliance with the hours of service rules unless there is a continuous record of the time the driver spent on the job. The Regulations require drivers to keep a record of their working and driving time in the form of a driver's log.

Some respondents commented that the proposal would discriminate between classes of drivers. For instance it was explained that self-employed drivers could suffer a direct economic penalty when placed out of service for 8 hours, while a driver employed by a carrier under an hourly rate would suffer no economic loss. The purpose of the proposed rule is not, indiscriminately penalize different classes of drivers monetarily or otherwise, but to remove from the highway those drivers that are likely to be operating in a fatigued condition. The Director is aware that various drivers will be affected differently. However, once a self-employed driver has been placed out of service for not having a driver's log, the proposed rule should serve as a deterrent to future noncompliance of the logging requirements.

Many commenters indicated that placing the drivers out of service would delay the freight being transported for an 8-hour period and indicated that such a delay would pose security problems for most commodities transported, and additional problems in the transportation of perishable goods. Questions were also raised concerning the responsibility for delayed claims filed against the motor carrier. At the present time, the FMCSR provide for two basic out of service actions. One involves placing a motor vehicle out of service for being operated in an imminently hazardous condition. The second involves placing drivers out of service for exceeding the hours of service requirements. When vehicles are placed out of service, the vehicle cannot be operated until designated repairs are accomplished. The driver is free to continue driving as long as the driver does not operate the vehicle declared out of service. When a driver has been placed out of service for violation of the driver out of service rules, the driver may not drive until in compliance with the hours of service requirements. However, the vehicle can be driven by another qualified driver to destination or to any point designated by the motor carrier. The only requirement posed by the current proposal is that the driver who is in violation of the logging requirements not drive until 8 hours off duty have accumulated.

Some respondents indicated that the change was unfair to operating motor carriers since the requirement of preparing a driver's log is basically the responsibility of the driver and placing the driver out of service, which delays the freight, places an undue burden upon the operating motor carrier and for this reason, the proposal should not be adopted. This argument is invalid. The present logging requirements found in §§ 395.8 and 395.9 of the FMCSR make it

clear that the preparation of the driver's logs is a dual responsibility involving the driver and the carrier. The Regulation requires a driver to prepare the log. In addition, the motor carrier has the responsibility to ensure that its drivers prepare the required logs. The driver is in many ways an extension of the motor carrier, and to separate the driver's from the carrier's responsibilities in log preparation is unreasonable. Failure of drivers to prepare logs or falsification of the entries makes both the carrier and the driver liable to prosecution. Affirmative action is required by the motor carrier to ensure that its employees follow the required regulations.

Concern was expressed by some commenters about drivers who do not have their log book with them at the time of the inspection because they are not required to prepare a log or because they may have lost their log book on the current trip. The proposed requirement that a driver be placed out of service for not having a log would only apply to drivers who are required to prepare logs. There are currently exemptions contained in the Safety Regulations for preparation of the driver's log and they are not affected by this change. For example, logs are not required for regularly employed drivers operating within a 50-mile radius of there terminal where they report for work, for certain drivers of lightweight vehicles or for drivers operating in the State of Hawaii. Also, drivers who are used for the first time or intermittently are not required to have logs available for the preceeding 7 days. A driver would not be placed out of service for failure to prepare the log if in one of the exempt categories. A driver who is required to prepare a log and fails to produce one, for any reason, including that the log was lost will be placed out of service.

A driver failing to have a log current on the day of examination and the prior day, but who has completed logs up to that time, will not be placed out of service but will be given the opportunity to prepare the logs to current status prior to continued examination. Several commenters stated for a shorter exception period. One commenter states this exception seemed to minimize the importance of current logs. Another added "If the log examination is made later in the day, the driver could be nearly 48 hours behind. Since the purpose of the log is to monitor actively and remove fatigued drivers from highways, this grant of an exemption period would not be stringent enought to prohibit a driver from failing to keep the log current." In an effort to determine if these comments have merit, it is the BMCS intention to evaluate the effects of this out of service criteria change during the summer months of 1979. If the results of the data so indicate, further rulemaking action will be considered.

One commenter indicated that a driver could be placed in double jeopardy, if the driver did not have logs and was placed out of service first by a Federal agent and then by State authorities which have adopted the FMCSR. This should not happen. Once a driver has been declared out of service by Federal authorities for failure to prepare the log, the driver may not reenter service until having been off duty for 8 consecutive hours and is in compliance with the logging requirements.

It has been requested that further consideration be given to placing drivers out of service who are transporting passengers. A bus driver who is on an extended charter or special operation and is placed out of service will cause undue hardships on passengers by causing a delay in transportation and could create serious problems concerning other factors such as hotel reservations and similar services. When a bus driver is placed out of service, consideration is usually given to the passengers. Bus inspections are normally performed at terminals or other locations where rest facilities are usually available to the passengers. The transportation of passengers, by its very nature, should impose upon the motor carrier and its driver a strong obligation to ensure that its operation is in full compliance. The consequences involving bus accidents cannot be minimized by providing an exemption in this rule by arguing that it may cause inconvenience to passengers. In addition, in 1977, only 6 drivers were cited for failing to prepare a daily log while transporting passengers.

Commenters addressed notification of the carriers in certain instances and questioned whether our policy in this matter has changed. It has not. The authority to declare drivers out of service as specified in § 395.13 authorizes the appropriate representatives of the Federal Highway Administration to notify motor carriers that drivers have been placed out of service. This does not imply that when drivers are placed out of service that the motor carrier will be contacted in each and every instance. It has been the policy of this Administration to notify carriers when their vehicles or drivers have been declared out of service only in specific cases. These instances involved vehicles transporting hazardous materials requiring the vehicle to be attended, vehicles transporting perishable commodities, tank vehicles transporting commodities requiring temperature control, vehicles transporting livestock, and instances which prevent the driver from returning to driving duties during the same day after having been placed out of service.

The majority of comments to this docket support the proposed change. Several drivers were in favor of this rule change. As one driver pointed out, an injustice is done to the conscientious driver who keeps an up-to-date log, if we continue to let other drivers continue in highway operations when only a citation is issued for no log. Another driver commented that this change would eventually eliminate no log drivers or cheaters and would help to remove fatigued drivers from the highway. Also, many carriers strongly supported the changes and indicated that they felt it will help them maintain the type of control necessary to keep operations legal and fatigued drivers off the road. The International Brotherhood of Teamsters applauded the effort and indicated that since we are not changing the basic hours of service requirements there will be no undue burden placed upon carriers or drivers. Also, the American Trucking Association, Inc., supported the change.

Rule Discussion

The FHWA is amending the FMCSR, with respect to the out of service criteria, to declare a driver out of service for failing to have a driver's log current on the day of examination and for the prior 7 consecutive days. An exception will be provided to the above in the event that the only failure is not having a log current on the day of examination and the prior day. In these instances the driver will be given the opportunity to prepare the logs to current status. Provided the driver does not refuse to prepare current logs and no other out of service criteria are violated, the driver may continue to drive.

A driver placed out of service would not be allowed to remain on duty. To the contrary, the driver would be required to be off duty for 8 consecutive hours to have the opportunity to obtain adequate rest before again operating a heavy commercial vehicle on our highways. When applicable, the consecutive 8 hour off duty period may include sleeper berth time.

An exception to this procedure would be invoked, and is provided in the rule change, for drivers transporting hazardous materials subject to § 397.5,

which requires the vehicle to be attended.

To determine the exact nature of the out of service violation, it is required that the driver explain the reason for being placed out of service in the remarks section of the log as provided in § 395.8(o).

This Final Rule is intended to further encourage drivers to maintain current logs and provide the FHWA with a more consistent rule designed to remove the potentially unsafe and fatigued driver from the public highway. A copy of the Final Regulatory Evaluation accompanying this rule, which examines the need for this regulatory action and assesses its potential impacts, is available in the public docket for review. As indicated later in this document, the FHWA has determined that the economic consequences of the Final Rule are not significant.

Accordingly, the Federal Motor Carrier Safety Regulations are amended as follows:

1. 49 CFR 395.13 is revised to read:

§ 395.13 Drivers declared out of service.

(a) Authority to declare drivers Out of Service. Every special agent of the Federal Highway Administration (as defined in Appendix B to this subchapter) is authorized to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out of service criteria as set forth in paragraph (b) of this section.

(b) *Out of Service critieria.* (1) No driver shall drive or remain on duty in excess of the maximum periods permitted in this part.

(2) No driver, if required to have a driver's log under §§ 395.8 and 395.9, shall fail to have a log current on the day of examination and for the prior 7 consecutive days. Exception: A driver failing only to have possession of a log current on the day of examination and the prior day, but has completed logs up to that time, will be given the opportunity to prepare logs to current status.

(c) *Responsibilities of the motor carrier.* (1) No motor carrier shall:

(i) Require or permit a driver who has been declared out of service to operate a motor vehicle until that driver may lawfully do so under the rules in this part.

(ii) Require a driver who has been declared out of service for failure to prepare a daily log to operate a motor vehicle until that driver has been off duty for 8 consecutive hours and is in compliance with §§ 395.8 and 395.9. The consecutive 8-hour off-duty period may include sleeper berth time.

(2) A motor carrier shall complete the appropriate portion of the form provided and deliver the copy of the form either personally or by mail to the Director, Regional Motor Carrier Safety Office, Federal Highway Administration, at the address specified upon the form within 15 days following the date of examination. If a motor carrier sends the form to the Director by mail, delivery is made upon the date when it, or the envelope containing it, is postmarked.

(d) *Responsibilities of the driver.* (1) No driver who has been declared out of service shall operate a motor vehicle until that driver may lawfully do so under the rules in this Part.

(2) No driver who has been declared out of service, for failing to prepare a driver's log, shall operate a motor vehicle until having been off duty for 8 consecutive hours and is in compliance with §§ 395.8 and 395.9.

(3) A driver to whom a form has been tendered declaring the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.

(4) Section 395.13 does not alter the hazardous materials requirements prescribed in § 397.5 pertaining to attendance and surveillance of motor vehicles.

2. 49 CFR 395.8(o) is amended by adding the following sentence at the end of the present rule:

§ 395.8 Remarks.

(o) * * * Explain the reason for being placed out of service, pursuant to § 395.13.

Note.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Mr. Gerald J. Davis of the program office at the address specified above.

(49 U.S.C. 304, 1655(e); 49 CFR 1.48 and 301.60.)

Issued on: June 8, 1979.

Howard L. Anderson,

Associate Administrator for Safety.

[FR Doc. 79-18923 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking of Marine Mammals Incidental to Commercial Fishing Operations—Permits, Etc.

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Interim final regulation.

SUMMARY: The intent of the amendment is to clarify the period during which observers remain aboard tuna purse seiners by defining the term "completed vessel trip" in regulations governing the taking of marine mammals incidental to tuna purse seine fishing in the eastern tropical Pacific Ocean during 1978, 1979, and 1980.

DATES: This regulation is effective June 18, 1979. Written comments may be submitted on or before July 18, 1979. Requests for a public hearing and justification for such a request must be received by July 9, 1979.

ADDRESSES: Submit comments and hearing requests to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: William P. Jensen, Marine Mammal Program Manager, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235, telephone 202-634-7461.

SUPPLEMENTARY INFORMATION: Regulations governing the taking of marine mammals incidental to tuna purse seine fishing in the eastern tropical Pacific Ocean during 1978, 1979, and 1980 limit the incidental mortality of marine mammals permitted under the general permit. Annual mortality is estimated in accordance with methodology published in the **Federal Register** on October 4, 1976, March 11, 1977, and May 4, 1977 (41FR43726, 42FR13574, and 42FR22573), respectively.

This methodology utilizes kill-per-trip data for completed trips carrying NMFS observers and kill-per-day data reported by radio from observed vessels at sea.

The placement of observers on tuna vessels is designed to obtain a statistically valid sample for estimating total porpoise mortality. One hundred thirty completed trips annually is

considered a valid sample, however, a trip has not been defined for purposes of establishing when a trip is complete. Because of the importance of establishing what constitutes a completed trip, a clarifying definition is being promulgated which obligates a vessel certificate holder to carry an observer until the vessel returns to port and unloads more than 400 tons of any species of tuna or unloads an amount of any species of tuna equivalent to one-half of the vessels carrying capacity or has spent 40 days or more at sea from the date of departure. The regulations also provide that the NMFS regional director may give exemptions to the requirements for good cause.

The clarifying definition is being promulgated to be effective immediately to prevent any misunderstandings that may arise concerning fulfillment of the obligation to carry an observer. The efficient operation of the observer program is critical for monitoring the porpoise quotas. Good cause for waiver of the normal 30 day period between publication and the effective data therefore exists. However, public comment on the regulation will be accepted for 30 days after publication of the definition.

Under Executive Order 12044 (43FR23170) and Department of Commerce Administrative Order 218-7 (44FR2082), the Assistant Administrator for Fisheries has made an initial determination that this is not a significant regulation.

The primary author of this rulemaking is Mr. William P. Jensen, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, (202) 634-7461.

Regulation Promulgation

Accordingly, 50 CFR Chapter II, Part 216 is amended by revising § 216.24(d)(2)(iii)(A) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that he is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714-293-6540 at least five days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel certificate holder is obligated to carry an observer until the vessel returns to port and unloads more than 400 tons of any species of tuna or unloads an amount of any species of tuna equivalent to one-half of the vessel's carrying capacity; or has spent 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received at least ten (10) days prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

* * * * *

Dated: June 11, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-18876 Filed 6-15-79; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 118
Monday, June 18, 1979

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.

DEPARTMENT OF ENERGY

[10 CFR Part 490]

[Docket No. CAS-RM-79-110]

Emergency Building Temperature Restrictions: Notice of Intent Regarding Delegation of Implementation Authority to the States and Allocation of Federal Funds To Meet State Costs

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: On June 1, 1979, the Department of Energy (DOE) published proposed regulations in the **Federal Register** (44 F.R. 31922) in connection with implementation of the President's "Standby Conservation Plan No. 2, Emergency Building Temperature Restrictions." In that notice DOE stated its intention to delegate to each state governor who requests such delegation a substantial portion of its authority under the Plan. This notice is intended to provide information as to the authorities and functions which DOE proposes to delegate to those states requesting delegation, and the formula by which Federal funds will be provided to the states to which delegation is made to meet the costs of State implementation activities.

DATES: Written comments must be received on or befor June 29, 1979, 4:30 p.m.

ADDRESS: Send comments to Docket Number [CAS-RM-79-110] Margaret Sibley, Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Henry G. Bartholomew, Office of Buildings and Community Systems, Office of Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, N.W., Room 2221C, Washington, D.C. 20585, (202) 376-4476.

Mary Doyle, Office of General Counsel, 20 Massachusetts Avenue, N.W., Room 2221C, Washington, D.C. 20585, (202) 376-4100.

SUPPLEMENTARY INFORMATION: DOE hereby gives notice of its intent regarding delegation of implementation authority and allocation of Federal funds to the states and territories pursuant to Section 9(c) of "Standby Conservation Plan No. 2, Emergency Building Temperature Restrictions" (the Plan). On June 1, 1979, DOE published in the **Federal Register** (44 FR 31922) a Notice of Proposed Rulemaking and Public Hearings, containing proposed regulations in connection with implementation of the Plan. In that notice DOE stated its intention to delegate to each state Governor who requests such a delegation and through the states to local governments a substantial portion of its authority under the Plan.

DOE will enter into agreements with each state or territory whose Governor requests delegation of implementation authority. Under these agreements, the Governors will accept delegation of all of the following authorities and functions: (1) public education and outreach to inform all affected building owners and operators of their obligations under DOE regulations implementing the Plan; (2) distribution to building owners and operators of forms and instructions prepared by DOE; (3) response to questions from the public on compliance requirements and use of the forms; (4) selective inspection of buildings for compliance; and (5) compliance inspections in response to complaints of violations received from the public. The agreements may provide that the Governors may redelegate to units of local government some or all of the enumerated authorities and functions.

Requests for delegation of implementation authority may be submitted by letter from the Governor of a state or territory or his delegatee addressed to:

Secretary, Department of Energy, 1000 Independence Avenue, N.W., Washington, D.C. 20585, Attention: Emergency Building Temperature Restrictions Program, Office of Conservation and Solar Applications.

Federal funds in the amount of $6.7 million will be available for distribution to those states and territories to which delegation is made to meet the costs of state and local government activities under the agreements. The formula for allocation of these funds is as follows: 25 percent of the funds will be distributed in equal shares to states requesting delegation and 75 percent of the funds will be apportioned to the states and territories in shares which reflect each state's or territory's population in relation to the total population of the United States. Federal funds will be distributed to the States and territories in the following amounts:

BILLING CODE 6450-01-M

STATE ENFORCEMENT ALLOCATIONS

STATE/ TERRITORY	POPULATION (1978)*	25% EQUAL ALLOCATION TO ALL STATES	75% BASED ON POPULATION (STATES & TERRITORIES)	TOTAL STATE/ TERRITORY ALLOCATION
Alabama	3,742,000	$ 32,843	$84,841	$117,684
Alaska	403,000	32,843	9,137	41,980
Arizona	2,354,000	32,843	53,371	86,214
Arkansas	2,186,000	32,843	49,562	82,405
California	22,294,000	32,843	505,465	538,308
Colorado	2,670,000	32,843	60,536	93,379
Connecticut	3,099,000	32,843	70,263	103,106
Delaware	583,000	32,843	13,218	46,061
District of Columbia	674,000	32,843	15,281	48,124
Florida	8,594,000	32,843	194,849	227,692
Georgia	5,084,000	32,843	115,268	148,111
Hawaii	897,000	32,843	20,337	53,180
Idaho	878,000	32,843	19,907	52,750
Illinois	11,243,000	32,843	254,909	287,752
Indiana	5,374,000	32,843	121,843	154,686
Iowa	2,896,000	32,843	65,660	98,503
Kansas	2,348,000	32,843	53,235	86,078
Kentucky	3,498,000	32,843	79,309	112,152
Louisiana	3,966,000	32,843	89,920	122,763
Maine	1,091,000	32,843	24,736	57,579
Maryland	4,143,000	32,843	93,933	126,776
Massachusetts	5,774,000	32,843	130,912	163,755
Michigan	9,189,000	32,843	208,339	241,182
Minnesota	4,008,000	32,843	90,872	123,715
Mississippi	2,404,000	32,843	54,505	87,348
Missouri	4,836,000	32,843	109,645	142,488
Montana	785,000	32,843	17,798	50,641
Nebraska	1,565,000	32,843	35,483	68,326
Nevada	660,000	32,843	14,964	47,807
New Hampshire	871,000	32,843	19,748	52,591
New Jersey	7,327,000	32,843	166,123	198,966
New Mexico	1,212,000	32,843	27,479	60,322
New York	17,748,000	32,843	402,395	435,238
N.Carolina	5,577,000	32,843	126,446	159,289
North Dakota	652,000	32,843	14,783	47,626
Ohio	10,749,000	32,843	243,709	276,552
Oklahoma	2,880,000	32,843	65,297	98,140
Oregon	2,444,000	32,843	55,412	88,255
Pennsylvania	11,750,000	32,843	266,404	299,247
Rhode Island	935,000	32,843	21,199	54,042
S.Carolina	2,918,000	32,843	66,159	99,002
South Dakota	690,000	32,843	15,644	48,487
Tennessee	4,357,000	32,843	98,785	131,628
Texas	13,014,000	32,843	295,062	327,905
Utah	1,307,000	32,843	29,633	62,476
Vermont	487,000	32,843	11,042	43,885
Virginia	5,148,000	32,843	116,719	149,562
Washington	3,774,000	32,843	85,567	118,410
W. Virginia	1,860,000	32,843	42,171	75,014
Wisconsin	4,679,000	32,843	106,085	138,928
Wyoming	424,000	32,843	9,613	42,456
American Samoa	30,100		682	682
Canal Zone	40,000		2,152	2,152
Guam	95,900		2,174	2,174
Puerto Rico	3,205,000		72,666	72,666
Trust Territories of the Pacific Islands	125,500		2,845	2,845
Virgin Islands	94,900		2,152	2,152
TOTAL	221,632,400	$1,674,993	$5,024,999	$6,699,992

* Territories - 1976; Source: Bureau of Census

BILLING CODE 6450-01-C

If any state or territory does not request delegation of implementation authority, that state's or territory's share of Federal funds will be retained by DOE to meet the cost of Federal implementation and enforcement in that jurisdiction.

Comment is invited on this Notice of Intent regarding delegation of authority and allocation of Federal funds to the states. Interested parties may submit written comments with respect to the proposed action to: Docket Number CAS–RM–79–110, Margaret Sibley, Office of Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, NW., Room 2221C, Washington, D.C. 20585. Comments should be identified on the outside envelope and on the documents submitted with the designation: "Emergency Building Temperature Restrictions: State Delegation." Fifteen copies should be submitted.

All comments received by DOE will be retained by DOE and made available for public inspection in the DOE Reading Room, Room GA–152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m. Monday through Friday. Comments should be received by June 29, 1979, 4:30 p.m., in order to be considered.

This notice of intent concerns a discretionary activity of DOE and is not a regulatory action for purpose of the notice and comment requirements of the Administration Procedure Act (5 U.S.C. 551) and the Department of Energy Organization Act (42 U.S.C. 7101).

Issued in Washington, D.C. on June 14, 1979.

Kelly C. Sandy III,

Acting Deputy Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 79-19082 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 79-CE-14]

Transition Area—Kearney, Nebr.; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Kearney, Nebraska, to provide additional airspace for aircraft executing a new instrument approach procedure to the Kearney, Nebraska Municipal Airport which is based on a Non-Directional Radio Beacon (NDB), a navigational aid being installed 5.13 miles south of the airport by the City of Kearney, Nebraska.

DATES: Comments must be received on or before July 21, 1979.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

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

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

FOR FURTHER INFORMATION CONTACT: Benny J. Kirk, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE–538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before July 21, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Kearney, Nebraska. To enhance airport usage, a new instrument approach procedure is being developed for the Kearney, Nebraska Municipal Airport utilizing an NDB being installed 5.13 miles south of the airport by the City of Kearney, Nebraska. The establishment of an instrument approach procedure based on this navigational aid entails alteration of the transition area at Kearney, Nebraska, at and above 700 feet above ground level (AGL) within which aircraft are provided additional air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by altering the following transition area:

Kearney, Nebraska

That airspace extending upward from 700 feet above the surface within a 9.5 mile radius of Kearney Municipal Airport (latitude 40°43'37"N, longitude 99°00'04"W.)

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of transportation Act (49 U.S.C. 1655(c)); sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on June 6, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

FR Doc. 79-18947 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1700]

Human Prescription Drugs in Oral Dosage Forms; Proposed Exemption of Potassium Supplements in Effervescent Tablet Form Containing Not More Than 50 Milliequivalents of Potassium

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes for public comment an exemption from child-protection packaging requirements for potassium supplements in the form of individually packaged effervescent tablets each containing not more than 50 milliequivafents of potassium. An exemption for effervescent potassium tablets containing not more than 25 milliequivalents of potassium is currently in effect. The Commission believes that child-protection packaging for the larger dose tablets is unnecessary to protect children from serious illness or injury, based on the absence of past adverse experience with effervescent potassium tablets and on test data indicating that their effervescence inhibits ingestion in dangerous amounts. Mead-Johnson Laboratories petitioned the Commission to take this action.

DATES: Comments, preferably in five copies, on this proposed exemption should be submitted on or before August 17, 1979. Comments and other relevant material received after this date will be considered only to the extent practicable.

If the Commission issues a final regulation concerning the exemption, the Commission proposes that the exemption become effective on the date the final regulation is published in the Federal Register.

ADDRESS: Comments should be addressed to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, N.W., Third floor, Washington, D.C. 20207. Copies may be examined in the Office of the Secretary as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Marozzi, Division of Safety Packaging and Scientific Coordination, Directorate for Engineering and Science, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301–492–6477.

SUPPLEMENTARY INFORMATION On November 23, 1977, the Consumer Product Safety Commission received a petition (PP 78–1) from Mead-Johnson Laboratories, Evansville, Indiana, requesting an exemption from child-protection packaging requirements for "K-Lyte" double strength tablets. "K-Lyte" double strength is a potassium supplement in effervescent tablet form, each tablet containing 50 milliequivalents (mEq) of potassium. Potassium supplements are generally used to counter potassium deficiencies in the body, caused by use of diuretics, diet deficiencies, or other causes. Overdosages of potassium may result in listlessness, mental confusion, or muscle weakness in the extremities; severe overdosages can result in cardiac arrest.

Potassium supplements containing over 25 mEq of potassium are presently subject to the Commission's child-protection packaging requirements, set forth at 16 CFR 1700.14(a)(10). Potassium supplements such as "K-Lyte" single strength (25 mEq) tablets are currently exempted from these requirements at 16 CFR 1700.14(a)(10)(vi).[1] For the reasons stated below, the Commission has decided to propose an exemption for potassium supplements in individually packaged effervescent tablet form, containing no more than 50 mEq of potassium per tablet. The Commission, therefore, proposes to revise the existing exemption for potassium supplements to set a higher exemption level.

Grounds for Exemption

Mead-Johnson contends that the same grounds which justified an exemption for the "K-Lyte" single strength tablets support the current request. The company bases its petition on studies involving 302 young children exposed to the three flavors of "K-Lyte" single-strength, indicating that the tablet and/or effervescent characteristics of the products are repulsive to children. The company points out that the effervescent formulation is the same in the double strength tablets as it is in the single strength product. Additionally, the company bases its petition on the low acute toxicity of the drug and the absence of any recorded incidents of accidental overdosage of "K-Lyte" single strength by a child during twelve-and-one-half years of marketing experience.

The Mead-Johnson findings as to the lack of past adverse experience with "K-Lyte" single strength tablets have been largely confirmed by the Commission staff. A search of the data sources available to the Commission staff, including the National Electronic Injury Surveillance System; Department of Health, Education, and Welfare (DHEW) Poison Control Statistics, National Clearinghouse for Poison Control Centers; in-depth investigations; and death certificates and consumer complaints on file with the Commission revealed only 2 cases where "K-Lyte" or similar tablets containing potassium salts were ingested. No hospitalizations or symptoms were reported in either of the 2 cases.

The Commission staff also conducted a toxicological evaluation of "K-Lyte" double strength. The staff used the Mead-Johnson data showing that no child among 302 children ingested more than one-half tablet of the single-strength "K-Lyte" (most ingested considerably less) and Dorsey Laboratories data on testing of 200 children where only 1 child ingested more than 1¼ of their 20 mEq potassium tablets (an amount equal to approximately half of a double strength "K-Lyte" tablet). The use of these data is appropriate since "K-Lyte" double strength does not differ from the lower strength supplements in effervescence or taste, the properties which are said to inhibit ingestion. Based upon extrapolations from adult overdosage cases where prominent symptomatology was exhibited (i.e., the ability of the kidney to maintain normal potassium levels had been exceeded), the staff estimated that approximately 10% of an ingested dose of the drug had an additive effect upon the amount of potassium normally maintained in the blood plasma. In other than extreme overdosage situations in which the drug is consumed rapidly, the normally functioning kidney would prevent excess blood potassium levels from developing. Assuming that 10% of any ingested dose would have an additive blood level effect even in the absence of kidney overload, the staff concluded that if accidental ingestion by a child of one-half tablet of "K-Lyte" double strength should occur (i.e., approximately the equivalent of one single-strength tablet), the plasma concentration would not reach a level which would be hazardous.

Furthermore, based upon staff calculations, a 10 Kg child (22 lbs) would have to ingest a minimum of two double strength tablets before physiological effects such as listlessness and muscular

[1] On February 11, 1974, the Commission published a notice in the Federal Register (39 FR 5197) suspending the effective date of the child-protection packaging requirements for oral prescription drugs as they applied to potassium supplements which are individually packaged effervescent tablets, each containing not more than 25 milliequivalents of potassium. Elsewhere in this issue of the Federal Register the Commission issues a final rule exempting potassium supplements containing not more than 25 mEq of potassium from the child-protection packaging requirements.

weakness of extremities might be expected under these criteria. However, as noted earlier, no child ingested more than the equivalent of ½ double strength tablet, and only 4% of 500 children ingested more than the equivalent of a quarter tablet.

The staff calculations provide for a wide margin of safety since they are based upon a worst case analysis and do not take into consideration the fact that the kidney will rapidly eliminate excess potassium unless there is severe renal insufficiency or an extremely large dose has been ingested very rapidly.

The Commission also solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. Based on the lack of adverse human experience and the deterrent qualities of the effervescence, FDA concluded that the exemption should be granted.

The Commission also solicited comments from the Technical Advisory Committee on Poison Prevention Packaging. Of the 7 members that commented on the petition, 5 recommended granting the exemption and 2 recommended denial, expressing concern for the toxic potential of potassium salts. The five members who recommended granting the petition pointed to the evidence showing children's distaste for the product and the lack of adverse effects reported on the lower strength potassium supplements.

Finding

Based on the lack of adverse human experience reported on the lower strength potassium supplements and the test data indicating that the effervescence of the drug inhibits child ingestion, the Commission finds that this drug in the dosage and form specified does not pose a risk of serious personal illness or injury to children. The Commission notes that while the available potassium is double that of the single strength product, the effervescent properties of the tablets are the same. The Commission emphasizes that this proposed exemption is limited to potassium supplements in individually packaged effervescent tablets, containing not more than 50 mEq of potassium and containing no other substance subject to the requirements for special packaging under 16 CFR 1700.14(a)(10). The applicability of the requirement of special packaging at 16 CFR 1700.14(a)(10) is not affected by this proposal. Products within the scope of this proposal must continue to be in special packaging until the effective date of any final regulation.

Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see 16 CFR Part 1021; 42 FR 25494) provide that exemptions to an existing standard that do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment and environmental review of exemptions from regulations is, therefore, generally not required (§ 1021.5(b)(1)). The rules also state that environmental review of rules requiring poison prevention packaging is generally not required (1021.5(b)(3)).

With respect to this exemption of potassium supplements in effervescent tablet form from poison prevention packaging, the Commission finds that the rule will have no significant effect on the human environment and that no environmental review is necessary.

Conclusion and Promulgation

Having considered the petition, the studies of child behavior submitted by the petitioner, Poison Control Statistics from the DHEW National Clearinghouse for Poison Control Centers, and other human experience data and medical and scientific literature, and having consulted, pursuant to section 3 of the Poison Prevention Packaging Act (PPPA) of 1970, with the Technical Advisory Committee on Poison Prevention Packaging established in accordance with section 6 of the act, the Consumer Product Safety Commission concludes that an exemption from the special packaging requirements for potassium supplements in effervescent tablet form each containing not more than 50 mEq of potassium should be proposed as set forth below. Accordingly, pursuant to the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, secs. 2(4), 3, 5; 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–572, sec. 30(a); 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes that 16 CFR 1700.14 be amended by revising paragraph. (a)(10)(vi), as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription Drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal Law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15(a)(b), and (c) except for the following:

(vi) Potassium supplements in individually-packaged effervescent tablet form, each tablet of which contains not more than 50 milliequivalents of potassium.

Dated: June 13, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-18964 Filed 6-15-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 271]

[Docket RM79-44]

Ceiling Prices; High-Cost Natural Gas

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking setting forth proposed definitions for natural gas produced from geopressured brine, from coal seams, and from Devonian shale.

DATES: Comments should be filed by July 16, 1979.

ADDRESSES: All findings should reference Docket No. RM79–44 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275–4212.

On December 1, 1978, the Federal Energy Regulatory Commission issued Interim Regulations in Docket No. RM79–3 implementing the Natural Gas Policy Act of 1978 (NGPA) (43 F.R. 56448). Subpart G of Part 271 set forth regulations implementing section 107(a) of the NGPA, to provide incentive prices for deep, high-cost natural gas.

Section 107(b)(2)–(4) also authorized the Commission to establish incentive prices for gas from geopressured brine, occluded natural gas produced from coal seams, gas from Devonian shale, as well as gas produced from other conditions which have been determined by the Commission to present extraordinary

risks or costs. However, due to statutory deadlines imposed by the NGPA, the Commission did not promulgate regulations to implement section 107(b).

The Commission believes that precise definitions for Section 107(c)(2) through (4) are required; i.e., natural gas "produced from geopressurized brine," "from coal seams," and "from Devonian shale." Pursuant to section 121(b) of the NGPA, these categories will no longer be subject to price regulation after the effective date of the incremental pricing rule required by section 201 of the Act. This proposed rule suggests definitions for these categories which would be used to implement the deregulation provisions as well as for pricing determinations if incentive prices for these categories are established. We specifically invite comments on these definitions.

The procedures to be used to determine whether or not gas is subject to the deregulation provisions of section 121(b) of the NGPA will be similar to those now governing determinations of eligibility for prices under sections 102, 103, 107, and 108 of the NGPA. More specifically, applicants will make filings with the appropriate jurisdictional agency for a determination which will be subject to Commission review. Accordingly, notice is hereby given that the Commission intends to prescribe filing requirements similar to those established for other categories in Subpart B of Part 274. Comments are solicited on the specific documents, oath statements, etc. which should be submitted to support an application for determination for the categories covered by this proposal. The Commission will review these submissions and promulgate the filing requirements together with the appropriate definitions.

Interested persons are invited to submit written comments on the proposed regulations to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM79–44 on the outside of the envelope and on all documents submitted to the Commission.

Fifteen (15) copies should be submitted. All comments and related information recevied by the Commission by July 16, 1979, will be considered prior to the promulgation of the final regulations.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.* Public Utility Regulatory Policies Act of 1978, P.L 95–617, Natural Gas Policy Act of 1978, P.L. 95–621, Department of Energy Organization Act, P.L. 95–91, E.O. 12009, 43 FR 46267).

In consideration of the foregoing, it is proposed to amend Part 271 of subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

1. Subpart G of Part 271 is amended by adding the following sections:

§ 271.710 Definition of "natural gas produced from geopressured brine."

Natural gas produced from geopressured brine" means: natural gas dissolved insubsurface brine aquifers with reservoir geopressures substantially in excess of normal saltwater hydrostatic pressures, such geopressures being due, in part, to the formation waters bearing a portion of the weight of the sedimentary over overburden.

§ 271.720 Definition of "occluded natural gas produced from coal seams."

"Occluded natural gas produced from coal seams" means: natural gas released during a mechanical degradation process from entrapment between the seams and in the micropores of beds of coal.

§ 271.730 Definition of "natural gas produced from Devonian shale."

Natural gas "produced from Devonian shale" means: natural gas produced from the fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period as generally found in the subsurface of the Applachian Basin and in surface outcrops around its periphery. For the purpose of this definition, Devonian shale is defined as that shale stratigraphic interval that lies between the base on the Mississippian Berea Sand or, if absent, the base of the Osage Series, and the top of the Onondaga limestone formation or its chert equivalent, the top of the Hunton group of carbonates.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–18953 Filed 6–15–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. RM79–40]

[18 CFR Part 281]

Procedures for Evaluating the Economic Practicability and Reasonable Availability of Alternative Boiler Fuel for Larger Boiler Facilities

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Clarification.

SUMMARY: In the **Federal Register** of May 8, 1979 (44 FR 26894), the Federal Energy Regulatory Commission published a proposed rule (18 CFR Part 281, Subpart C) for determining when alternative boiler fuel is available for essential agricultural users. That proposal included a proposed deadline of June 15, 1979, by which users would be required to file petitions for rulemaking. In response to several inquiries about the June 15 deadline, the Commission wishes to emphasize that the requirement to file petitions for rulemaking by June 15 is nothing more than a proposal at this point. Therefore, these petitions need not be filed. In addition, the provision in final regulations published in the **Federal Register** of May 8, 1979 (44 FR 26855), which refers to this same requirement, has no present effect since Subpart C of Part 281 has not been issued as a final rule.

FOR FURTHER INFORMATION CONTACT: Mary Jane Reynolds, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 8000, Washington, D.C., 20426, (202) 275–4283.

June 8, 1979.

SUPPLEMENTARY INFORMATION: The Commission has had inquiries concerning the proposed filing requirements contained in its proposed rule for determining when alternative boiler fuel is available for essential agricultural users (Docket No. RM79–40). It is emphasized that the proposed deadline of June 15, 1979, by which users would be required to file petitions for rulemaking, is nothing more than a proposal at this point. All of the provisions of the proposed rule, including all filing dates, are subject to reevaluation by the Commission prior to the issuance of a final rule. No such final rule has been issued to date.

The Commission also has had a number of inquiries concerning the filing requirements of § 281.211(b)(1)(ii)(D) of its Final Regulation for the Implementation of Section 401 of the Natural Gas Policy Act (Order No. 29, Docket No. RM79–15, May 2, 1979).[1] That section would require an essential agricultural user "to which Subpart C applies" to file a copy of its petition for alternative fuel determination along with a request for classification of its

[1] On May 23, 1979, the American Bakers Association, the American Meat Institute, and the National Milk Producers Federation filed a joint request with the Commission for extension of time for the submitting of copies of petitions for alternate fuel determination.

essential agricultural use requirements as priority 2 entitlements.

Section 281.211(b)(1) requires these requests for classifications as priority 2 entitlements to be filed by June 15, 1979.

The "Subpart C" referred to is that part of the Commission's regulations being considered in Docket No. RM79–40. Since no rule has yet been issued in that docket, Section 281.211(b)(1)(ii)(D) has no present effect concerning requests for classification otherwise required by § 281.211(b)(1). Because "Subpart C" has not yet been issued, essential agricultural users filing requests under § 281.211(b)(1) are not presently required to file accompanying copies of petitions for alternate fuel determinations.

Accordingly, all interstate natural gas pipelines should consider informing their customers that June 15, 1979, is only a proposed deadline for filing petitions for alternate fuel determinations, that it is not yet in effect, and that it may be modified from the date proposed in Docket No. RM79–40, depending on what final rule is eventually issued. The pipelines should also inform their customers that 18 CFR § 281.211(b)(1)(ii)(D) does not yet affect any filings by essential agricultural users, since the "Subpart C", to which that section refers, has not yet been enacted. Finally, the pipelines should consider requesting that their distributor customers pass on to their essential agricultural customers (end-users) this clarification of the proposed rule in Docket No. RM 79–40 and the final rule in Docket No. RM79–15.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18786 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

VETERANS ADMINISTRATION

[38 CFR Ch. I]

Improving Government Regulations; Semiannual Agenda

AGENCY: Veterans Administration.

ACTION: Semiannual agenda of regulations, significant and nonsignificant, under development or review.

SUMMARY: This agenda announces the regulations, both significant and nonsignificant, that the Veterans Administration will have under development and review during the 6-month period from June 18, 1979 through December 16, 1979. The Veterans Administration's purpose in publishing this agenda is to give the public notice for comment on those regulations under development or review during this 6-month period.

DATE: Comments must be received on or before August 17, 1979.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

FOR FUTHER INFORMATION CONTACT: Mr. W.E. Stewart, Management Services (61), 810 Vermont Avenue, NW., Washington, DC 20420. (202–389–3770).

SUPPLEMENTARY INFORMATION: Comments should be addressed to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington DC 20420. All written comments will be available for public inspection until August 27, 1979, at the above address, room 132, between the hours of 8 am and 4:30 pm Monday through Friday (except holidays). Persons visiting the VA Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit (271A) in room 132. Persons visiting or calling VA field stations will be informed that the records are available for inspection only in Central Office.

Executive Order 12044, "Improving Government Regulations" requires that executive agencies publish, every 6 months, in the **Federal Register** a semiannual agenda of regulations under development and review. The Veterans Administration's next semiannual agenda of regulations will be published in the December 17, 1979 issue of the **Federal Register.**

Approved: June 11, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Legal authority	Title	Brief description	Knowledge official
	SIGNIFICANT REGULATIONS PROPOSED OR UNDER DEVELOPMENT		
Pub. L. 94-581, Veterans Omnibus Health Care Act of 1976, 10-21-76.	Protection of Patient Rights	Provides for VA policy dealing with informed patient consent related to all medical and prosthetic research, and to the maximum extent practicable, to all patient care furnished by VA health care facilities.	J. F. Fleckenstein, (202) 389-3785.
Pub. L. 94-581	Mental Health Services	Provides for furnishing certain mental health services for members of the family of a veteran or of persons eligible for care under VAR 6054.	Do.
Pub. L. 94-581	Priorities for Medical Services	Provides a priority order for furnishing medical services to eligible veterans.	Do.
Pub. L. 94-581	Immunizations Under National Programs.	Provides authority for administering vaccines for immunizations as part of a national immunization program to veterans receiving care for any disability in a VA health care facility.	Do.
Pub. L. 94-581	Obtaining Vehicles for Special Driving Training Courses.	Provides for obtaining vehicles for driver training.	Do.
Pub. L. 94-581	Post Hospital Outpatient Dental	Provides for furnishing of outpatient dental care which is reasonably necessary to complete treatment of a non-service-connected disability which was begun while the veteran was receiving VA authorized hospital care.	Do.
Pub. L. 94-581	Prerequisites for Payments to State Homes.	Establishes prerequisites for payments or grants to state homes.	Do.
Pub. L. 95-202, G.I. Bill Improvement Act of 1977, 11-23-77.	Duty Periods Defined	Provides authority for furnishing VA medical benefits to persons who served as Women's Air Forces Service Pilots (WASPS) when the Secretary of Defense determines that service is considered active duty and issues the person a discharge from such service under honorable conditions.	Do.
Pub. L. 95-202	G.I. Bill Improvement Act and Post-Vietnam Era Veterans Educational Assistance Act.	To amend and augment appropriate VA Regulations to implement provisions of the G.I. Bill Improvement Act of 1977 and to adjust the education loan program.	June C. Schaeffer, (202) 389-2092.
Pub. L. 94-502, Veterans' Education and Employment Assistance Act of 1976, 10-15-76.	Post-Vietnam Era Veterans' Educational Assistance.	To provide joint DoD/VA regulations to implement those provisions of Pub. L. 94-502, which concern a voluntary education program for service members and veterans.	Do.
Pub. L. 95-476, Veterans' Housing Benefits Act of 1978, 10-18-78 and 38 U.S.C. 1810(a)(4).	Energy Conservation Home Improvement Loan Regulations and Home Improvement Loan Regulations for Alterations, Improvements, or Repairs.	To establish a home improvement loan program for energy conservation improvements including solar energy improvements and to revise the present home improvement loan program for alterations, improvements or repairs.	George D. Moerman, (202) 389-3042.

Legal authority	Title	Brief description	Knowledge official
	SIGNIFICANT REGULATIONS PROPOSED OR UNDER DEVELOPMENT—Continued		
Pub. L. 95-476	Condominium Loan Regulations	To amend VA Regulations to include the Criteria for VA approval of existing, proposed, and converted condominium developments or projects.	Do.
Pub. L. 95-476	State Cemetery Grants	Authorizes a program of grants assistance to states for the establishment, expansion, and improvement of State veterans cemeteries.	C. W. Eyman, (202) 389-2313.
Pub. L. 95-521, Ethics in Government Act of 1978, 10-26-78.	Financial Disclosure for Executive Personnel	Will require Federal employees in grades GS-16 and above to disclose in great detail each year their income, assets, debts, any gifts worth more than $250 not from their relatives and considerable other financial information.	Charles M. Johnston, (202) 389-3761.
(Listed in December 18, 1978, Semiannual Agenda of Regulations—These regulations are still under development and responsibility for them has been shifted to the office of the General Counsel.)			
	SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW		
38 CFR 14.620	Power of Attorney and Delegation of Authority.	The procedures used by VA to delegate and record the authority exercised by VA officials in real estate transactions will be reviewed to reduce paperwork and improve efficiency.	James P. Kane, (202) 389-2189.
38 CFR 17.100	Transportation of Claimants and Beneficiaries.	Revises the conditions under which travel payment or reimbursement may be made by specifying that payment shall not be made unless certain requirements are met.	J. F. Fleckenstein, (202) 389-3785.
38 CFR 17.50b	Use of Public or Private Hospitals for Veterans.	Extends authority for furnishing hospital care on a contract basis in public or private hospitals in the Commonwealth of Puerto Rico and other possessions through December 31, 1981.	Do.
38 CFR21.1-21.735	Vocational Rehabilitation	To improve and modernize the Vocational Rehabilitation Program.	June C. Schaeffer, (202) 389-2092.
38 CFR 36.4300-36.4393	Loan Guaranty—Guaranty or Insurance of Home Loans to veterans.	Sets forth basic requirements for loan origination, loan service, and loan termination of VA guaranteed and insured home and condominium loans, and specifies the rights, duties and obligations of veterans, lenders, holders, builders, and other entities engaged in activities relating to the VA guaranteed and insured loan program.	George D. Moerman, (202) 389-3042.
(Listed in Semiannual Agenda Dated December 18, 1978—Review is continuing.)			
	NON-SIGNIFICANT REGULATIONS PROPOSED OR UNDER DEVELOPMENT		
38 CFR 36.4275, 4315, 4600.	Partial payments made by obligors on VA home, mobile home and vendee loans.	To establish regulatory requirements in the home, mobile home and vendee loan regulations governing holder rights and responsibilities when holder receives a partial payment from an obligor.	Raymond L. Brodie, (202) 389-3668.
38 CFR 36.4283	Repairs to Repossessed Mobile Home Units.	To require holders to obtain VA prior approval of repairs to a repossessed mobile home unit if the repairs will cost more than $400.	Do.
38 CFR 36.4313	Attorney Fees	To increase the allowable attorney fees which may be paid to an attorney handling the foreclosure of a VA guaranteed or insured home or condominium loan.	Do.
38 CFR 36.4303	Reporting requirements on VA guaranteed and insured home and condominium loans.	To increase the allowable number of days which a lender may timely report a fully disbursed home or condominium loan to the VA and request a Certificate of Guaranty or Insurance.	George D. Moerman, (202) 389-3042.
	NON-SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW		
38 CFR 1.450-1.455	Investigation	Covers investigation policies, jurisdiction, and regulations, pertaining to Central Office Investigations.	William L. Rottew, (202) 389-3093.
(A radical change in subject regulations is required because of recent IG legislation. Therefore, information printed in the Semiannual Agenda of Regulations dated December 18, 1978, remains applicable.)			

Legal authority	Title	Brief description	Knowledge official
	NON-SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW—Continued		
38 U.S.C. 210(c)	Applicability of Title VI of the Civil Rights Act.	Indicate that payment of VA burial benefits is subject to Title VI of the Civil Rights Act.	T. H. Spindle, (202) 389-3005.
38 CFR 3.12	Amendment of character of discharge rules.	Elimination, in most cases, of homosexual acts as grounds for considering other than honorable discharge to have been issued under dishonorable conditions.	Do.
38 CFR 3.57	Age of Recognition of adopted child or stepchild.	Eliminate present requirement that adoption or stepchild status must have occurred prior to age 18 before adopted or stepchild can be recognized as a child of a veteran.	Do.
38 CFR 3.310	Presumption that cardiovascular disease is service-connected in veterans with certain service-connected lower extremity amputation or amputations.	Ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles.	Do.
38 CFR 3.401(a)	Effective date of award of aid and attendence or housebound benefits.	Amend current effective date regulations to clarify when an award of aid and attendance or housebound benefits is effective.	Do.
(Listed in Semiannual Agenda dated December 8, 1978—Review is continuing.)			
38 CFR 3.951	Twenty year rating protection	Amend current 20 year dissbility rating protection to extend protection only when; veteran has been in receipt of monetary award of 20 or more years.	Do.
38 CFR 6.79, 6.80, and 6.88.	United States Government Life Insurance Reinstatement.	Change in job titles to Assistant Director for Insurance. Make the necessary gender changes.	Murray Zuckerman, (215) 486-5733.
38 CFR 6.90	Physical Examinations and Inspections.	Enables a physician's assistant to make certain examinations for insurance purposes. Make the necessary gender changes.	Do.
38 CFR 8.0	National Service Life Insurance Eligibility.	To include the Modified Life at Age 70 plan. Make the necessary gender changes.	Do.
38 CFR 8.1	Definition of and criteria for "good health".	To make the required gender changes	Do.
38 CFR 8.3	Premiums	To include the 20-Payment Life plan where appropriate.	Do.
38 CFR 8.24	Application and Medical Evidence.	Change in job title to Assistant Director for Insurance. Make the necessary gender changes.	Do.
38 CFR 8.27	Cash value	States how long paid-up additions must be in force for cash values.	Do.
38 CFR 8.29	Extended Term and Paid-Up Insurance.	To make the necessary changes for the Modified Life at Age 70 plan.	Do.
38 CFR 8.33-8.36	Change in Plan	To make the necessary changes for the Modified Life at Age 70 plan and 20-Payment Life plan. Make the necessary gender changes.	Do.
38 CFR 8.64 and 8.65	Examinations	Enables a physician's assistant under certain conditions to make an examination. Changes the title to Director for the head of a regional office. Necessary gender changes made.	Do.
38 CFR 8.70	Claims Alleging Insurance where there is no Application for Insurance on file.	Changes the title of person charged with making original determinations as to valid contracts.	Do.
38 CFR 8.89c	Total Disability Income Provisions.	Provides for updated pamphlets dealing with premiums for the Total Disability Income Provisions. Add the 20-Payment Life plan where appropriate.	Do.
38 CFR 8.100	Insurance Provided by Special Legislation.	Makes the required gender changes	Do.
38 CFR 8.102	National Service Life Insurance Appropriations.	Provides for the 20-Payment Life plan where appropriate.	Do.
38 CFR 8.103	National Service Life Insurance Nonparticipating Funds.	Provides for the 20-Payment Life plan where appropriate. Makes the necessary gender changes.	Do.
38 CFR 8.108	National Service Life Insurance Policy Forms.	Updates the applicable forms. Includes the modified Life at Age 70 plan and the 20-Payment Life plan where appropriate.	Do.
38 CFR 8.110-8.112b	National Service Life Insurance issued on or after April 25, 1951.	Includes the Modified Life at Age 70 plan where appropriate. Makes the necessary gender changes.	Do.

Legal authority	Title	Brief description	Knowledge official
	NON-SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW—Continued		
38 CFR 13.1-13.111	Veterans Assistance—DVB Fiduciary Activities.	Administration of benefits due to incompetent adult beneficiaries or minors.	Charles F. Lee, (202) 389-3643.
(Listed in Semiannual Agenda dated December 6, 1978—Review is continuing.)			
38 CFR 14.633	Limitation of Recognition	To provide for suspension of agents and attorneys after notice and opportunity for hearing.	Martin D. Gussow, (202) 389-2440.
38 CFR 17.30	Definitions and Active Duty	Redefines the terms "Domiciliary Care," "Nursing Home Care," "Rehabilitative Services," and "VA Facility," and deletes the requirement of war service in determining a veteran's eligibility for state home care.	J. F. Fleckenstein, (202) 389-3785.
38 CFR 17.31	Duty Periods Defined	Provides for a change in title of organization from Coast and Geodetic Survey to National Oceanic and Atmospheric Administration.	Do.
38 CFR 17.38	Hospital or Nursing Home Care at Veterans' Memorial Hospital, Philippines.	Amends the VA regulation to delete the requirement of war service for United States veterans in the determination of veteran's eligibility for care of nonservice-connected disabilities at Veterans' Memorial Hospital, Manila, PI.	Do.
38 CFR 17.47	Eligibility for Hospital, Domiciliary, or Nursing Home Care or Persons Discharged or Released From Active Military, Naval or Air Service.	Deletes the requirements of war service in the determination of veterans eligibility for domiciliary care and deleted references to transportation expenses now contained in VA Regulation 6100.	Do.
38 CFR 17.48	Considerations Applicable in Determining Eligibility for Hospital or Domiciliary Care.	Adds "Nursing Home" to the title, deletes reference to transportation expenses, and deletes the word "exclusive" in referring to health care facilities over which the Administrator has control.	Do.
38 CFR 17.50b	Use of Public or Private Hospitals for Veterans.	Provides that veterans hospitalized at government facilities with which the Administrator contracts may be transferred to a public or private hospital if they develop a need for emergency treatment of a condition which poses a serious threat to the veteran's life or health.	Do.
38 CFR 17.51	Use of Community Nursing Homes.	Increases the maximum percent of the cost of Community Nursing Home Care reimbursable by the VA.	Do.
38 CFR 17.54	Medical Care for Survivors and Dependents of Certain Veterans.	Extends medical care benefits to the spouse or child of a veteran who, at the time of death, had a total disability, permanent in nature, resulting from a service-connected disability.	Do.
38 CFR 17.60	Outpatient Care for Eligible Persons.	Provides for medical services within the limits of VA facilities to obviate the need for hospital care. Provides for furnishing certain home health services. Limits the duration of post-hospital care. Provides for furnishing outpatient care for any condition, except dental, for those veterans rated as 50% or more for a service-connected disability.	Do.
38 CFR 17.98	Authority to Approve Sharing Agreements, Contracts for Scarce Medical Specialists Services and Contracts for Other medical Services.	Permits VA contracts with schools and colleges of podiatry and optometry for scarce medical specialist services.	Do.
38 CFR 17.165 and 17.165c.	Recognition of a State Home	Deletes the requirement of war service in the determination of veteran' eligibility for state home care.	Do.
38 CFR 17.166 and 17.166b.	Aid for Domiciliary Care and Aid for Hospital Care.	Deletes the requirement of war service in the determination of veterans' eligibility for state home care.	Do.
38 CFR 17.166c	Amount of Aid Payable	Revises the amount of aid payable to state homes.	Do.
38 CFR 17.210	Sharing Specialized Medical Resources.	Specifies that charges for services provided to Medicare beneficiaries under a sharing agreement will be at rates prescribed by the Secretary of Health, Education and Welfare, after consultation with the Administrator	Do.

Legal authority	Title	Brief description	Knowledge official
	NON-SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW—Continued		
38 CFR 18.1-18.3, 18a.1-18a.5, 18b.1-18b.95.	Veterans Assistance—Civil Rights.	Outlines VA's responsibility in enforcing non-discrimination in federally assisted programs/effectuation of Title VI, Civil Rights Act of 1964.	Melvin T. Jackson, (202) 389-2095.
(Published in the **Federal Register** on 4-25-79, were proposed rules 38 CFR 18c.1 et. seq. (subparts A through F and Appendix A); Federally Assisted Education Programs; Non-discrimination on the Basis of Sex. The continuing review of these regulations will implement Title IX of the Education Amendments of 1972 (Pub. L. 92-318, 6-27-72), enabling the Veterans Administration to enforce the law prohibiting sex discrimination in education programs and activities which receive or benefit from financial assistance.)			
38 CFR 19.1-19.5	General Appellate Regulations	General appellate jurisdiction, delegation of authority, subject matter of appeals, disclosure of information, restrictions on payments.	Jan Donsbach, (202) 389-2978.
38 CFR 19.101-19.156	Rules 1-56	Rules of Practice for the Board of Veterans Appeals.	Do.

[FR Doc. 79-18640 Filed 6-15-79; 8:45 am]

BILLING CODE 8320-01-M

[38 CFR Part 1]

Regional Office Committees on Waivers and Compromises

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: The regulations are revised for purposes of overall clarification. Revision is also made to reflect additions to, and deletions from, the jurisdiction of the regional office Committees on Waivers and Compromises.

DATES: Comments must be received on or before July 18, 1979. It is proposed to make these regulations effective on the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Peter T. Mulhern (047C5), Waivers and Compromises Division, Office of the Controller, Veterans Administration, Washington, DC 20420, (202-389-3405).

SUPPLEMENTARY INFORMATION: This revision of 38 CFR 1.955 through 1.970 provides overall clarification. In addition, the Committee is now granted authority to consider work study and education loan default debts for waiver of collection. Authority to consider school liability questions is removed from Committee jurisdiction. Refund policy is clarified concerning recouped overpayments of erroneous pay and allowances and, also, the date of recovery is established where recoupment is made from a running award. The Chief of the Fiscal activity and the Chief, Centralized Accounts Receivable Division are given authority in certain instances to accept or reject compromise offers on other than loan guaranty program debts, regardless of whether or not there has been a prior denial of waiver. The Chief, Centralized Accounts Receivable Division is now given authority to suspend or terminate collection on all debts within the Centralized Accounts Receivable Division's jurisdiction, not in excess of $20,000, exclusive of interest.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans' Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until July 30, 1979. Any person visiting Central Office for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to any VA field station will be informed that records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: June 11, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

1. The center title is changed and § 1.955 is revised to read as follows:

Regional Office Committees on Waivers and Compromises

§ 1.955 Regional office Committees on Waivers and Compromises.

(a) *Delegation of authority and establishment.* (1) Sections 1.955 et seq. are issued to implement 38 U.S.C. 1820(a)(4) and 3102, 31 U.S.C. 951-953 and 5 U.S.C. 5584. The duties, delegations of authority and all actions required of the Committee on Waivers and Compromises, are to be accomplished under the direction of, and authority vested in, the Director of the regional office.

(2) There is established in each regional office, a Committee on Waivers and Compromises to perform the duties and assume the responsibilities delegated by §§ 1.956 and 1.957. The term "regional office", as used in §§ 1.955 et seq., includes VA Medical and Regional Office Centers and VA Centers where such are established.

(b) *Committee on Waivers and Compromises*—(1) *Composition.* The Committee shall consist of a Chairperson and five members at regional offices having loan guaranty activities or a Chairperson and four members at other regional offices. Members shall be selected so that in each of the debt claims activities of compensation, pension, education, insurance, loan guaranty (at offices having such activities), and finance, there is at least one member with special competence. An alternate Chairperson and an unlimited number of alternate members may be designated and used in place of Committee member(s), or as panel members (see paragraph (c) of this section), whenever needed.

(2) *Selection.* The Director shall designate the employees to serve as Chairperson, members and alternates. Except upon specific authorization of the Chief Benefits Director, when workload warrants a full-time committee, such designation will be part-time additional duty upon call of the Chairperson.

(3) *Control and staff.* The Division Chief of the Fiscal activity is accountable for the administrative control of the Committee functions. The quality control of the Committee and its professional and clerical staff is the responsibility of the Chairperson.

(4) *Overall control.* The Controller is delegated complete management authority, including planning, policy formulation, control, coordination, supervision and evaluation of Committee operations.

(c) *Panels.* When a claim is properly referred to the Committee, the Chairperson shall ordinarily designate from members and/or alternates, a panel of three (of whom the Chairperson may be one), to consider and determine the action to be taken. One person from this panel shall be specially qualified in the program field in which the debt arose. If their panel decision is unanimous, it will be the Committee decision. Otherwise, the case will be decided by the entire membership of the Committee (i.e., either six or five persons as provided in paragraph (b)(1) of this section) and the majority vote of the Committee shall determine the decision. In such cases the Chairperson shall not vote except when necessary on four-member committees to break a tie.

(d) *Single signature authority.* Where a request is for waiver of collection of a debt of $500 or less, exclusive of interest, the Chairperson shall designate from members and/or alternates one person, with special competence in the program area where the debt arose, to consider the request. His/her signature alone to the decision will suffice. In compromise cases, however, three-person panels are always required regardless of the amount of the debt. (38 U.S.C. 210(c)(1))

2. Section 1.956 is amended as follows:

(a) By adding the words "or her" before the word "discretion" and adding the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (b).

(b) By revising the introductory portion of paragraph (a) and paragraph (a)(1)(i) to read as follows:

§ 1.956 Jurisdiction.

(a) The regional office Committees are authorized, except as to determinations under § 2.6(e)(4)(i) of this chapter where applicable, to consider and determine as limited in §§ 1.955 et. seq., settlement, compromise and/or waiver concerning the following debts and overpayments:

(1) Arising out of operations of the Department of Veterans Benefits:

(i) Overpayment or erroneous payments of pension, compensation, dependency and indemnity compensation, burial allowances, plot allowance, subsistence allowance, education (includes debts from work study and education loan defaults as well as from other overpayments of educational assistance benefits) or insurance benefits, clothing allowance and automobile or other conveyance and adaptive equipment allowances.

* * * * *

3. Sections 1.957, 1.958, 1.959, and 1.960 are revised to read as follows:

§ 1.957 Committee authority.

(a) *Regional office committee.* On matters covered in § 1.956, the regional office Committee is authorized to determine the following issues:

(1) *Waivers.* A decision may be rendered to grant or deny waiver of collection of a debt in any amount (except for erroneous payment of pay and allowances as explained in this subparagraph) in the following overpayment categories:

(i) Loan guaranty program (38 U.S.C. 3102(b)). Committees may consider waiver of the indebtedness of a veteran or spouse resulting from (A) the payment of a claim under the guaranty or insurance of loans, (B) the liquidation of direct loans, (C) the liquidation of loans acquired under § 36.4318, and (D) the liquidation of vendee accounts. The phrase "veteran or spouse" includes a veteran-borrower, veteran-transferee, a veteran-purchaser on a vendee account, a former spouse or surviving spouse of a veteran.

(ii) Other than loan guaranty program. (38 U.S.C. 3102(a))

(iii) Services erroneously furnished. (§ 17.62(a))

(iv) Erroneous payment of pay and allowances. (5 U.S.C. 5584) Overpayments in this category may be considered for waiver by the Committee only if $500 or less.

(2) *Compromises*—(i) *Loan program debts.* Accept or reject a compromise offer irrespective of the amount of the debt (loan guaranty matters under 38 U.S.C. ch. 37, are unlimited as to amount).

(ii) *Other than loan program debts (38 U.S.C. 951–953).* (a) Accept or reject a compromise offer on a debt which exceeds $1,000 but which is not over $20,000 (both amounts exclusive of interest).

(b) Accept or reject a compromise offer on a debt of $1,000 or less, exclusive of interest, which is not disposed of by the Chief, Fiscal activity or the Chief, Centralized Accounts Receivable Division pursuant to paragraph (b) of this section.

(3) *Breached career residency contracts.* Final settlement of any breached career residency contract in which terms are different than those provided in the contract, which will result in the payment of less than liquidated value or in an extension of time in which to pay damages.

(b) *Chief of the Fiscal Activity and the Chief, Centralized Accounts Receivable Division.* The Chief of the Fiscal activity at both Department of Veterans Benefits and Department of Medicine and Surgery offices and the Chief, Centralized Accounts Receivable Division have authority, as to debts arising within their jurisdictions, to:

(1) Suspend or terminate collection action on all debts of $20,000 or less, exclusive of interest.

(2) On other than loan guaranty program debts under 38 U.S.C. chapter 37, accept compromise offers of 50 percent or more of a total debt not in excess of $1,000, exclusive of interest, regardless of whether or not there has been a prior denial of waiver.

(3) On other than loan guaranty program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of $1,000, exclusive of interest, regardless of whether or not there has been a prior denial of waiver. (38 U.S.C. 210(c)(1))

§ 1.958 Finality of decisions.

A decision by the regional office Committee operating within the scope of its authority, denying waiver of all or a part of an overpayment is subject to appeal. There is no right of appeal from a decision rejecting a compromise offer. (38 U.S.C. 210(c)(1))

§ 1.959 Records and certificates.

The Chairperson of the Committee shall execute or certify any documents pertaining to its proceedings. He/she will be responsible for maintaining needed records of the transactions of the Committee and preparation of any administrative or other reports which may be required. (38 U.S.C. 210(c)(1))

§ 1.960 Legal and technical assistance.

Legal questions involving a determination under § 2.6(e)(4) of this chapter will be referred to the District Counsel for action in accordance with delegations of the General Counsel, unless there is in existence a General Counsel's opinion or an approved District Counsel's opinion dispositive of the controlling legal principle. As to matters not controlled by § 2.6(e)(4) of this chapter, the Chairperson of the regional office Committee or at his/her instance, a member, may seek and obtain advice from the District Counsel on legal matters within his/her jurisdiction and from other division chiefs in their areas of responsibility, on any matter properly before the Committee. Guidance may also be requested from the Central Office staff. (38 U.S.C. 210(c)(1))

4. Section 1.962 is amended as follows:

(a) By deleting the words "Chief Attorney" and inserting the words "District Counsel" in the third sentence and adding the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (b).

(b) By revising the introductory portion preceding paragraph (a) to read as follows:

§ 1.962 Waiver of overpayments.

The term "overpayment" means payments made and determined to be erroneous, indebtedness resulting from work study and education loan defaults, indebtedness resulting from services erroneously furnished and indebtedness of a veteran-borrower or veteran-transferee under the loan guaranty program or the indebtedness of the spouse under laws administered by the Veterans Administration.

* * * * *

5. Section 1.963 is amended as follows:

(a) By adding the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (c).

(b) By revising paragraph (b) to read as follows:

§ 1.963 Waiver; other than loan guaranty.

* * * * *

(b) *Application.* Request for waiver of an overpayment will be considered only if received within 2 years following the date of notice of the indebtedness by the Veterans Administration to the payee.

* * * * *

6. In § 1.963a, paragraph (e) is revised to read as follows:

§ 1.963a Waiver; erroneous payment of pay and allowances.

* * * * *

(e) There shall be no right of appeal to the Board of Veterans Appeals from a determination made under this section denying a waiver of erroneous payment of pay or allowances. Denial of a waiver of erroneous payment of pay and allowances may be appealed to the General Accounting Office (GAO) in accordance with procedures established by that agency and the Veterans Administration. (38 U.S.C. 210(c)(1))

§ 1.964 [Amended]

7. Section 1.964 is amended by deleting the words "widow (widower)" and "widow or widower" and inserting the words "surviving spouse" in paragraph (c) and inserting the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (f).

§ 1.966 [Amended]

8. By deleting the word "his" and inserting "his/her" in paragraph (a); by deleting the words "field station Committee" and inserting "regional office Committee" in the introductory portion of paragraph (b) and by inserting the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (b)(2)(ii).

9. In § 1.967, paragraph (c) is revised to read as follows:

§ 1.967 Refunds.

* * * * *

(c) Amounts which have been recovered by the U.S. Government prior to the date of receipt by the Veterans Administration of a request for waiver, will not be refunded and will be excluded from waiver. Where recovery is made by offset or recoupment from a check(s) of a running award, the date of recovery is the date of issuance of the check from which the offset is made; or in the case of total recoupment the date of recovery is the date on which the check would have been issued. However, any amounts repaid because of erroneous payment of pay or allowances to employees will be considered for waiver action (regardless of date of request as long as such is timely in accordance with § 1.963a(c)) and, if waived, refund will be made to the employee, provided application for refund is made no later than 2 years following the date of waiver. (38 U.S.C. 210(c)(1))

§ 1.968 [Revoked]

10. Section 1.968 is revoked.

11. Sections 1.969 and 1.970 are revised to read as follows:

§ 1.969 Revision of waiver decisions.

(a) *Jurisdiction.* A decision involving waiver may be reversed or modified on the basis of new and material evidence, fraud, a change in law or interpretation of law specifically stated in a Veterans Administration issue, or clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered by the same or any other regional office Committee.

(b) *Finality of decisions.* Except as provided in paragraph (a) of this section, a decision involving waiver rendered by the Committee having jurisdiction is final, subject to the provisions of:

(1) Sections 3.104(a), 19.153 and 19.154 of this chapter as to finality of decisions;

(2) Section 3.105(a) and (b) of this chapter as to revision of decisions, except that the Central Office staff may postaudit or make an administrative review of any decision of a regional office Committee;

(3) Sections 3.103, 19.113 and 19.114 of this chapter as to notice of disagreement and the right of appeal;

(4) Section 19.124 of this chapter as to the filing of administrative appeals and the time limits for filing such appeals.

(c) *Difference of opinion.* Where reversal or amendment of a involving waiver is authorized under § 3.105(b) of this chapter because of a difference of opinion, the effective date of waiver will be governed by the principle contained in § 3.400(h) of this chapter. (38 U.S.C. 210(c)(1))

§ 1.970 Standards for compromise.

Decisions of the Committee respecting acceptance or rejection of a compromise offer shall be in conformity with the standards in §§ 1.900 through 1.937. In loan guaranty cases the offer of a veteran or other obligor to effect a compromise must relate to an indebtedness established after the liquidation of the security, if any, and shall be reviewed by the Committee. An offer to effect a compromise may be accepted if it is deemed advantageous to the Government. A decision on an offer of compromise may be revised or modified on the basis of any information which would warrant a change in the original decision. (38 U.S.C. 210(c)(1))

[FR Doc. 79-18790 Filed 6-15-79; 8:45 am]

BILLING CODE 8320-01-M

[38 CFR Part 21]

Veterans Education; Independent Study

AGENCY: Veterans Administration.

ACTION: Proposed Regulation.

SUMMARY: The proposed regulation is intended to make the criteria used for measuring courses involving independent study clearer and more uniform and thus make payments of educational assistance to veterans and eligible persons more equitable.

The law provides different rates of payment of educational assistance which depend in part upon whether the veteran or eligible person is pursuing a program of education by independent study, residence training or a combination of the two. Educational institutions and state approving agencies, however, do not always define these terms in the same way, so that two students with the same attendance schedule might be paid different educational assistance. The amendment rectifies this situation.

DATES: Comments must be received on or before July 18, 1979. It is proposed to make this amendment effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until July 30, 1979.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: Section 21.4280(a), Title 38, Code of Federal Regulations is amended to make clear that educational assistance may be paid to veterans and eligible persons who are attending combined independent study-resident training courses or subjects. Section 21.4280(b) is amended to provide a number of definitions which are necessary to apply this section. Section 21.4280(c) is amended to include only material dealing with measuring independent study courses or subjects for Veterans Administration purposes. Section 21.4280(d) is added to provide for paying educational assistance to veterans and eligible persons enrolled in independent study courses or subjects. Section 21.4280(e) is added to provide for measuring and paying for enrollments in both independent study and resident training.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until July 30, 1979.

Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: June 11, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Section 21.4280 is revised to read as follows:

§ 21.4280 Independent study leading to a standard college degree.

(a) *General.* An eligible veteran or person may receive an educational assistance allowance for pursuit of an independent study course or subject or for an independent study-resident course or subject under the following conditions:

(1) The course or subject leads to or is fully creditable toward a standard college degree;

(2) The course or subject meets the definition of independent study or independent study-resident training found in paragraph (b) of this section;

(3) The course or subject is approved as independent study or independent study-resident training by the State approving agency

(38 U.S.C. 1682(e))

(b) *Definitions.* For the purposes of measurement and payment of educational assistance whether an eligible veteran or person is pursuing a course or subject entirely by independent study shall depend upon the type of course subject in which the eligible veteran or person is enrolled and in certain instances, defined by the subparagraphs of this paragraph, upon the frequency of class attendance.

(1) A veteran or eligible person is in resident training when he or she:

(i) Is enrolled under chapter 34, title 38, United States Code, in a flight training course (this subdivision refers to veterans only);

(ii) Is enrolled in a course or subject not leading to a standard college degree offered solely through regularly scheduled, weekly conventional classroom or laboratory sessions;

(iii) Is enrolled in an undergraduate course or subject leading to a standard college degree offered through regularly scheduled, weekly conventional classroom or laboratory sessions, and/or flight training;

(iv) Is a student teacher;

(v) Is enrolled in a graduate, advanced professional or law course or subject leading to a standard college degree that either:

(A) Is offered through regularly scheduled, conventional classroom or laboratory sessions, or

(B) Consists of research necessary for the preparation of the student's master's thesis, doctoral dissertation, or a similar treatise which trains the student in the techniques of scholarly investigation; contributes to the body of knowledge; and is a prerequisite to the conferring of the degree the student is pursuing.

(38 U.S.C. 1682, 1732)

(2) A veteran or eligible person is pursuing research in absentia when he or she is a graduate student pursuing off campus research which has all the characteristics of the course or subject described in paragraph (b)(1)(v)(*B*). When a student is registered at a school for research in absentia, the research shall be treated as a resident course or subject. See § 21.4273(b).

(38 U.S.C. 1682, 1732)

(3) No veteran or eligible person is in independent study for the purpose of this section when he or she is enrolled in either a cooperative course as defined in § 21.4233(a), a farm cooperative course, a course approved as a correspondence course, a course meeting the requirements of paragraph (b) (1) or (2) of this section or a course offered by open-circuit television. A veteran or eligible person enrolled in any other course or subject is in independent study only when the course or subject in which he or she is enrolled:

(i) Leads to or is fully creditable toward a standard college degree;

(ii) Consists of a prescribed program of study with provision for interaction either by mail, telephone, or personally between the student and the regularly employed faculty of the university or college;

(iii) Is approved as independent study by the State approving agency;

(iv) Is offered without any regularly scheduled, conventional classroom or laboratory sessions.

(38 U.S.C. 1682, 1732)

(4) A veteran is in independent study-resident training if he or she:

(i) Is enrolled concurrently in one or more courses or subjects offered by resident training as defined by paragraph (b) (1) or (2) of this section and one or more courses or subjects offered by independent study as defined by paragraph (b)(3) of this section; or

(ii) Is enrolled in one or more undergraduate subjects which are offered by resident training as defined by paragraph (b) (1) or (2) of this section for part of a term, quarter or semester; and which are offered by independent study as defined by paragraph (b)(3) of this section for the remainder of the term, quarter or semester; or

(iii) Is enrolled in a subject which includes resident training as defined in paragraph (b)(1) of this section occuring at the same time as independent study

as defined in paragraph (b)(3) of this section.

(38 U.S.C. 1682, 1732)

(c) *Measurement of independent study.* A course or subject offered solely by independent study be measured as less than half-time training as follows:

(1) If the institution of higher learning evaluates the course or subject in semester or quarter hours of credit and prescribes a period for completion, the course shall be measured as less than one-half but more than one-quarter time when the semester hours per semester or equivalent, are 4 or more, and measured as one-quarter time or less for 1 through 3 semester hours per semester, or equivalent.

(2) If the institution of higher learning does not evaluate the independent study program in standard semester or quarter hours or the equivalent, independent study shall be measured as less than one-half but more than one-quarter time training.

(38 U.S.C. 1682(e), 1732(c))

(d) *Payment for independent study.* A veteran or eligible person who is pursuing only independent study under chapter 34 or chapter 35, title 38, United States Code, shall be paid an educational assistance allowance based on the training time determined in paragraph (c) of this section at the institutional rate prescribed in § 21.4136(a).

(38 U.S.C. 1682(e), 1732(c))

(e) *Independent study-resident training.* For the purpose of this paragraph a course or subject described in paragraph (b)(4)(ii) shall be treated as independent study during any week in which no classroom or laboratory sessions are scheduled and as resident training during any week in which classroom or laboratory sessions are scheduled. For the purpose of this paragraph the number of weekly conventional classroom sessions in a course or subject described in paragraph (b)(4)(iii) will be converted to credit hours on a 1 to 1 basis, and the number of laboratory sessions in a course or subject described in paragraph (b)(4)(iii) will be converted to credit hours on a 2 to 1 basis. The remainder of the credit hours assigned by the school will be considered to be independent study. Such a course or subject will be treated as two courses or subjects for payment purposes, one resident training and one independent study. In all cases when the resident training portion of undergraduate independent study-resident training does not have sufficient supporting conventional classroom or laboratory sessions as required by § 21.4272(d) before the independent study-resident training in measured.

the credit hours pursued in residence will be adjusted in accordance with § 21.4272(d)
(38 U.S.C. 1682(e), 1732(c))

(1) if independent study and resident training are pursued concurrently by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, and both are measured on a credit-hour basis, the allowable rate shall be determined on the basis of the combined training load provided a major portion of the credit hours are being pursued in residence.

(38 U.S.C. 1682(e), 1732(c))

(2) When a major portion of the credit hours being pursued by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, is not pursued in residence and the part that is pursued in residence would equal half-time or more, the number of independent study credit hours will be converted to the number of credit hours consistent with less than half-time training as stated in § 21.4270. The converted independent study credit hours shall be added to the credit hours pursued in residence. The allowable rate shall be determined on the basis of the combined training load.

(38 U.S.C. 1682(e), 1732(c))

(3) When a major portion of the credit hours being pursued by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, is not pursued in residence, the portion that is pursued in residence is equal to less than half-time or one-quarter time, and the portion that is by independent study is equal to half-time or more, the number of independent study credit hours shall be coverted to the highest number of credit hours consistent with less than half-time training as stated in § 21.4270. The training load shall be determined by adding the resulting credit hours together. The monthly rate shall be determined by computing the monthly rate separately for independent study and residence training and combining them, except that the monthly rate cannot exceed the institutional rate prescribed in § 21.4136(a) for the combined training load.

(38 U.S.C. 1682(e), 1732(c))

(4) When a major portion of the credit hours being pursued by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, is not pursued in residence and both the portion that is pursued in residence and the independent study portion are each equal to less than half-time or one-quarter time, the training load shall be determined by adding together the hours attributable to each. The monthly rate shall be determined by computing the monthly rates separately for independent study and resident training and combining them, except that the monthly rate cannot exceed the institutional rate prescribed in § 21.4136(a) for the combined training load.

(38 U.S.C. 1682(e), 1732(c))

(5) When measurement of courses being pursued by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, is different (i.e. class attendance on a credit-hour basis and independent study under paragraph (c)(2) of this section), the appropriate rate for each part shall be determined and the combined rates paid, but not to exceed the full-time institutional allowance rate.

(38 U.S.C. 1682(e), 1732(c))

[FR Doc. 79-18913 Filed 6-15-79; 8:45 am]
BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-149; RM-3343]

FM Broadcast Station in St. Simons Island, Ga.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to St. Simons Island, Georgia, in response to a petition filed by Canon's Point Broadcasting Compnay. Petitioner states the proposed station would provide a first local aural broadcast service to the community.

DATES: Comments must be filed on or before August 6, 1979, and reply comments must be filed on or before August 27, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: June 7, 1979.

Released: June 13, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (St. Simons Island, Georgia), BC Docket No. 79-149, Rm-3343.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making[1] was filed on February 21, 1979, by Canon's Point Broadcasting Company ("petitioner"), proposing the assignment of FM Channel 249A to St. Simons Island, Georgia, as a first Fm assignment to that community.

(b) The channel can be assigned to St. Simons Island in compliance with the minimum distance separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data*—(a) *Location.* St. Simons Island, an unincorporated community in Glynn County, is one of the coastal islands situated off the coast of Georgia, approximately 85 kilometers (53 miles) south of Savannah, Georgia.

(b) *Population.* St. Simons Island—5,346; Glynn county—50,528.[2]

(c) *Local Aural Broadcast Service.* There is no local aural broadcast service on St. Simons Island.

3. *Economic Considerations.* Petitioner asserts that although St. Simons Island is unincorporated, plans are being discussed for its incorporation. It notes that suggestions have been made for funding of a study on incorporation by the legislature and a bill has been introduced in the Georgia State Legislature for studies looking toward incorporation of the community. Petitioner states that the primary industry on the island is resort recreation. It points out that St. Simons Island has its own post office, schools, banks, churches, library, civic organizations, shopping center and chamber of commerce. According to the St. Simons Island Chamber of Commerce, the current population of the community is estimated at 15,000.

4. In light of the above information and the fact that the proposed FM station would provide the community[3] with a first full-time aural broadcast service, the Commision proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with respect to St. Simons Island, Georgia, as follows:

City	Channel No.	
	Present	Proposed
St. Simons Island, Georgia		249A

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements, are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before August 6, 1979, and reply comments on or before August 27, 1979.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later that that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79-18935 Filed 6-15-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of the petition was given on March 19, 1979, Report No. 1168.

[2] Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

[3] Based on petitioner's showing, St. Simons Island does appear to be a community for purposes of making an assignment.

[47 CFR Part 73]

[BC Docket No. 79-148; RM-3339]

FM Broadcast Station in Moriah, N.Y.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the asssignment of a Class A FM channel to Moriah, New York, at the request of Peter E. Hunn. The proposed assignment would provide for a first local aural broadcast service to the community.

DATES: Comments must be filed on or before August 6, 1979, and reply comments on or before August 27, 1979.

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

FOR FURTHER INFORMATION CONTACT:
Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: June 7, 1979.
Released: June 13, 1979.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Moriah, New York), BC Docket No. 79-148, RM-3339.

1. The Commission has under consideration a petition for rule making [1] seeking amendment of § 73.202(b) of the Commission's Rules, the FM Table of Assignments. The petition was filed by Peter E. Hunn ("petitioner"), requesting the assignment of FM Channel 292A to Moriah, New York. No responses to the petition were received.

2. Moriah (pop. 5,244), [2] in Essex Country (pop. 34,631), is situated in the Lake Champlain-Adirondack Mountain area, approximately 61 kilometers (38 miles) north of Glens Falls, New York. There is no local aural broadcast service in Moriah. Channel 292A can be assigned to this community in conformity with the minimum distance separation requirements.

3. Petitioner states that the proposed FM station could serve the area residents by broadcasting important local information, including local weather forecasts which are important to an area located near the shores of Lake Champlain and the Adirondack Mountains. He adds that the station would serve to inform people about local issues and events and would broadcast many views on various subjects which are of interest to the people of the community.

4. Since Moriah is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 292A to Moriah, New York, requires coordination with the Canadian Government before if can be assigned.

5. In view of the apparent need for a first local aural broadcast service, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with regard to Moriah New York, as follows:

City	Channel No.	
	Present	Proposed
Moriah, New York		292A

6. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before August 6, 1979, and reply comments on or before August 27, 1979.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An ex parte contract is a message (spoken or written) concerning the merits of pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip V. Verveer,
Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D. C.

[FR Doc. 79-18934 Filed 6-15-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of the petition was given on March 19, 1979, Report No 1168.

[2] Population figures are taken from the 1970 U.S. Census.

[47 CFR Part 73]

[BC Docket No. 79-150; RM-3344]

FR Broadcast Station in Murfreesboro, Ark.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Murfreesboro, Arkansas, in response to a petition filed by Ball Broadcasting Company. Petitioner states the proposed station would provide a first aural broadcast service to the community.

DATES: Comments must be filed on or before August 6, 1979, and reply comments must be filed on or before August 27, 1979.

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

FOR FURTHER INFORMATION CONTACT:
Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rule Making

Adopted: June 7, 1979.

Released: June 13, 1979.

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Murfreesboro, Arkansas).

By the Chief, Broadcast Bureau: 1. The Commission has under consideration a petition for rule making[1] seeking the amendment of Section 73.202(b) of the Commission's Rules, the Table of FM Assignments. The petition was filed on behalf of Ball Broadcasting Company ("petitioner"), proposing the assignment of FM Channel 237A to Murfreesboro, Arkansas. The channel can be assigned in conformity with the minimum distance separation requirements without affecting the present assignments in the FM Table. Petitioner states that it will apply for the channel, if assigned. No responses were made to the proposal.

2. Murfreesboro (pop. 1,350), seat of Pike County (pop. 8,711),[2] is located approximately 161 kilometers (100 miles) southwest of Little Rock, Arkansas. There is no local aural broadcast service in Murfreesboro.

3. Petitioner states that according to the Murfreesboro Chamber of Commerce, the community's population is currently 1,540, which is an 8.7 percent increase since 1970. It notes that Murfreesboro's economy is based on farming, lumber milling and tourism. Petitioner points out that since there is no local aural broadcast service in Pike County, the proposed station would provide a forum for programs dealing with community problems of the area. It states that a full-time facility would fill the need for coverage of important news items, including storm alerts, disasters affecting the area, and nighttime sports, in addition to serving as an advertising outlet for local business firms.

4. In view of the fact that the proposed FM channel assignment would provide Murfreesboro and Pike County with a first full-time aural broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, Section 73.202(b) of the Rules, with regard to the community listed below:

City	Channel No.	
	Present	Proposed
Murfreesboro, Arkansas	...	237A.

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required before a channel will be assigned.

6. Interested parties may file comments on or before August 6, 1979, and reply comments on or before August 27, 1979.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-18981 Filed 6-15-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of the petition was given on March 19, 1979, Report No. 1168.

[2] Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 222]

[Docket No. RSGC-2, Notice 2]

Proposed Requirement for Display of Alerting Lights by Locomotives at Public Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes new regulations that would require locomotives to display flashing alerting lights at rail-highway grade crossings. The effect of this action would be to alert motorists and pedestrians of an approching train. This action is taken by FRA in an effort to reduce the number of accidents which have occurred at points where highways cross railroad tracks.

DATES: (1) Written Comments: Written comments must be received before September 28, 1979. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

(2) Public Hearings: Public hearings will be held at 10:00 a.m. in Chicago, Illinois on September 17, 1979 and in Washington, D.C. on September 20, 1979. Any person who desires to make an oral statement at either hearing should notify the Docket Clerk before September 12, 1979, by phone or by mail.

ADDRESSES: (1) Written comments: Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Adminstration (Trans Point Building), 2100 Second Street, SW., Washington, D.C. 20590. Written comments will be available for examination both before and after the closing date for written comments, during regular business hours in Room 4406 of the Trans Point Building at the above address.

(2) Public Hearings: Public hearings will be held in Room 349 of the John C. Kluczynski Building, 230 S. Dearborn Street, Chicago, Illinois, and in Room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. Persons desiring to make oral statements at either hearing should notify the Docket Clerk by telephone (202–426–8836) or by writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, (Trans Point Building), 2100 Second Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Principal Authors

Principal Program Person: J. A. McNally, Office of Standards and Procedures, Federal Railroad Administration, Washington, D.C. 20590. Telephone (202) 426–9178.

Principal Attorney: Michael E. Chase, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590. Telephone 202–426–8836.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1978, FRA issued an Advance Notice of Proposed Rulemaking (ANPRM) (43 FR 9324). The ANPRM stated that FRA was considering development of proposed safety regulations to require locomotives to be equipped with lighted devices that are more effective than the standard headlight now in use in alerting motorists that a train is approaching a grade crossing. The ANPRM was intended to obtain information about various types of lighted devices, especially the alerting qualities (conspicuity) and potential drawbacks of xenon flash tube lights (strobe lights). Increasing the conspicuity of locomotives is one method of attempting to reduce the large number of grade crossing accidents and their resulting injuries and deaths.

It should be noted that the FRA proposal contained in this notice, which would require that locomotives be equipped with alerting lights, is designed to supplement other efforts being made within DOT to reduce accidents at rail-highway grade crossings. In this connection, DOT has several active programs directed at eliminating hazards at railroad-highway grade crossings. These include the installation of active and passive warning devices, new grade crossing surfaces, construction of grade separations, and endorsing measures to improve driver awareness of the hazards involved through driver education programs and effective enforcement of all traffic laws.

The National Grade Crossing Inventory indicates the following number of crossings: 219,082 public; 142,338 private; and 3,601 pedestrian. During the 10-year period 1967 through 1976, there was an annual average of 1,328 fatalities and 3,680 injuries resulting from rail-highway grade crossing accidents involving collisions between rail equipment and motor vehicles, other vehicles, or machines and pedestrians.

In 1977, the most current year for which data has been finalized, there was a total of 12,299 crossing accidents of all types resulting in 944 fatalities and 4,649 injuries. Of the total number of accidents, 11,849 involved collisions between rail equipment and motor vehicles. These are the accidents which are most pertinent to this proceeding.

The 11,849 accidents between rail equipment and motor vehicles consisted of 8,528 collisions where a train struck a motor vehicle (resulting in 674 fatalities, 3,057 injuries) and 3,321 collisions in which a motor vehicle ran into the side of train (resulting in 172 fatalities and 1,398 injuries). Of the 11,849 collisions, 7,022 occurred in daylight and 4,827 took place at night. A breakdown of the types of protection at the crossings where these accidents occurred indicates that 1,013 occurred at crossings with gates, 4,532 at crossings with flashing lights, wigwags or bells, and 6,104 at crossings with passive warning signs only.

The FRA presently has in effect a regulation (49 CFR 230.231) which requires each locomotive used in road service to be equipped with a headlight "which shall afford sufficient illumination to enable a person in the cab of such locomotive who possesses the usual visual capacity required of locomotive enginemen, to see in a clear atmosphere, a dark object as large as a man of average size standing erect at a distance of at least 800 feet ahead and in front of such headlight; and such headlight must be maintained in good condition." In the case of locomotives used in yard service, the distance requirement is reduced to 300 feet. Additionally, FRA requires that each locomotive be provided with a "suitable whistle or its equivalent" (49 CFR 230.234).

The Association of American Railroads (AAR) Standards Code of Operation Rules is the foundation for the operating rules and practices of most railroads, including rules governing the display of a locomotive headlight and use of the locomotive bell and whistle. Using the AAR Code as a guideline, each railroad constructs, interprets, applies, and expands upon the Code rules as it sees fit according to conditions or operating practices prevailing on the individual railroad. Rule 17 of the AAR Code provides that: "The headlight must be displayed brightly to the front of every train by day and by night. When an engine is running backward, a white light must be displayed by night on the leading end." Rule 16 of the AAR Code provides that: "Yard engines will display the headlight to the front and rear by night. When not provided with a headlight at the rear, a white light must be displayed".

FRA has conducted research to determine means of enhancing the visibility of trains at grade crossings. Several types of devices, including xenon strobe lights, were investigated. This research is documented in the following reports: "The Visibility and Audibility of Trains Approaching Grade Crossings," J. O. Aurelius and N. Korobow System Consultants, Inc. FRA–RP–71–2, May 1971 (NTIS No. PB–202–683); "Field Evaluation of Locomotive

Conspicuity Lights," D. B. Devoe and C. N. Abernathy, Transportation Systems Center, FRA-ORD-75-54, May 1975 (NTIS No. FB-244-532); and "Guidelines for Enhancement of Visual Conspicuity of Trains at Grade Crossings," John B. Hopkins and A. T. Newfell, Transportation Systems Center, FRA-ORD-71, May 1975 (NTIS No. PB-244-551). Copies of these reports may be obtained from the National Technical Information Service, Springfield, Va. 22161.

Also available in the docket are two other reports. One is "Analysis for NPRM Strobe Light on Locomotives (Docket No. RSGC-2)," May 26, 1978, prepared by the Transportation Systems Division of Input Output Computer Services, Inc., Cambridge, Massachusetts. The analysis includes an examination of the effectiveness of strobe lights in preventing accidents, an estimate of the benefits, an evaluation of the costs of a regulation requiring strobe lights, and a measure of the economic impact of the regulation on the railroad industry. The other report, "Grade Crossing Resource Allocation for Strobe Lights and Conventional Warning Systems," is a resource allocation analysis conducted by the Transportation Systems Center, Cambridge, Massachusetts.

Members of Congress have also expressed their interest in the use of strobe lights to improve grade crossing safety. Congressman Paul Simon has introduced a bill on this subject (H.R. 8017, 95th Cong., 1st Sess. (1977)). If it had been enacted, it would have directed the Secretary of Transportation to issue regulations that require the locomotive of all freight, passenger, and commuter trains to be equipped with strobe lights. These regulations would also have had to require that the strobe lights be operated at grade crossings and at other locations where the Secretary finds that their operation is required in the interest of safety.

In addition to laboratory research and field testing, FRA initiated operational tests in fiscal year 1977 with Amtrak, Santa Fe, Chessie, and Boston and Maine Railroads to evaluate the effectiveness of strobe lights and to identify and remedy any operational problems associated with their use. This project should be completed in fiscal year 1979.

Preliminary data collected from two of the railroads has been conflicting. The experience of one railroad indicates the strobe lights have been effective in reducing grade crossing accidents and have been relatively troublefree from an operational and a maintenance standpoint. In this instance, the control group (without strobe lights) had an accident rate higher than the National average. The other railroad experienced operational and maintenance problems, and did not experience any reduction in grade crossing accidents. On this railroad the control group had an accident record lower than the national average. However, neither railroad identified any adverse effects due to the strobe lights.

After careful review and analysis of the comments filed in response to the ANPRM, the research currently available, and the experience from the operational tests, FRA has concluded that it is appropriate to propose Federal requirements for the display of alerting light devices at public grade crossings.

ANPRM Comments

The ANPRM requested comment on the need for and the specific requirements of regulations governing additional lighted devices on locomotives. It also requested specific advice in several question areas. Where possible, the comments have been grouped under the appropriate question area. The more general comments on the need for regulations or suggesting alternatives are discussed before the responses to the ten question areas.

A total of twenty-five comments were received. Out of these, twelve were from railroads, five were from individuals, two were from manufacturers of strobe lights, three were from State transportation regulatory agencies, one was from the National Transportation Safety Board (NTSB), one was from the Association of American Railroads (AAR), and one was from a Congressman, cosigned by five other members.

Eight commenters favored additional lighted devices because they believed increased locomotive conspicuity could reduce the number of grade crossing accidents. Two of the eight were railroads, one was the NTSB, one was a State transportation regulatory agency, one was the Congressman, one was a manufacturer of strobe lights, and two were individuals.

Thirteen commenters were explicitly or implicitly opposed to requiring additional lighted devices because they doubted the potential usefulness of lighted devices in reducing grade crossing accidents, or because they believed additional study of their usefulness should precede any further action. The AAR and seven railroads were among the thirteen, as were three individuals, and two State transportation regulatory agencies. Two other railroads which operate only historic steam trains for educational and recreational purposes were opposed to requiring strobe lights on their locomotives because of the costs and because of a desire for historical accuracy.

The commenters who did not favor additional lighted devices questioned their usefullness. Seven commenters believed additional lighted devices would not deter bad driving. Several noted that drivers often ignore the existing grade crossing warnings. Three commenters suggested that improving signs and other warning devices at grade crossings would be more effective. Two suggested the use of rumble strips, which are strips of asphalt or other substance placed on the road to alert drivers of an upcoming rail-highway grade crossing. Two commenters thought better enforcement of the law where drivers ignore warning signs would be helpful. Two suggested driver education programs and three mentioned "Operation Lifesaver", a program to increase public awareness of the hazard at grade crossings. Three commenters believed that more study is necessary.

Several commenters opposed requiring additional lighted devices because of the costs. In this connection, one commenter suggested that money for additional grade crossing protection, such as strobe lights, should come from highway funds. The FRA does not agree that alerting lights are too costly or that public funding is required. The safety benefits of alerting lights would reduce the number of accidents, injuries, and fatalities, as well as reduce the costs to the railroads associated with grade crossing accidents.

FRA agrees that better law enforcement, driver education, and public awareness are desirable and would help reduce grade crossing accidents. However, the number of grade crossing accidents continues at a high level despite improved technology in crossing protection systems and joint efforts of railroad management, labor, and State and Federal governments of railroad management, labor, and State and Federal governments on public awareness projects such as "Operation Lifesaver". Many motorists approaching a grade crossing either ignore the warning signs and devices or proceed through the crossing after slowing or stopping if they do not see a train in close proximity. Even if the crossing is protected by a lowered gate, some motorists continue to go around the gate and enter the crossing if a train is not sighted.

An additional lighted device on the locomotive that is highly alerting would increase driver awareness that a train is actually approaching the crossing. Lighted alerting devices, including strobe lights, are being used successfully to warn motorists of the approach of an emergency vehicle or of the presence of highway work equipment such as snow removal equipment.

The current information available to the FRA indicates that installation on locomotives of a certain type of lighted device, dual alternating strobe lights, would have the effect of reducing grade crossing accidents. FRA's most recent study, "Analysis for NPRM Strobe Lights on Locomotives", evaluates their effectiveness by fault free analysis.

While the true value of human life cannot be measured in dollars, FRA believes that the cost to society of deaths and injuries at rail-highway grade crossings is an additional indicator of the need for regulatory action. In this connection, FRA calculations indicate that between 124 and 129 fatalities and between 566 and 680 injuries could be avoided on an annual basis if strobe lights were used as proposed in this notice. This reduction in fatalities and injuries would result in an annual savings to society of between 65 and 78 million dollars.

In addition, a resource allocation analysis conducted by the Transportation Systems Center at Cambridge, Massachusetts, indicates that strobe lights are cost effective. However, it should be noted that the benefits considered in the analysis are primarily societal in nature.

ANPRM Query No. 1

What types of lights should FRA consider requiring on locomotives to increase their conspicuity? Strobe lights, more powerful or oscillating headlights, or revolving dome lights? Could any of these lights be confused with other lights in the present railroad environment and result in potentially dangerous situations? Could any of these lights have a negative or distracting effect on railroad employees, motorists, pedestrians or persons who reside near a railroad?

In responding as to the type of lighted device that should be considered, eight commenters recommended strobe lights and two suggested strobe lights as a temporary alternative pending development of better methods of reducing grade crossing accidents. Four of these commenters recommended dual strobe lights which flash alternatively. On the other hand, some commenters expressed support for different types of alerting devices. In this connection, two commenters favored the use of an oscillating headlight believing that it would more easily supplement the present stationary headlight and that the relatively focused sweep of its high candela beam would be highly alerting to motorists at or very near to the grade crossing. One railroad commenter noted it had replaced strobe lights with an oscillating headlight because of employee complaints about the flashing strobe light. One commenter favored a revolving dome light and another commenter noted that its locomotives were already outfitted with a revolving dome light.

Confusion of additional lighted devices with lights in the present railroad environment was not seen as a problem. Two commenters who favored strobe lights, which are white in color, suggested that clear lens be used. The issue is not one of additional lights, rather it is the color of the additional lights. (See ANPRM Query No. 3 for discussion of color.)

A number of possible negative effects of strobe lights were identified and one possible negative effect was identified for dome lights. One commenter suggested that a roof top light might interfere with the radio antenna thereby causing interruptions in radio communications. Six commenters were concerned that reflected light at night would disturb the train crew. One commenter was also concerned that the reflected light of a strobe might be detrimental to visibility, create depth perception problems, have a hypnotic effect, or cause psychological problems. Four commenters suggested that strobes would have an adverse effect on persons along the right of way. The problems suggested included momentary blinding or disorienting railroad employees on the ground, distracting drivers or automobiles or trucks, and disturbing persons who reside close to the right of way.

One commenter who favored dome lights contended that strobe lights tend to draw and hold an observer's gaze directly into the light source, thereby creating a problem in visual acuity adjustment. This commenter further pointed out that any light source as sharp and bright as a strobe has a tendency to diffuse in fog or mist and create uncertainty as to its true location. Three commenters noted that photosensitive persons suffering from epilepsy may be adversely affected by strobe lights with a high flash rate. Three commenters were of the opinion that use of strobe lights would not adversely affect railroad employees.

FRA believes that a bright flashing light, such as a strobe light, is an effective alerting light device. The oscillating headlight is less effective because it has a much narrower focus. Thus, vehicles traveling parallel to the lead locomotive would be less likely to notice it.

The adverse effects noted by several commenters can be virtually eliminated by a reduction in the maximum candela of the light while still retaining the alerting qualities of the device. This has been confirmed in field testing of the device under actual operating conditions on the main line of a railroad. In addition, if the alerting lights are actuated only while approaching and passing over a grade crossing, employee exposure will be reduced to a minimum. Perhaps those commenters opposing strobe lights visualized their being operated continuously whenever the locomotive is in motion, much as the headlight is continuously lighted, instead of being activated only at grade crossings.

ANPRM Query No. 2

Should these lights be required on all locomotives or only on road locomotives? Should these lights be required to be installed only on locomotives that operate independently of other locomotives or that are used as the lead unit of locomotive consists?

The majority of commenters commenting on the questions posed in this query agreed that the lighted warning device should be applied to all road locomotives except those which by design would not be utilized as a leading unit in a consist. Two commenters thought all locomotives that operate across grade crossings should have additional lighted devices. Four commenters thought that only the lead locomotive should be required to have the devices, while one commenter thought that all locomotives should have the device except for those which by design can't be operated as a lead unit. Still another commenter thought it should be displayed on the lead unit and on the rear trailing unit.

Three commenters opposed installing lighted warning devices on switching locomotives that are primarily operated in yards or utilized solely for industry switching. It was pointed out that many switching operations are performed at locations where there may be many competing lighted elements, such as flashing neon signs or emergency vehicles, that would decrease the effectiveness of an additional lighted device on the locomotive. Also, freight

cars often preceded the locomotive in switching operations.

In addressing accident statistics and ratio of severity, it is important to focus attention on locomotives operated in main line road service because of their higher speeds. However, it should also be recognized that switching locomotives usually move over grade crossings more frequently than road locomotives during the course of their assigned work, and these crossings many times involve a higher volume of vehicular traffic than crossings out on the line of road. Furthermore, some classes of locomotives, depending upon the carrier, are used in both switching and road service, sometimes during the course of a single tour of duty.

If the alerting device is relatively unique and is activated only approaching and crossing over grade crossings, it should alert the unwary motorist despite existing lighted elements prevalent in the surrounding area. Since the hazard is a locomotive approaching a crossing when the motorist is unwary, an alerting device can have a bearing on reducing the extent of the hazard. Therefore, FRA believes that the locomotive at the head of a train or other movement which operates across a grade crossing should have increased conspicuity.

ANPRM Query No. 3

How many lights should be required on each locomotive? What color should they be? What values should be specified for light intensity, frequency of flashing, and width and height of beam or angular coverage?

The commenters responding to this portion of the ANPRM expressed a variety of opinions relative to the number of lighted devices that should be required on a locomotive. Their recommendations ranged from one device on the front end of the locomotive only, to one on each end, to a total of four devices per unit. The commenter recommending four devices per unit suggested that two red and two blue lights flashing alternatively be used. One commenter suggested a blue colored lighted device and another rejected amber as a possibility. Several commenters suggested white. A commenter cautioned that only colors which are not prevalent in railroad signal systems or not utilitized in vehicular traffic control should be considered.

Those commenters responding to the question relative to the proposed intensity and angles of the light beam suggested angles which ranged from a very narrow conical beam of 5 to 10 degrees aimed directly forward with an intensity of 20,000 to 50,000 candela, to beams having a horizontal width of 320 degrees and a vertical width of 5 to 10 degrees with an intensity of 400 candela. One commenter pointed out that each strobe light should be required to have an additional continous burning 32 candela miniature incandescent lamp filament inside the optical lens to act as a reference light source.

Because locomotives in general service on railroads today are capable of being operated in either direction, alerting lighted devices should be highly visible in whatever direction the locomotive is being operated. FRA does not favor use of the colors blue or red. FRA believes that the color blue should be reserved for blue signal protection of workmen. The color red is considered unsatisfactory because of its use in the signal systems. Furthermore, both colors are widely used on emergency vehicles and law enforcement vehicles on the nation's highways. On the other hand, a white light, which is produced by a xenon strobe, is highly alerting, does not conflict with the majority of automatic block signal aspects, and enjoys only limited use as an alerting color in a lighted device on highway vehicles.

FRA feels the flash rate for alerting lights must be held to between 60 and 90 flashes per minute to maintain maximum alerting characteristics. Flash rates substantially in excess of 90 per minute have the potential to induce seizures in persons with photosensitivity.

The intensity of alerting lights should not exceed 3,000 candela during the day or 1200 candela during the night in order to avoid possible adverse side affects. Operating two lights alternatively would insure that the device would provide maximum conspicuity to warn motorists of the approach of a locomotive.

FRA further feels the beam width should not be required to exceed a +5 and −5 vertical width over a forward area of at least 270 degrees. Operation of the strobe over the 90 degrees in the rearward direction may adversely affect crewmembers. Limiting the vertical range of the flash will minimize any adverse impacts.

ANPRM Query No. 4

How effective would each type of light be in alerting motorists and preventing grade crossing accidents? Based upon available statistics, what percentage of accidents that occurred in 1977 could have been avoided by each type of light?

Several commenters were of the opinion that the proposed lighting devices would not prove to be effective in alerting a motorist approaching a grade crossing. On the other hand, two commenters, one of whom was a lighting manufacturer, supported the proposed warning lights and were convinced that they would effectively aid in the reduction of grade crossing accidents. One railroad commenter attested to the fact that this railroad's accident record improved after oscillating lights were introduced into use. However, none of the commenters provided statistics to support their position.

FRA believes that flashing light devices mounted on a locomotive could help alert motorists approaching grade crossings. Accident statistics indicate quite clearly that the locomotive headlight, and sounding of the whistle and bell, are often not effective. In some cases, these are being ignored by the motorists; in many others, they fail to draw the attention of motorists in time for them to take action to avoid an accident.

ANPRM Query No. 5

How costly would each type of light be to install and maintain? What would be the labor and material costs per locomotive to install each type? What would be the annual maintenance cost for each type? Is each type readily available in sufficient number? How much time would be required to equip all locomotives with each type?

Two commenters commented as to the length of time that would be needed to install various proposed devices. One of these estimated it would take one month to equip his entire locomotive fleet with either strobe or dome lights, the other estimated that, for each locomotive, it would take four days to install a single strobe light or a single revolving dome light, six days to install an oscillating headlight, and six days to install two strobe lights.

A total of five railroads and one manufacturer commented relative to estimated installation costs. Estimates as to per unit costs for installation ranged from $200 to $1,203 for strobe lights and $1,000 to $1,583 for oscillating headlights. Three commenters who combined the material and labor costs estimated from $530 to $2,000 per strobe unit. One of the three estimated that it would cost $2,200 per unit for an oscillating headlight.

Several comments were received on the subject of annual maintenance costs. The estimates provided ranged rom $55 to $200 for strobe lights, from $105 to $600 for oscillating headlights, and from $60 to $200 for revolving dome lights.

ANPRM Query No. 6

If regulations were promulgated requiring locomotives to be equipped with two strobe lights that flash alternatively, each with an effective intensity of between 800 and 3,000 candela over the forward 270 degrees of the lamp with a vertical beam width of ±degrees and with a flash rate of between 60 and 90 flashes/minute for each lamp, what would be the labor and material costs per locomotive to intall these lights? What would be the annual maintenance costs for these lights per locomotive? Are these lights readily available in sufficient supply? How much time would be required to equip locomotives with these lights?

Several commenters commented relative to installation and maintenance costs if two strobe lights of stipulated specifications were to be required on each locomotive. Estimates as to cost of labor ranged from $200 to $2,406 per locomotive. Two commenters who combined the cost of labor and material estimated the combined cost to be between $530 and $1,500. One comment originating from a member of Congress estimated that the overall cost of equipping a locomotive would be $500. Estimates relative to cost of material ranged from, $400 to $648, while annual maintenance costs ranged from $55 to $224. Estimates of time required per unit for installation ranged from two to six days.

ANPRM Query No. 7

Should these lights be illuminated at all times when the locomotive is in motion? Only at night or during reduced visibility? Only when approaching grade crossings that are not protected by flashing lights or gates? When approaching all grade crossing regardless of the type of grade crossing protection provided? What discretion, if any, should railroads and localities be allowed in this respect? If these lights are to be activated only when approaching grade crossings, should they be installed so that they are automatically activated whenever the locomotive bell or horn is used, or should they be independently activated?

In commenting as to when strobe lights should be illuminated, the NTSB recommended that all locomotives be equipped with strobe lights and that they be activated at all times when a locomotive is in operation. A commenting carrier representative was of the same opinion. Three commenters were of the opinion that the additional lighted devices should be displayed at grade crossings, but that the individual carriers should determine under what other conditions they should be displayed. These commenters point out that there are great dissimilarities, varying physical characteristics, and a variety of operating practices prevalent on railroad systems throughout the country.

Several commenters thought that the lights should be activated only at grade crossings. Two of these commenters suggested that the lights be installed so as to be activated automatically whenever the whistle or bell on the locomotive were sounded with provisions made for sounding it independently when conditions warranted. One commenter stated that the display of these lights should be required only when approaching and passing over public crossings at grade which were protected by passive warning devices, leaving it up to the discretion of the railroad as to whether they should be displayed at grade crossings protected by active warning devices.

A number of commenters, including three representing carriers, argued that the lights should be installed to be activated independently of the locomotive whistle and bell. They point out that there are numerous situations when these audible warning devices are utilized in accordance with operating rules for purposes other than to warn vehicular traffic at grade crossings and, in some of those instances, flashing strobe lights could be inappropriate and distracting.

One carrier thought that these warning lights should be primarily utilized to supplement the lighted locomotive headlight in an effort to provide greater visual warning to the motorist approaching the grade crossing. If this were done, the proposed lights would be displayed whenever the locomotive headlight was displayed in compliance with railroad operating rules.

None of the commenters specifically addressed the issue of displaying these lighted devices only at night or under conditions of reduced visibility. However, one commenter did express the opinion that their use under these conditions should be mandatory regardless of what else might be required.

The grade crossing problem is not one which involves only the larger carrier, nor is it restricted to specific geographical locations or the characteristics of the terrain. To insure that these lights are effective, they must be activated approaching and pasing over all grade crossings, similar to the locomotive's whistle or bell. However, FRA does not believe that the flashing light devices should be displayed at all times when the locomotive is in motion. Continuous display could negate some of the alerting aspects and might distract or disturb railroad employees or persons along the right of way.

In addition, FRA believes that alerting lights should be capable of being operated independently. This would accommodate situations where ordinances do not allow the whistle to be sounded or the whistle is sounded for operating reasons other than approaching grade crossings.

ANPRM Query No. 8

What State and local jurisdictions have laws, ordinances, and regulations in effect that:

(a) Require locomotives to diplay strobe lights, flashing lights, or any other type of lights to alert motorists at grade crossings?

(b) Prohibit or limit the use of strobe lights, flashing lights, or any other type of lights?

(c) Prohibit or limit the use of horns, bells, whistles, or other types of audible warning devices?

The four commenters responding to this portion of the ANRPM stated that they were not aware of any State or local jurisdictions having laws, ordinances, or regulations in effect that would require locomotives to display such lights or prohibit their use. However, two of these commenters stated that they were aware of State and municipal ordinances which restricted the use of locomotive whistles. One commenter, representing a State regulatory body, stated that restraints were imposed on the sounding of audible warning devices at about one percent of the grade crossings in that State. The precise location and specific hours of prohibition are spelled out by special order. A commenter from an eastern railroad stated that there were no such restrictions in effect at any location on that railroad.

FRA is aware that throughout the country various ordinances require railroads to refrain from using locomotive whistles while moving through specific urban areas, except in emergency situations. However, FRA is not aware of any locations where similar ordinances have been issued relative to the sounding of the locomotive bell. Further, it is not aware of any ordinance that restrains the use of lighted warning devices on locomotives.

ANPRM Query No. 9

How many of the following grade crossing accidents occurred in 1977:

(a) A locomotive equipped with only a standard fixed headlight struck a motor vehicle or pedestrian?

(b) A locomotive equipped with an oscillating headlight, strobe light, or revolving light struck a motor vehicle or pedestrian?

(c) A motor vehicle struck the side of a locomotive or one of the first 20 cars in a train when the locomotive was equipped with an oscillating headlight, strobe light, or revolving light?

A commenter representing a State regulatory body stated that in his State during the year 1977 records indicate that there had been 15 accidents in which a locomotive equipped with a standard fixed headlight had struck a motor vehicle at a grade crossing. Four commenters commenting on this portion of the ANPRM stated that none had occurred on their property during the year 1977.

Six commenters submitted data relative to the number of grade crossing accidents in 1977 that involved a locomotive equipped with an oscillating headlight, strobe light or revolving light. Three of these commenters reported having no grade crossing accidents, two commenters reported having one, and one commenter reported 17 accidents.

Six commenters responded to the question relative to a motor vehicle striking the side of a train at a grade crossing when the locomotive was equipped with only a standard fixed headlight. Two of these commenters reported that no accidents had occurred, one commenter reported having two, another commenter reported having three, and one commenter reported a total of 29.

Four commenters commented on the rate of similar accidents involving trains where the locomotive was equipped either with an oscillating headlight, strobe light, or revolving light. Two of these reported that no accidents had occurred while two commenters reported having had eight each during the year.

FRA believes that the data received are too fragmentary and indefinite to draw any conclusions.

ANPRM Query No. 10

For each accident category in question 9.

(a) What was the grade crossing accident rate based on locomotive miles?

(b) How many fatalities resulted?

(c) How many injuries resulted? To the extent possible, categorize injuries as permanently disabling, major and minor, or superficial.

(d) How much damage resulted to railroad and other private property?

(e) How many accidents occurred at grade crossings protected by gates? By flashing lights without bells? By wigwags with and without bells? By passive warning signs?

(f) How many accidents occurred in daylight, dawn/dusk, and in darkness?

Only one commenter calculated its grade crossing accident rate based upon locomotive miles. The entire locomotive fleet of this railroad is equipped with either a revolving or flashing dome light. The accident rate was 5.97 per million locomotive miles.

In general, the data submitted in response to ANPRM Query No. 10 are too fragmentary and lack the degree of detail necessary to fit them into the categories outlined in the question. The most that can be said is that existing crossing protection, including lowered gates, does not always convince unwary motorists that a train is actually approaching a crossing. This suggests a need for a supplemental warning device which attracts the attention of motorists to the actual presence of a locomotive and provides sufficient warning time to avoid an accident.

Section by Section Analysis

Section 222.1—This section sets forth the scope of the part. Part 222 prescribes the minimum requirements regarding the use of alerting lights on railroad locomotives. It allows a railroad to adopt additional requirements governing their use. This flexibility would permit a railroad to tailor the use of alerting lights to its individual operating environment.

Section 222.1—This section specifies the applicability of the part. It provides that the requirements of the part apply to all locomotives operated on standard gauge track which is part of the general railroad system of transportation. By way of clarification, it also provides that the part does not apply to locomotives operated only on track inside an installation which is not part of the general railroad system of transportation or to locomotives operated by a rapid transit railroad only on track used exclusively for rapid transit passenger service.

FRA believes that alerting lights should be required, regardless of the type of service or operation. Although speeds may be greater on the main track outside of yards, movements over grade crossings within yards, particularly when switching, occur more frequently. Furthermore, the volume of automobile traffic is generally greater. Analysis of the grade crossing accident data demonstrates that there is a significant possibility of collisions at grade crossings irrespective of relatively slower speeds, locale, or type of service being performed.

Section 222.5—Proposed definitions necessary to the understanding and implementation of the part are set forth in this section. Most of the definitions are simple and do not involve any underlying substantive issues. The definition of "locomotive" is similar to that used in other regulations and encompasses the many variations of motive power used by railroads. The term would include units without propelling motors but with "control stands", which are drivers seats. These units are included since they are regularly the lead unit in "push-pull" train operations. These are operations in which the locomotive pulls cars from one point to another and then pushes the cars back to the point from which they originally departed.

The proposed definition of "public grade crossing" has the identical elements of that term defined in the National Grade Crossing Inventory. The proposed requirements of the part regarding the display of alerting lights would apply only at public grade crossings. Private crossings would not be included for several reasons. First, the overwhelming percentage of accidents occur at public grade crossings and those crossings are where the public has a reasonable expectation of special protection. Many private crossings are used very infrequently. Second, the operational practices of a railroad and the holder of a private right of crossing are subject to agreement between the two parties. The parties can best determine the appropriateness of displaying alerting lights and take the necessary actions at private crossings. Third, to the extent that certain private crossings have a quasi-public quality, State and local governments are in the best position to identify them and to require the display of alerting lights.

Section 222. 7—This section would prescribe a civil penalty of at least $250, but nor more than $2,500, for each violation of a provision of the proposed part. Each day of each violation would constitute a separate offense. These penalty provisions are consistent with penalty provisions established in other regulations involving mandatory standards governing railroad operations.

Section 222.9—The proposed procedures for petitioning FRA for a

waiver of compliance with any requirement of the proposed part are set forth in this section.

Section 222.11—This section sets forth the proposed requirements for the display of alerting lights. In general, the section would require that each locomotive at the front of a train, or other movement, display two alternately flashing alerting lights at all public grade crossings. (The proposed specifications of each alerting light are set forth in § 222.13 and the proposed procedure for installing alerting lights is covered by § 222.15.) Studies indicate that alternate flashing provides the maximum alerting quality.

The phrase, "at the head of train or other movement", is used for two reasons. First, it makes clear that, if a locomotive is not the first piece of rolling equipment to enter a public crossing, the display of alerting lights would not be required. Second, it indicates that, if a locomotive enters a public crossing without any rolling equipment in front, it would have to display alerting lights irrespective of whether it is pulling any other equipment.

Proposed § 222.11 also provides that the required display begin at least 30 seconds prior to the locomotive entering any public grade crossing and continue until 30 seconds after the locomotive has cleared the crossing or until the entire train has cleared the crossing, whichever occurs sooner. This proposed time frame reflects FRA's view of the period when alerting lights will be effective in warning vehicles approaching the crossing of the presence of the locomotive. It should provide motorists with ample opportunity to take action to avoid an accident, while minimizing any possible adverse impacts from use of the alerting lights.

The section also includes an exception to the proposed requirement that a locomotive at the head of a train, or other movement, display alerting lights at all public grade crossings. A non-equipped locomotive, or a locomotive with defective alerting lights, would be permitted to operate across public grade crossings within an engine servicing area or train yard at a speed not exceeding 5 mph for the purpose of servicing the locomotive or assembling or disassembling multi-unit locomotive consists.

This proposed exception follows logically from the fact that only the locomotive at the head of the train, or other movement, is required to display alerting lights. It is possible that other locomotives in a multi-unit consist will either not be equipped with alerting lights or may have defective lights. In order to assemble or disassemble a consist of that type, and to move a locomotive for repair, an exception appears necessary. The limited geographic boundary, the limited purposes, and the low speed of the exception would minimize the safety risk.

The proposed requirement to display alerting lights would become effective three years from issuance of the final rules based on the NPRM. The three year interval should enable the industry to obtain and install the lights without creating any undue burden on railroad operations.

Section 222.13—The proposed specifications of the alerting lights are contained in this section. They are performance specifications so that there would be maximum opportunity for light manufacturers to develop alerting lights and railroads to choose the best device. The performance characteristic can be met now by xenon strobe lights. FRA is not aware of any other type of light currently available that can meet the specifications.

The section proposes that each alerting light have a flash rate not less than .75 nor more than 1.5 flashes per second. The combined flash rate would be between 1.5 and 3.0 flashes per second. The range of permissible flash rate would provide excellent conspicuity without posing a problem to photosensitive persons.

Under the proposed section, the alerting light would be required to have a flash duration not in excess of .1 seconds, and the light would have to be "aviation white" in color. FRA believes that the short flash duration is an essential element of the alerting quality and that the color white is appropriate due to its relative uniqueness in the railroad environment.

The angular coverage proposed is plus or minus 5 degrees in the vertical direction and at least plus or minus 135 degrees in the forward horizontal direction. The narrow vertical range would focus the flash at the level of vehicles approaching a crossing. It would also minimize undesirable beam scatter. The wide horizontal range would maximize the alerting capability of the light, and would make it visible even to vehicles approaching the crossing at a sharp angle to the tracks and vehicles paralleling the locomotive before crossing the track. The rearward 90 degrees of the flash would not be required to be visible since it could prove distracting in some situations to crewmen behind the locomotive displaying the alerting lights.

Under this proposed section, the effective intensity of the alerting light over the entire angular coverage is specified for day, night, and dawn and dusk. An effective intensity of between 800 and 3,000 candela would be required during the day, between 400 and 1,200 candela during the night, and between 400 and 3,000 during dawn and dusk. The different intensity ranges for different time periods is proposed to permit a railroad to use a multi-intensity light. Thus, for example, if unusual operating conditions warrant an especially high intensity light during the day, a railroad could install a two level alerting light.

It will be noted that a single intensity light with an effective intensity of between 800 and 1,200 candela could be operated at all times. This range is proposed because it provides adequate conspicuity during the day without creating an excessively intense flash at night.

Section 222.15—Under this proposed section, the alerting lights would have to be mounted not less than 5 feet apart, equidistant from the nearer end of the locomotive and at least 8 feet above the rail. This minimum height requirement is proposed to insure that the lights are visible from a considerable distance. Ideally, they should be mounted as high as possible. It is anticipated that in most instances they would be mounted on the roof of the locomotive. The minimum lateral separation of 5 feet is proposed to accentuate the alerting quality of the alternating flash.

Section 222.17—This proposed section provides that whenever one of the alerting lights becomes inoperative enroute, the locomotive could be operated at track speed to the next forward point where repairs can be made or the locomotive replaced. Even if both alerting lights on the locomotive at the front of the train, or other movement, become inoperative enroute, the locomotive still could be operated at track speed to the next forward point where repairs can be made. In addition, the locomotive could be replaced by another locomotive in the consist if the replacement locomotive has an operative alerting light.

Where neither the locomotive at the front of the train, or other movement, nor any other locomotive in the consist has an operative alerting light, the lovomotive would be permitted to operate only at a speed which would enable it to stop short of an obstruction at public grade crossings. This proposed requirement is considered essential, not only in view of the reduced conspicuity of the locomotive, but also due to the

expectation on the part of the public that locomotives will be displaying alerting lights.

Section 222.19—Under this proposed section, a locomotive that is equipped with alerting lights and operated at the front of a train, or other movement, would have to display those lights as specified by proposed section 222.11. This proposed requirement would become effective after 30 days from the date of issuance of the final rules based on this NPRM.

Economic Impact

FRA has evaluated this NPRM in light of Executive Order 12044 and DOT's policies for the evaluation of regulatory impacts (E.O. 12044, 43 FR 12661, March 24, 1978; Policies and Procedures for Simplification, Analysis, and Review of Regulations, 44 FR 11034, February 26, 1979). Based on that evaluation, FRA has determined that this NPRM contains a significant regulatory proposal.

FRA certifies that a regulatory analysis has been prepared and that a copy of that analysis has been placed in Docket No. RSGC–2. Interested persons may examine the regulatory analysis during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590. Persons interested in obtaining a copy of the analysis for review and comment should contact the Docket Clerk by telephone (202) 426–8836 or by writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, at the above address.

As previously explained, this NPRM would require that locomotives display alerting lights at public grade crossings. The proposed requirement would apply to each locomotive, whether operated as a single unit or at the front of a train.

FRA has estimated the cost of installing strobe lights using two different approaches. The first approach is based on the TSC recommendation (Hopkins, John B. and Newfell, A. T., Guidelines for Enhancement of Visual Conspicuity of Trains at Grade Crossings, Cambridge, MA, Transportation Systems Center, 1975 (DOT/FRA)). While the specifications set forth in these guidelines are not yet in production, the estimated cost for equipping locomotives with alerting lights pursuant to this approach is $1,750 per locomotive. This cost is based on use of the following specification: 4000 candela—Day 800–4000 candela; Night 100–400 candela; Dim 50–100 candela; Day/Night transition automatic—photocell; automatic hookup to horn and/or whistle; and On/Off Manual override. Thus, if all of the 28,000 locomotives currently in use were equipped pursuant to this approach, the total cost would amount to $49,000,000 (28,000 × $1,750).

If this approach is used, the estimated cost for subsequent maintenance, based on a five-year maintenance interval, is $285.00 per locomotive. This cost is computed as follows: Rebuilt $80.00; Labor remove/replace 2 hours × $25.00 = $50.00; 3 sets of bulbs = $130.00; 1 hour labor.

The second approach is based on currently available equipment. If this equipment is used, the estimated cost of installation is $555.00 per locomotive. This cost is based on use of the following specification: 1100 candela—Standard 1500 candela; 3 level option 100/550/1100 candela; automatic transition—photocell; automatic hookup and/or whistle; and manual override. Thus, if all of the locomotives currently in use were equipped pursuant to this approach, the total cost would amount to $15,540,000 (28,000 × $550.00).

If currently available equipment is used, the estimated cost for subsequent maintenance, based on a 5-year maintenance interval, is $174.00 per locomotive. This cost is computed as follows: Rebuilding $80.00; labor remove/replace 2 hrs. × $25.00 $44.00. = $50.00; 1 bulb/per

It should be noted that the actual cost of installation and maintenance of the strobe lights proposed in this notice would be lower than the cost of installation and maintenance based on the TSC recommendation or currently available equipment. The cost would be lower since some of the options discussed in connectin with those approaches, such as the three level option and automatic transition—photocell, would not be required by this notice.

Alternatives

FRA, in its deliberation of this proposed regulation, has considered various methods of improving grade crossing safety. These methods, grade separation and installation of active warning devices, have been compared with alerting lights for the purpose of determining the relative merits of alerting lights. These alternative methods, however, are crucial elements of an overall grade crossing program.

Grade Separation

Grade separation is one effective means of reducing grade crossing accidents. There are locations throughout the rail-highway network where the nature and volume of automotive and train traffic over a particular grade crossing warrants the major expenditures related to the construction of a grade separation. These types of crossings exist in high speed rail corridors where the closing speed between the automotive and rail vehicle is of such short duration that an extremely hazardous condition is created. Additional areas requiring grade separation exist in connection with the interstate highway system where high volume roadways intersect a railroad right-of-way.

However, the unit cost of a grade separation during 1978 was $1 million based on the average construction cost, (excluding preliminary engineering and right-of-ways) of federal-aid highway projects. Although grade separation projects are currently being funded by the Federal Highway Administration (FHWA), it is recognized that use of this approach at the vast majority of public grade crossings cannot be justified.

Active Warning Devices

Installation of train activated alerting devices (i.e., flashing lights or automatic gates) is another alternative. Installation of these devices constitutes a major portion of the ongoing FHWA program to improve safety at rail-highway grade crossings. The conventional grade-crossing flashing light systems have generally been found to reduce accidents at unprotected crossings from 60% to 75%, with even better results of 90% when augmented by automatic gates.

Per unit costs associated with these types of devices average $26,000 for flashing lights and $39,200 for automatic gates. Recognizing that there are presently 168,000 unprotected crossings, the cost associated with equipping all of these crossings would be enormous.

The vastness of the rail-highway network and the extremely wide variation in the amount of exposure to accident potential that exists at these crossings precludes the desirability and justification for equipping all unprotected crossings with these permanently located automated devices. There are large numbers of grade crossings where rail traffic is very limited (i.e., one train per day or two trains per week) and vehicular traffic is also at a minimum.

Alerting Lights

Alerting lights can be installed on locomotives for a small fraction of the cost that would be required to eliminate all rail-highway crossings or equip all crossings with active warning devices.

Although these methods would provide significantly higher levels of grade crossing safety, FRA studies indicate that alerting lights would provide a valuable added safety factor with a more favorable cost-benefit basis. In fact, as previously noted, the cost of grade separation or equipping all crossings with active warning devices would be prohibitive and, in some case, unjustifiable from a cost-benefit standpoint.

Alerting lights would provide additional warning at all rail-highway grade crossings, most of which are not currently protected by active devices. Moreover, they would serve as a useful supplemental warning system at crossings which are protected by active devices. The added warning provided by alerting lights is, therefore, consistent with the current program for the installation of active warning devices at grade crossings.

In view of these factors, FRA believes that alerting lights are needed to supplement existing departmental efforts to reduce accidents at rail-highway grade crossings.

Written Comments and Hearings

Interested persons are invited to participate in this proceeding by submitting written data, views or comments. Communications would identify the regulatory docket number and the notice number, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 2100 Second Street, S.W., Washington, D.C. 20590. Persons desiring receipt of their communications to be acknowledged should attach a stamped pre-addressed postcard to the first page of each communication. Communications received before September 28, 1979, will be considered before final action is taken on the proposed rules. All comments received will be available for examination by interested persons at any time during regular working hours in Room 4406, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590.

In addition, FRA will conduct public hearings at 10:00 a.m. on September 17, 1979, in Room 349 of the John C. Kluczynski Building, Chicago, Illinois and on September 20, 1979, in Room 2230 of the Nassif Building, Washington, D.C. The hearings will be informal, and not judicial or evidentiary hearings. There will be no cross examination of persons making statements. A staff member of FRA will make an opening statement outlining the matter set for hearing. Interested persons will then have the opportunity to present their oral statements.

At the completion of all initial oral statements, those persons who wish to make rebuttal statements will be given the opportunity to do so in the same order in which they make their initial statements. Additional procedures for conducting the hearings will be announced at the hearings.

Interested persons may present oral or written statements at the hearings. All statements will be made a part of the record of the hearings and will be a matter of public record. Any person who wishes to make an oral statement at the hearings should notify the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 2100 Second Street, S.W., Washington, D.C. 20590 (Telephone (202) 426-8836), before September 12, 1979, stating the amount of time required for the initial statement.

The proposals contained in this notice may be changed in light of the oral statements made at the public hearings, or the written comments submitted in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA proposes to adopt a new Part 222 (49 CFR Part 222) to read as follows:

PART 222—ALERTING LIGHTS—LOCOMOTIVES

Sec.

222.1 Scope.
222.3 Application.
222.5 Definitions.
222.7 Civil Penalty.
222.9 Waivers.
222.11 Alerting Lights Display.
222.13 Alerting Light Specifications.
222.15 Alerting Lights Installation.
222.17 Movement of Defective Equipment.
222.19 Interim Utilization of Equipped Locomotives.

Authority: Secs. 2, 7, 8, 9, and 13, Locomotive Inspection Act (45 U.S.C. 23, 28, 29, 30 and 34); sec. 6 (e) and (f), Department of Transportation Act (49 U.S.C. 1655 (e) and (f)).

§ 221.1 Scope.

This part prescribes minimum requirements governing alerting lights on locomotives. So long as these minimum requirements are met, railroads may adopt additional or more stringent requirements governing their use.

§ 222.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all locomotives operated on standard gauge track which is part of the general railroad system of transportation.

(b) This part does not apply to locomotives—

(1) Operated only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Operated by a rapid transit railroad only on track used exclusively for rapid transit passenger service in a metropolitan or suburban area.

§ 222.5 Definitions.

As used in this part:

(a) "Alerting light" means a light having the characteristics prescribed in § 222.13.

(b) "Dawn" means the period between one half hour before sunrise and one half hour after sunrise.

(c) "Day" means the period between one half hour after sunrise and one half hour before sunset.

(d) "Dusk" means the period between one half hour before sunset and one half hour after sunset.

(e) "Effective intensity" means that intensity of a light in candela as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights, November, 1964.

(f) "Locomotive" means a unit of equipment—

(1) With propelling motors designed for moving other equipment;

(2) With propelling motors designed to carry freight, or passenger traffic, or both, in revenue service; or

(3) Without propelling motors but with control stands.

(g) "Locomotive servicing track area" means one or more tracks within a area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel.

(h) "Public grade crossing" means a location where one or more railroad tracks cross a road open to public travel which is under the jurisdiction of, and maintained by, a public authority.

§ 222.7 Civil penalty.

Each railroad that operates a locomotive in violation of any requirement prescribed by this part is liable to a civil penalty of not less than $250, nor more than $2,500, for each violation. Each day of each violation constitutes a separate offense.

§ 222.9 Waivers.

(a) A railroad may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this part.

(b) Each petition for a waiver under this section must be filed in the manner,

and contain the information, required by Part 211 of this Chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest, and is consistent with railroad safety, he may grant the waiver subject to any condition he deems necessary. Notice of each waiver granted, including a statement of the reason therefor, is published in the **Federal Register.**

§ 222.11 Alerting lights display.

(a) Except as provided in paragraph (b) of this section, after (three years from issuance of the final rules), each locomotive at the front of a train, or other movement, shall display two alternately flashing alerting lights, installed in accordance with § 222.15, at a minimum of 30 seconds before entering any public grade crossing and continuing until 30 seconds after the locomotive has cleared the crossing or until the entire train has cleared the crossing, whichever occurs sooner.

(b) A non-equipped locomotive, or a locomotive with defective alerting lights, may be operated at the front of a train, or other movement, across a public grade crossing located within an engine servicing area or train yard without displaying alerting lights at a speed not exceeding 5 mph for the purpose of servicing the locomotive or assembling or disassembling multi-unit locomotive consists.

§ 222.13 Alerting light specifications.

Each alerting light shall have—

(a) A flash rate of not less than .75, nor more than 1.5, flashes per second;

(b) A flash duration, as defined by the period during which 90 percent of the total energy within the visible range associated with the flash is emitted, not in excess of .1 seconds;

(c) A color that falls within the limits of "aviation white" as defined in the Code of Federal Regulations, Title 14, § 23.1397(c) (14 CFR 23.1397(c));

(d) An angular coverage of ± degrees in the vertical direction, and not less than ±135 degrees in the forward horizontal direction; and

(e) An effective intensity over the entire angular coverage of between 800 and 3,000 candela during the day, between 400 and 1,200 candela during the night, and between 400 and 3,000 candela during dawn and dusk.

§ 222.15 Alerting lights installation.

The two alerting lights shall be mounted not less than 5 feet apart, equidistant from the nearest end of the locomotive, and not less than eight feet above the rails.

§ 222.17 Movement of defective equipment.

(a) Whenever one of the alerting lights prescribed in this part becomes inoperative en route, the locomotive may be operated at track speed to the next forward point where repairs can be made or the locomotive can be replaced.

(b) Whenever both of the alerting lights prescribed in this part become inoperative en route, the locomotive may be operated to the next forward point where repairs can be made or the locomotive can be replaced—

(1) At track speed if another locomotive in the locomotive consist at the front of the train has an operative alerting light; or

(2) At a speed which will enable it to stop short of any obstruction at public grade crossings.

§ 222.19 Interim utilization of equipped locomotives.

After (30 days from issuance of the final rule), each locomotive that is operated at the front of a train, or other movement, and which is equipped with alerting lights as prescribed in this part, shall display those lights as specified by § 222.11(a)

(Secs. 2, 7, 8, 9, and 13, Locomotive Inspection Act (45 U.S.C. 23, 28, 29, 30 and 34); Sec. 6(e) and (f), Department of Transportation Act (49 U.S.C. 1655(e) and (f))

Issued in Washington, D.C. on June 12, 1979.

John M. Sullivan,

Administrator.

[FR Doc. 79-18998 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-06-M

Federal Highway Administration

[49 CFR Parts 392, 393, and 399]

[BMCS Docket No. MC-80; Notice No. 79-5]

Toxic Gases in Commercial Motor Vehicles

AGENCY: Federal Highway Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Comments and information are solicited on a proposed revision to the Federal Motor Carrier Safety Regulations (FMCSR), to establish definite exposure limits to certain toxic gases within commercial motor vehicles operating under the jurisdiction of the Federal Highway Administration. These limits would provide commercial vehicle drivers with the same basic protection afforded industrial workers through current occupational safety standards as set by the Occupational Safety and Health Administration.

DATE: Comments must be received August 17, 1979.

ADDRESS: All comments should refer to the Docket number and notice number that appear at the top of this document and must be submitted (original and two copies) to Room 3402, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety, (202) 426-9767, or Mr. Gerald M. Tierney, Attorney, Motor Carrier and Highway Safety Law Division, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.s.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: An Advance Notice of Proposed Rulemaking (ANPRM), Docket No. MC-80, Notice No. 77-11, was published in the **Federal Register** (43 FR 20), January 3, 1978, proposing revisions to these Regulations. The FMCSR in § 392.66 currently requires that:

"No person shall dispatch or drive any motor vehicle or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

(a) Where an occupant has been affected by carbon monoxide;

(b) Where carbon monoxide has been detected in the interior of the vehicle;

(c) When a mechanical condition of the vehicle is discovered, which would be likely to produce a hazard to the occupants by reason of carbon monoxide."

Respondents were invited to comment regarding whether the Federal Highway Administration (FHWA) should expand the regulation dealing with carbon monoxide to include other toxic gases such as nitric oxide and nitrogen dioxide; whether the FHWA should regulate the levels of these harmful gases; and if so, what concentration levels should be set as the maximum.

Twelve responses were filed in response to this ANPRM. The consensus supported the proposal to adopt maximum driver exposure levels for these toxic gases.

The FHWA's initial investigation about the problem of gas intrusion into truck cabs began in April 1973, when a number of drivers and union officials alleged that truck drivers were operating unsafe equipment because of the harmful and hazardous fumes in their

truck cabs, in violation of the FMCSR. Testing which was conducted then, at one motor carrier, failed to disclose significant concentrations of these gases within their cabs.

Complaints continued to be received from drivers from various sections of the country. Accordingly, the FHWA had experimental research conducted to measure the in-cab concentration of these toxic gases over a variety of conditions.

Test Protocol

A worst-case selection of 88 vehicles was made from 8 participating trucking fleets. In most cases both idling and road tests were performed on the same vehicle. Idling tests were conducted in basic conformance with Society of Automotive Engineers' Test Procedure] 989; based upon these results, individual vehicles were selected for road testing. While a technician operated measuring equipment, drivers assisted by changing window, vent, and other conditions; thus, allowing several variables to be studied.

Final testing was conducted to determine gas leakage routes into truck cabs. A tracer gas, sulfur hexafluoride, was released and then measured along the exhaust systems of idling and moving vehicles.

Test Results

The maximum concentrations which were recorded during idling and road testing were: nitric oxide, 2 parts per million (ppm); nitrogen dioxide, 3 ppm; and carbon monoxide, 30 ppm. These measurements consisted of a combination of vehicle and outside air (ambient) concentrations. The proposed National Institute of Occupational Safety and Health (NIOSH) nitrogen dioxide ceiling value of one ppm was commonly exceeded when the levels in the ambient were added to those found in the cab. NIOSH is an advisory government agency. Worst-case nitrogen dioxide levels were found to be statistically correlated with exhaust leaks and closed cabs; testing showed that cab floor openings were the principal pathways for entrance of engine compartment gases.

Interpretation of Test Results

The driver is affected by toxic gas exposure in two ways, the first is by potentially chronic or acute health effects, the second is by performance degradation. These effects were considered for all gases, and it was determined that the consequences of exposure to nitrogen dioxide was greatest followed by carbon monoxide. Nitric oxide under certain atmospheric conditions is changed into nitrogen dioxide.

Nitrogen dioxide, a product of diesel exhaust, is classified as a deep lung irritant, which is known to increase breathing difficulties. In addition, laboratory animal studies have shown this gas to cause pathological changes in the lungs, which may lead to emphysema.

The carbon monoxide levels measured during the test program were considered less hazardous to drivers than the nitrogen dioxide levels, but were high enough to be of concern. This is especially true when vehicle self-contamination levels are combined with any of the following conditions: when the driver smokes, when ambient carbon monoxide levels are elevated, or when a vehicle is operated by a driver suffering from heart or lung disease.

Although the implications for long-term exposure to these gases are not fully known, these conditions create concentrations in the blood sufficiently high to cause short-term health and performance problems. Therefore, the FHWA proposes to adopt requirements for these gases identical to those of the American Conference of Governmental Industrial Hygienists (ACGIH),[1] a voluntary consensus organization. The Department of Labor's Occupational Safety and Health Administration (OSHA) uses these same values with the exception of the Threshold Limit Value—Short-term Exposure Limits (TLV-STELS).[2] Support for the adoption of voluntary consensus standards was provided by the Office of Management and Budget's memorandum of December 22, 1977, to the Heads of Executive Departments and Establishments, published on January 3, 1978, which encourages the use of voluntary consensus standards." * * * whenever possible and appropriate, as a means of reducing and eliminating redundant Federal efforts to develop and maintain in-house Government standards" (43 FR 48).

If justified by future evidence, research, and/or analysis, these levels may need to be revised. It is felt that commercial vehicle drivers should be offered, without further delay, basically the same protection which has safeguarded other industrial workers for years.

The proposed revisions would adopt the Threshold Limit Value—Ceiling, (TLV-C), for nitrogen-dioxide, which is the driver exposure concentration level which must not be exceeded even instantaneously. For carbon monoxide and nitric oxide, 2 measurement levels will be established. The first, the Threshold Limit Value—Short Term Exposure Level, (TLV-STEL), establishes the maximum concentration to which a driver can be exposed for a period up to 15 minutes, continuously. The second, the Threshold Limit Value—Time Weighted Averge, (TLV-TWA), establishes a time-weight average concentration level for driver exposure during a normal 8-hour work day or 40-hour work week.

Although the TLV-TWA values are based on a conventional 8-hour workday or 40-hour work week, they are nevertheless regarded as appropriate for truck and bus drivers. A 1977 FHWA nationwide survey established the mean driving time for these drivers as 30.1 hours and 32.2 hours, respectively.

The adoption by the FHWA of ACGIH standards should not impose undue hardships on the motor carrier industry. Testing which was conducted for the FHWA indicated that well maintained vehicles do not exceed these levels. Thus, this proposed Regulation is expected to have minimal impact, and therefore, does not warrant a full evaluation in accordance with the criteria established by the Department of Transportation, under Executive Order 12044. Consequently, no statement is being placed in the public docket.

The new requirement being proposed will encompass the present rule, and will prohibit anyone from driving, dispatching, or carrying passengers in a vehicle in which concentrations of these gases exceed the established values.

Accordingly, it is proposed that Part 393 Subpart J, published at 43 FR 6638, Feb. 15, 1978, be redesignated as Part 399 Subpart L and it is proposed that § 392.66 of the FMCSR (Subpart G of Chapter III, Title 49, Code of Federal Regulations) be revised and redesignated as § 399.1001 under the new Subpart Z, entitled, Toxic and Hazardous Substances.

[1] TLVs® Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1977. Available from Secretary-Treasurer, ACGIH, P.O. Box 1937, Cincinnati, Ohio 45201. Price $1.50.

[2] Occupational Safety and Health Standards, Subpart Z—Toxic and Hazardous Substances, Code of Federal Regulations, Title 29, Chapter XVII, [§ 1910.1000(d)(1)(i)].

PART 399—EMPLOYEE SAFETY AND HEALTH STANDARDS

Subpart A—General (Proposed in MC-64; 43 FR 8566)

Subpart B—Recording and Reporting Employee Injuries and Illness (Proposed in MC-64; 43 FR 8566)

Subpart C through J [Reserved]

Subpart K—Medical and Emergency Medical Care (Proposed in MC-64; 43 FR 8566)

Subpart L—Step, Handhold, and Deck Requirements on Commercial Motor Vehicles (Proposed in MC-58-1; 43 FR 6638, formerly published as Subpart J to Part 393)

Subpart M through Y [Reserved]

Subpart Z—Toxic and Hazardous Substances

§ 399.1001 Toxic gases.

No motor carrier shall permit or require a driver to drive any motor vehicle or permit any passengers thereon, when the following exist:

(a) Where an occupant has been affected by carbon monoxide, nitric oxide, or nitrogen dioxide;

(b) Where gases have been detected in the interior of the vehicle above the following levels:

Substance	TWA [1]	STEL [2]
Carbon Monoxide	50 ppm	400 ppm
Nitric Oxide	25 ppm	35 ppm
Nitrogen Dioxide	[3] 5 (c) ppm	5(c) ppm

[1] Threshold Limit Value—Time Weighted Average (TLV-TWA)—the time-weighted average concentration for a normal 8-hour work day or 40-hour work week, to which nearly all workers may be repeatedly exposed, day-after-day, without adverse effect.

[2] Threshold Limit Value—Short-term Exposure Limit (TLV-STEL)—the maximal concentration to which workers can be exposed for a period up to 15 minutes continuously without suffering from 1) irritation, 2) chronic or irreversible tissue change, or 3) narcosis of sufficient degree to increase accident proneness, impair self-rescue, or materially reduce work efficiency, provided that no more than four excursions per day are permitted, with at least 60 minutes between exposure periods, and provided that the daily TLV-TWA also is not exceeded. The STEL should be considered a maximal allowable concentration, or absolute ceiling, not to be exceeded at any time during the 15-minute excursion period.

[3] Threshold Limit Value-Ceiling (TLV-C)—the concentration that should not be exceeded even instantaneously.

Vehicle testing for gases should be conducted in basic accordance with "Carbon Monoxide Concentration Test Procedure—Society of Automotive Engineers (SAE) J 989," Report of the Automotive Emissions and Air Pollution Committee (Approved January 1966).

(c) When a mechanical condition of the vehicle is discovered which would be likely to produce a hazard to the occupants by reason of exposure to carbon monoxide, nitric oxide, or nitrogen dioxide.

Those desiring to comment on this Notice are asked to submit in writing (original and two copies) of their views, data, and arguments. All communications received will be considered before any proposal for final rulemaking is initiated.

Comments are welcome and will be available, both before and after the closing date, for examination by interested persons in the Docket Room of the Bureau of Motor Carrier Safety, Room 3402, 400 Seventh Street, SW., Washington, D.C. 20590. If it is determined to be in the public interest to proceed further, after summarizing the comments received in response to the NPRM, a Final Rule will be issued.

Note.—The FHWA has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation under Executive Order 12044.

Authority: 49 U.S.C. 304, 49 U.S.C. 1655, 49 CFR 1.48 and 49 CFR 301.60.

Issued on: June 6, 1979.

Robert A. Kaye,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 79-18808 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1056]

[Ex Parte No. MC-19 (Sub- 23)]

Practices of Motor Common Carriers of Household Goods; Investigation Into Estimating Practices

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission proposes to amend its regulations governing the practices of motor common carriers of household goods as they concern estimating, 49 CFR 1056.8. The proposed regulations would allow a carrier at its option to give a binding estimate for the movement of a shipper's household goods. No other written estimates would be allowed. The Commission also proposes to amend 49 CFR 1056.7, .9, .10, and .21 to conform those regulations to the modified estimating requirements.

DATES: Comments are due on or before July 18, 1979.

ADDRESSES: Send comments to Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Bruce Boyarko or David Gaynor, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423, (202) 275-7901 and 275-7904.

SUPPLEMENTARY INFORMATION: The Interstate Commerce Commission, in an interim report served April 26, 1978, proposed to bind a motor common carrier of household goods to any estimate given for the movement of a shipper's goods. The numerous comments received revealed to the Commission that alternative rules could better accomplish the purpose of the proceeding.

The Commission proposes to allow a carrier the option to give a binding estimate on the basis of constructive weight determined using the volume of the shipper's items as seen by the estimator in the home. The shipper would be charged the lower total charge determined by using the actual or the constructive weight of the shipment. The estimate would be prepared in writing and according to appropriate tariff rules. No other type of written estimate would be allowed. The text of proposed § 1056.8 and those of related regulations are contained forth in the appendix. A brief explanation of each will be set forth here:

Subsection § 1056.7(b) will be amended to eliminate the requirement of reporting in an annual performance report the number of over- and underestimates. Added to that subsection, however, is the requirement that a carrier report the number of shipments on which it misquotes applicable rates. The inclusion of this requirement is designed to provide data our staff can examine to determine if a carrier is systematically misquoting rates to obtain shipments. We would like parties to comment on the likelihood of some carriers abusing the proposed system in this fashion, and, if a likelihood is perceived, to include suggestions to remedy any abuse. In addition, the rules would require that a carrier report the percent of COD and national account shipments carried on which estimates are given, and the percent of shipments which are transported for the estimated price.

Subsection § 1056.8 as it now reads will be entirely eliminated. A new section detailing the mechanics of the binding estimate procedure will be substituted in its place.

The first part of the subsection, § 1056.8(a) will declare that the only estimate that can be given in writing will be a binding estimate, and that if a carrier offers binding estimates, it must offer them to all shippers. Estimates will be made only after a visual inspection of the goods to be transported.

The total charge to be paid will be that determined using the actual or constructive weight of the goods [§ 1056.8(b)]. Constructive weight will be determined by multiplying the volume of the items viewed in the home times a

conversion factor (in pounds per cubic foot) stated in the carrier's tariff. The estimated service price given will include all charges to be rendered to a shipper.

The tariffs of each carrier adopting this method will have to be amended. Subsection 1056.8(c) will require that every carrier adopting this method have two rules: (1) that the price to be paid is the lower price determined using the actual or constructive weight, (2) that a conversion factor of a certain number of pounds per cubic foot will be used to determine constructive weight. There will be no specified conversion factor in the rules, because the figure to be used must be determined by each carrier in its own tariffs. The Commission will be receptive to requests to adopt alternative methods of price computation that carriers may feel are better suited to their operations than is the proposed method.

The estimates given will be valid for 60 days, or less if a carrier's tariff so specifies. Subsection § 1056.8(d) requires this, as well as delivery of a copy of the estimate to the shipper. The estimate will be binding when a shipper requests service or signs an order for service. Furthermore, the subsection states upon what terms an estimate can be changed and that a written statement of any adjustment must be executed.

The proposed rules place upon a carrier certain duties with respect to any change in and misquotation of rates. A carrier would be required to confirm quoted rates and to notify a shipper of changes in applicable rates 3 days prior to the pickup date. In addition, the rules would require a carrier to extend credit to a shipper for any charges which exceed the estimated service price as a result of a misquotation of applicable rates.

Shippers will be allowed to make their own cost appraisals according to § 1056.8(f). A kit may be provided for this purpose by the carrier, but any shipper's own appraisal will not be binding.

There will not be a form prescribed by us on which every estimate may be prepared. Certain information will be required by § 1056.8(g) in every estimate, and a form of the carrier's own design shall be used. The right to prohibit the use of any form which does not comply with the rules is reserved. (The right to approve forms for an alternative method is, of course, reserved too.) The information required is essentially that stated on the form now in use. Certain conditions must be added to make the estimate an offer to contract. The conditions essentially specify the terms for making the estimate binding, a carrier's duties to confirm quoted rates, and the conditions under which the price may change.

Subsection § 1056.8(h) will limit the use of the rules on shipments when an interline is involved. Binding estimates will be allowed only when all interlining carriers give binding estimates and agree to be bound by the estimate of the originating carrier. No such estimate can be given unless all carriers have come to an agreement about this and have appropriate tariff revisions in effect.

Subsection § 1056.9(a) will be amended to require that the estimated price, if any, must be stated in the order for service. Also, since the "110-percent rule" will be eliminated, the requirement of a maximum amount to relinquish possession will be eliminated. The shipper will be required to pledge that he has shown all items to, and requested all services from the estimator.

Subsection § 1056.10 will be amended to reflect the changes in the rules.

Finally, subsection 1056.21(d) will be amended to relieve any difficulty with having more than one set of rates in affect. It is not expected that more than one rate will be in effect; but if any carrier shall try to use a two-tier rate system, the opportunity will be there to seek Commission approval.

Comments are invited on these matters. They should be submitted to Secretary, Interstate Commerce Commission, Washington, DC, 20423. There should be an original and 15 copies. All submissions will become part of the record of this proceeding, and will be open to public inspection at the Commission's office in Washington, DC, during normal business hours.

This notice of proposed rulemaking is issued under the authority of Subchapter II of Chapter 105 of the Interstate Commerce Act (49 U.S.C. §§ 10521–26) and of 5 U.S.C. §§ 552, 553, and 559 (the Administrative Procedure Act).

Issued at Washington, DC, on the 31st day of May, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Stafford dissenting. Commissioner Christian absent and not participating in the disposition of this proceeding.

H. G. Homme, Jr.,

Secretary.

Commissioner Stafford, dissenting:

After careful review of the numerous comments filed in response to our April 1978 decision, I am compelled to again dissent from the action taken by the majority. Although today's proposal does deal with certain of the legal defects inherent in the previous rule, the practical problems associated with the binding estimate are again overlooked. I share the Commission's deep concern that shippers receive an accurate assessment of their prospective transportation charges. However, I am equally concerned that these same shippers may ultimately be hurt by the long-term effect of this proposal.

Our own Bureau of Investigations and Enforcement has consistently opposed the concept of binding estimates. This rule may well be an incentive for collusion between unscrupulous carriers and shippers to negotiate individual deals to provide transportation service at an excessively low rate. Even assumung no unlawful conduct, it may be expected that in many instances the binding "lawful" rate will be established by what amounts to a process of contractual negotiation between a carrier and shipper. In effect, there will no longer be any uniform rates in the movement of household goods.

This form of rate deregulation, with its resulting diminution in regulatory safeguards over rates, raises the serious possibility that the smaller carriers will be driven out of business. The binding estimate rule may well be an invitation for some carriers to deliberately quote excessively low estimates as a means of competing for all available volumes of business. There will be an incentive to quote higher rates when demand is greater, such as during the peak moving season in the summertime and conversely, to quote lower rates at other times of the year. Likewise, major carriers could, in effect, reduce rates to undercut competition in certain territories and conversely raise rates in areas providing little competition.

Such manipulation of the "estimated rate" will thus enable certain carriers to drive smaller competitors out of business. As pointed out by the Movers' and Warehousemen's Association, the operating ratio of a large number of movers exceeds 100. Many independent movers are barely surviving. The predatory pricing that will arise from the proposed regulation will only compound their financial problems and may force them out of business. The effect of this will be less competition, decreased quality of service, and higher levels of rates to the public as a whole.

In addition to these problems, the binding estimate rule also raises serious enforcement questions. In our prior report, the Commission stated that it would take appropriate action if any carrier were to use the rule deliberately to discriminate between shippers or to prefer one class of shippers over another. However, in its most recent statement, the Bureau of Investigations and Enforcement points out the practical difficulties of enforcing proper estimating practices. If unjust discrimination or preferential treatment becomes widespread, carriers who themselves engage in such conduct will not be apt to come forward with complaints about competitors unfair or deceptive acts, for fear of retaliation. Likewise, shippers cannot be expected to volunteer information concerning specially preferential rates received by themselves as a result of questionable estimating practices on the part of carriers. Compounding these enforcement problems,

the proposed rule would eliminate the present requirement that carriers file quarterly reports on the number of over and underestimates.

Finally, I note that our previous decision devoted extensive discussion as to why national account shippers should not come under the binding estimate rule. The Commission stated that large national account shippers would be in a good position to use the binding estimate rule to exact undue preference from carriers simply by demanding that the carrier furnish low estimates in return for the shipper's agreement to tender a certain volume of business to the carrier. Many of the public comments noted the legal problems associated with this separate treatment of national account shippers. Apparently persuaded by these arguments, the majority now concludes in a one paragraph discussion that "Equality of treatment . . . is more appropriate . . ." and decides to permit carriers to offer binding estimates to employees of national account shippers. What about the potential for unlawful rebates and undue preference which the majority deemed so serious a year ago? Today's report is virtually silent on this point.

This change, however, does not eliminate still another potential discriminatory effect. It is well established that the Interstate Commerce Act precludes carriers from collecting different transportation charges for rendering the same service under substantially the same circumstances. However, under this proposal, two neighbors moving to a common destination with approximately the same household goods shipment may pay very different charges. Even apart from the legal considerations, I am convinced that consumers have a right to expect that, so long as their is rate regulation, every shipper should pay the same charge for the same service.

In sum, I fear the Commission has settled upon a short-term answer to the problem of inaccurate estimates. The binding estimate rule ignores the reality that an estimate is precisely that. It is not within the ability of a carrier to come up with an estimated charge which is identical to a charge based on the actual weight. Nevertheless, this proposal places the full burden upon the carrier. The mover must bear all the risk inherent in the estimating process, a process which this Commission itself once described as "inexact". Ex Parte No. MC-19 (Sub-No. 23), *Practices of Motor Common Carriers of Household Goods*, 125 M.C.C. 307, 315 (1976). Not only do we ignore this reality, but we have failed to address the serious discrimination and enforcement questions which will accompany the implementation of this rule.

The Interstate Commerce Commission proposes to amend certain regulations in 49 CFR § 1056 in the following manner:

1. Section 1056.7(b) would be amended by revising paragraphs (b)(3)(ii) and (iii) and by adding paragraph (b)(3)(xi).

§ 1056.7 Information for shippers.

(ii) Percentage of estimates provided to each type of account.

(iii) Percentage of shipments in each type of account which were transported for the estimated price.

* * * * *

(xi) Number of estimated shipments on which rates were misquoted.

2. Section 1056.8 would be deleted and the following section would be substituted in its place:

§ 1056.8 Furnishing estimates.

(a) *Estimates.* No motor carrier of household goods, as defined in 49 CFR 1056.1(a), shall give to a prospective shipper of household goods an estimate of a service price except in the manner specified in this section. A motor common carrier which provides estimates in the manner specified in this section must offer an estimate to each shipper of household goods who requests an estimate. Each estimate of a service price shall be made only in writing and only after a visual inspection by the carrier or its agent of the goods to be transported. Each estimate of a service price prepared in the manner specified in this section shall consititute an offer for service at a price no higher than that stated in the estimate, subject to the provisions of paragraph (d) of this section.

(b) *Computation of service price.* The service price charged for a shipment on which an estimate is furnished shall be the lower amount determined by using the actual weight of the shipment or the constructive weight of the shipments. The constructive weight of a shipment shall be the estimated volume of a shipment multipled by a conversion factor stated in a carrier's tariff in terms of pounds per cubic foot. The estimated service price of a shipment shall include all service furnished by a carrier, including accessorial and terminal service.

(c) *Tariffs.* Each motor common carrier of household goods which furnishes estimates shall publish in its tariff rules which state the basis upon which an estimate of a service price will be computed. If an estimate is computed on the basis of constructive weight, appropriate tariff rules shall state that (1) the actual price for a shipment shall be the lower amount determined by using the actual weight of a shipment or the constructive weight of the shipment, and (2) that constructive weight will be determined by multiplying the estimated volume of the shipment by a conversion factor of a certain number of pounds per cubic foot. No estimate shall be furnished by a carrier unless appropriate tariff rules are published, filed, posted, and in effect.

(d) *Conditions.* Each estimate of a service price shall be delivered in writing to a prospective shipper and a copy shall be retained by the carrier furnishing the estimate. An estimate shall be valid for not more than 60 days from (but not counting) the date a written estimate is delivered to a prospective shipper. A carrier may by tariff rule limit the period during which an estimate is valid to a specified time of less than 60 days. An estimate shall be binding upon a carrier if a shipper requests the carrier to perform the service or signs a written order for service within the specified period. If a shipper requests the carrier to perform the service or signs a written order for service within the specified period, the estimate will continue in effect until the transportation service is performed. An estimate of service price shall be subject to change only when items are added to or removed from the shipment, additional services are requested or previously requested services are cancelled, a pending rate change becomes effective, or when a charge or charges different from those originally quoted apply to the shipment. If an estimate of service price is changed, a written statement reflecting the adjusted amount shall be delivered to the shipper prior to the commencement of any additional service and a copy retained by the carrier.

(e) *Reconfirmation of rates; misquotations.* Each carrier which furnishes an estimate shall confirm rates quoted in the estimates and notify the shipper of any changes in applicable rates 3 days prior to the date the shipment is to be picked up. If tariff charges subsequently are found to differ from those quoted in the estimate as a result of a misquotation of applicable charges, a carrier shall extend credit to the shipper for any amount in excess of the originally quoted charges which is attributable to misquotation of those charges, for a period of 30 days.

(f) *Shipper cost appraisal.* A carrier may provide a shipper with a kit which contains information which will enable the shipper to make his own nonbinding appraisal of the cost of a move. An appraisal of this type will not constitute an "estimate" as that term is used in these rules. These materials shall plainly indicate that shipper's own cost appraisals are not estimates and are not binding on the carrier.

(g) *Contents of estimate.* An estimate shall be prepared in clear and legible manner. The Commission retains authority to proscribe use of any form which, upon examination, is found not to comply with the provisions of this subsection.

The following information shall be contained in each written estimate based on constructive weight.

(1) The period for which the estimate is valid;

(2) Name, address, telephone number, and I.C.C. number of the carrier, and whether the carrier or the agent is the principal party of liability for the move;

(3) Name, address, and telephone number of shipper;

(4) Origin and destination of shipment;

(5) Destination contact;

(6) Packing, loading, and delivery dates;

(7) Acknowledgement of shipper's receipt of BOp 103, public advisory number 4, and carrier's performance report;

(8) Name and number of applicable tariffs;

(9) Conversion factor (pounds per cubic foot) to be used;

(10) Constructive weight, line-haul rate, number of miles, and total service price;

(11) Valuation charges on transportation and storage;

(12) Additional charges for: (i) pickup and delivery for storage in transit; (ii) storage in transit; (iii) warehouse handling; (iv) extra pickup and delivery; (v) servicing appliances; (vi) heavy articles; (vii) containers; (viii) packing and unpacking; (ix) labor; (x) charges for stairs, elevators, long distances, et cetera; (xi) overtime; (xii) other charges.

(13) Signature of estimator;

(14) Carrier's table of measurement; and

(15) The following conditions: (i) the estimate is binding upon the carrier once the shipper requests the service or signs an order for service; (ii) the shipper shall pay the lower amount determined by using the actual or the constructive weight of a shipment; (iii) the applicable tariff rates and charges; (iv) the shipper's right to 30-days credit for any charges in excess of those estimated, if applicable charges are misquoted; (v) the estimated service price may be adjusted only when items are added to or removed from the shipment, additional services are requested or previously requested services are cancelled, a pending rate change becomes effective, or when a rate different from that originally quoted applies to the shipment; (vi) the following statement, in bold face type, located directly above the estimator's signature:

"This estimate of service price is based upon the articles shown to and the services requested of the estimator. The service price will be subject to adjustment if (1) shipper adds items to or removes items from the shipment; (2) shipper requests additional services or cancels previously requested services; (3) a pending rate change becomes effective; or (4) charges different from those originally quoted apply to the shipment."

(h) *Interline Shipments.* No estimate may be given on a shipment that will be interlined unless all interlining carriers have on file appropriate tariff provisions for the giving of estimates under this section including appropriate provisions concerning shipments to be interlined, and all interlining carriers agree to be bound by the estimate of the originating carrier.

3. Section 1056.9 would be amended by revising paragraphs (a) (9), (10), and (11).

§ 1056.9 Order for service.

(a) * * *

(9) Amount of estimated service price, if any, and method of payment of total tariff charges;

(10) Maximum amount, if any, required to be paid in cash or by certified check, money order, or approved charge card to relinquish possession of a c.o.d. shipment.

(11) If an estimate of service price is furnished, a statement located directly above the space for shipper's signature which reads: "All articles I intend to ship have been shown to the estimator, and all services I will require have been requested. I understand that if the carrier, at my request, transports additional articles or performs additional services, the carrier shall assess additional charges pursuant to its tariff on file with the Commission."

Section 1056.10 would be amended by revising paragraphs (b)(7) and (8).

§ 1056.10 Reciept or bill of lading; information thereon.

(b) * * *

(7) Amount of estimated service price, if any, and method of payment of total tariff charges.

(8) Maximum amount, if any, required to be paid in cash or by certified check, money order, or charge card (under an approved plan) to relinquish possession of a c.o.d. shipment.

Section 1056.21 would be amended by revising paragraph (d).

§ 1056.21 Uniform rates for identical services.

* * * * *

(d) The regulations in (a), (b), and (c), above shall not apply to rates applicable to the transportation of shipments of machinery which, because of its unusual nature or vale, requires the specialized handling and equipment usually employed in the moving industry, nor shall the above subsections apply to rates established in accordance with sections 1056.8 and 1056.25(g) of this chapter.

[FR Doc. 79-18906 Filed 6-15-79; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 44, No. 118
Monday, June 18, 1979

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Licenses and Authorizations; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Licenses had Authorizations of the Administative Conference of the United States, to be held at 11:00 a.m., Friday, July 20, 1979 at the office of O'Melveny & Myers, 1800 M Street, NW, Suite 500 South, Washington, D.C.

The Committee will meet to discuss Professor Richard Merrill's study of regulation of carcinogens.

Attendance is open to the interested public, but limited to the space available. Person wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact David M. Pritzker (202–254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,
Executive Seretary.

[FR Doc. 79-18810 Filed 6-15-79; 8:45 am]

BILLING CODE 6110-01-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement Regarding the Operation and Maintenance Programs of the Tulsa District of the Corps of Engineers

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the regulations for the "Protection of Historic and Cultural Resources" (36 CFR 800) with the Corps of Engineers, Tulsa District and the State Historic Preservation Officers of Texas, Arkansas, Kansas, and Oklahoma concerning the operation and maintenance programs for water resource projects in the Tulsa District. The agreement provides a system that will insure that the Corps of Engineers gives adequate consideration to historic and cultural properties in the operation and maintenance of water resource projects in order to meet the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

COMMENTS DUE: July 18, 1979.

ADDRESS: Comments should be addressed to the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, N.W., Suite 510, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Louis Wall, Chief, Western Office of Review and Compliance, Advisory Council on Historic Preservation, P.O. Box 25085, Denver, Colorado 80225, (303) 234–4946.

SUPPLEMENTARY INFORMATION: This notice of the proposed agreement invites comments from interested parties. Copies of the proposed agreement are available from either the Western Office of Review and Compliance of the Council, Denver, Colorado, or the Office of Intergovernmental Programs and Planning of the Council, Washington, D.C.

Under Section 106 of the National Historic Preservation Act (16 U.S.C. 470), the Council reviews and comments on Federal undertakings that affect properties listed or eligible for listing on the National Register of Historic Places. Section 106 requires that the head of any Federal agency having indirect or direct jurisdiction over a proposed Federal, federally assisted or licensed undertaking affecting National Register or eligible properties shall afford the Council a reasonable opportunity for comment. The Council's regulations are published at 36 CFR Part 800.

The Tulsa District of the Corps of Engineers operates and maintains 34 multi-purpose lakes (lock, dam, and reservoir systems) and the McClennen-Kerr Navigation System in Texas, Arkansas, Kansas, and Oklahoma. In the course of this work, additions to or improvements of recreation areas are made and measures to mitigate the impacts of public use and natural erosion are taken; in so doing, the Corps encounters National Register and eligible properties. Under the terms of the proposed agreement, the Corps will develop Cultural Resource Management Plans for water resource projects for the states within the Tulsa District. Such plans would contain recommendations for nomination of sites, districts, and multiple resource areas to the National Register, data recovery, preservation, interpretation, and related treatment of such property. Plans developed pursuant to the proposed agreement would be reviewed by both the appropriate State Historic Preservation Officer and the Council. The proposed agreement also provides that Corps projects covered by the agreement will be designed to avoid National Register and eligible properties unless it is not prudent and feasible to do so. In that event, the Corps, in consultation with the appropriate State Historic Preservation Officer may develop mutually acceptable mitigation measures for impacts on National Register and eligible properties. The comments of the Council will be requested in accordance with the published regulations in certain situations.

The parties to the proposed agreement believe that it provides a workable system for expediting review of actions taken by the Corps to operate and maintain water resource projects in the Tulsa District. This agreement may become a model for other Corps districts.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 79-18875 Filed 6-15-79; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Chattahoochee National Forest, Ga.; Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Chattahoochee National Forest is extended as described below and all lands within the Chattahoochee National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the Chattahoochee National Forest.

Chattahoochee National Forest, Georgia

Habersham County:

That part of Forest Service Tract No. R–404 lying outside the existing National Forest boundary;

Union County:

Forest Service Tracts No. C–1633a, C–1696, C–1700, C–1703, C–1704, C–1707, C–1707a, C–1768, C–1784, C–1869, C–1880Aa, C–1880Ab, C–2006, C–2015 and that part of Forest Service Tract No. C–1834 lying in Union County;

Fannin County:

That part of Forest Service Tract No. C–1834 lying in Fannin County;

The areas described aggregate 1,963.39 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,

Assistant Secretary.

June 12, 1979.

[FR Doc. 79-18880 Filed 6-15-79; 8:45 am]

BILLING CODE 3410-11-M

Kisatchie National Forest, La.; Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Kisatchie National Forest is extended as described below and all lands within the Kisatchie National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designed for administration as part of the Kisatchie National Forest.

Kisatchie National Forest, Louisiana

Louisiana Meridian

Claiborne Parish

T. 22N., R. 5W.,
Sec. 8, S½SW¼NW¼, the West 20.00 acres of the SW¼.

Vernon Parish

T. IS., R. 5W.,
Sec. 5, N½NW¼, SW¼NW¼.
T. IN., R. 5W.,
Sec. 15, S½, NW¼, Diagonal SW½NE¼;
Sec. 16;
Sec. 17;
Sec. 20;
Sec. 21, W½, W½E½, NE¼NE¼, Diagonal NW½SE¼NE¼;
Sec. 28, W½, W½NE¼, Diagonal NW½W½SE¼;
Sec. 29
Sec. 32
Sec. 33, NW¼, N½SW¼.

Rapides Parish

T. 4N., R. 3W.,
Forest Service Tracts No. E–52a, and E–52b, lying in the SE¼ of Section 51 and the W½SW¼ of Section 52 along the shoreline of Kincaid Reservoir.

The areas described aggregate 5,414.55 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,

Assistant Secretary.

June 12, 1979.

[FR Doc. 79-18879 Filed 6-15-79; 8:45 am]

BILLING CODE 3410-11-M

Sabine National Forest, Tex.; Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Sabine National Forest is extended as described below and all lands within the Sabine National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the Sabine National Forest.

SABINE NATIONAL FOREST, TEXAS

Jasper County:

That part of Forest Service Tract No. S–2k–IV lying outside the existing National Forest boundary;

Sabine County:

Forest Service Tract No. S–100–2;

Newton County:

Beginning at a point on the Texas-Louisiana State line common to the Newton-Sabine County line, a point in Toledo Bend Reservoir; Thence, southwesterly across said Reservoir to the south east corner of Forest Service tract S–60; Thence, clockwise around tracts S–60, S–31–c, and S–60b to the Newton-Sabine County line; Thence, easterly with the said county line to the place or point of beginning.

The areas described aggregate 3102.10 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,

Assistant Secretary.

June 12, 1979.

[FR Doc. 79-18882 Filed 6-15-79; 8:45 am]

BILLING CODE 3410-11-M

St. Francis National Forest, Ark.; Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the St. Francis National Forest is extended as described below and all lands within the St. Francis National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the St. Francis National Forest.

St. Francis National Forest, Ark. Fifth Principal Meridian

Lee County:

T.2N., R.4E.,
Sec. 33, W½SW¼, SW¼NW¼.

The areas described aggregate 120.00 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,

Assistant Secretary.

June 12, 1979.

[FR Doc. 79-18881 Filed 6-15-79; 8:45 am]

BILLING CODE 3410-11-M

Superior National Forest; Transfer of Certain Lands; Additions

In FR Document 75-26173 appearing at page 45211 in the **Federal Register** of October 1, 1975, the following additions should be made in the land descriptions for St. Louis County:

1. On page 45211, Column 3, following subheading "T. 67N., R. 17 W., Sec. 11, lot 1" add T. 68N., R. 16 W., Sec. 31, lot 2.

2. On page 45212, Column 3, the described aggregate acreage should be 25,333.23 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,

Assistant Secretary for Conservation, Research, and Education.

June 12, 1979.

[FR Doc. 79-18883 Filed 6-15-79; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Request From the Department of Housing and Urban Development for a National Voluntary Laboratory Accreditation Program for Carpet

In accordance with the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP): Federal Government (15 CFR Part 7b.4(c)), the Department of Commerce publishes in this notice a request from the Department of Housing and Urban Development (HUD) to develop a laboratory accreditation program for carpet to be used in designating laboratories acceptable in the HUD/FHA Carpet Certification Program. The Use of Materials Bulletin (UM-44c), and the HUD Carpet Certification Program Procedural Handbook (HUD 4950.4) referenced in the request are available for inspection at the Office of Architecture and Engineering Standards, Room A6176, HUD Building, 451 7th Street, SW., Washington, D.C. 20410. These references are also available at all HUD Field Offices.

Any comments as to the need for this laboratory accreditation program shall be made within 60 days directly to HUD, Mr. Lynford Snell or Mr. Leslie Breden, Department of Housing and Urban Development, Federal Housing Commissioner, Washington, D.C. 20410 (202-755-6600). A copy of such comments should be sent to Mr. John W. Locke, Coordinator, NVLAP, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-2054). Additional inquiries related to NVLAP can also be directed to Mr. Locke.

Dated: June 13, 1979.

Jordan J. Baruch,

Assistant Secretary for Science and Technology.

The Under Secretary of Housing and Urban Development

May 17, 1979.

Honorable Juanita Kreps, Secretary of Commerce, Washington, D.C. 20230.

Dear Madame Secretary: The Department of Housing and Urban Development requests, in accordance with Section 7b.4 of Title 15 of the Code of Federal Regulations, that the Departments of Commerce and Housing and Urban Development, work together to establish a laboratory accreditation program for carpet in accordance with Use of Materials Bulletin 44c, dated February 22, 1978 (copy enclosed).

The HUD Carpet Certification Program presently uses three administrators, each of whom are responsible for the approval of the laboratories they use. The effort to eliminate the duplication of approvals by these administrators and minimize the costs to both industry and government establishes the need.

Enclosed is a copy of HUD Handbook 4950.4 used in the present HUD Carpet Certification Program. The procedures for the certification of carpets were authorized under the Technical Suitability of Products Program, Section 521 of the National Housing Act of 1965.

The Department of Housing and Urban Development will submit recommended general and specific criteria to be used in accrediting carpet testing laboratories. This will include consideration for the existing carpet program procedures now being used by HUD and HUD-accepted administrators and the NVLAP criteria. We will submit these criteria for your review and evaluation by August 15, 1979. HUD reserves the right to review and determine acceptability of the formalized criteria prior to publication in the **Federal Register.**

Although this particular program is directed toward testing carpet in accordance with HUD Standard UM 44c, the testing laboratories may also benefit relative to the testing of other textile related products. This could encourage participation and funding from a variety of both government and private sector sources.

We would be in a position to support this effort with our existing personnel.

If there are additional questions or information required, please feel free to call Mr. Lynford Snell or Mr. Leslie Breden at 755-5929.

Sincerely yours,

Jay Janis.

Enclosures

[FR Doc. 79-18914 Filed 6-15-79; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adusting Level of Restraint for Certain Wool Apparel Products Imported From the Socialist Republic of Romania

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Restoring unused carryforward yardage in the amount of 419 dozen, previously deducted from the level of restraint established for men's and boys' wool suits in Category 443, produced or manufactured in Romania and exported to the United States during the twelve-month period which began on January 1, 1979.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843.))

SUMMARY: The Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania provides, among other things, for the borrowing of designated percentages of yardage from the succeeding year's levels (carryforward) and deducting those amounts from the levels in the succeeding year. Such yardage amounting to 419 dozen was applied to the level of restraint for Category 443 during the agreement year which began on January 1, 1978 and was deducted from the level established for the year which began on January 1, 1979. It has been determined that the carryforward yardage was not used in 1978. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase by 419 dozen the level of restraint for wool textile products in Category 443, produced or manufactured in Romania, from 6,990 dozen to 7,409 dozen during the twelve-month period which began on January 1, 1979.

EFFECTIVE DATE: June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Shirley Hargrove, Trade and Industry Assistant, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On January 3, 1979, there was published in the **Federal Register** (44 FR 934) a letter dated December 28, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established import restraint levels for certain wool and man-made fiber textile products, produced or manufactured in Romania and exported to the United States during the twelve-month period which began on January 1, 1979. The letter published below restores carryforward yardage deducted from the level of restraint established for Category 443 during that twelve-month period.

Robert E. Shepherd,

Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

June 8, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissoner: This directive amends, but does not cancel, the directive of December 28, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain categories of wool and man-made fiber textile products produced or manufactured in Romania.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1979; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on June 12, 1979 to increase the twelve-month level of restraint established in the directive of December 28, 1978 for Category 443 to 7,409 dozen.

The action taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of wool textile products from Romania has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Robert E. Shepherd,

Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 79-18908 Filed 6-15-79; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed DOD Consolidation of Cryptologic Training; Environmental Impact Analysis Process

The Air Force has begun the environmental impact analysis process to assess the potential environmental impacts associated with the consolidation of cryptologic training at Keesler Air Force Base (AFB), Mississippi.

Based upon a study conducted by the Interservice Training Review Organization (Phase III Report, Cryptologic Consolidation Study, February 2, 1979), the Deputy Secretery of Defense has determined that conslidation of cryptologic training at Keesler AFB, MS, and Navy Technical Training Center, Corry Station, FL is the most feasible and cost-effective solution and worthy of further study.

The environmental impact analysis process will consider the potential impacts on the area surrounding Keesler AFB from gaining approximately 675 military and 60 civilian manpower authorizations and an average annual student load of approximately 1,100.

The environmental impact analysis process will lead to a formal environmental assessment which will be used to determine if a draft environmental impact statement (EIS) will be prepared or if a finding of no significant impact is appropriate.

If the formal environmental assessment indicates there may be significant impact on the quality of the human environment, the Air Force will file a draft EIS with the Environmental Protection Agency and release it to the public.

If such impacts are not found, a finding of no significant impact will be prepared and released.

Any comments or questions should be directed to the Deputy for Environment and Safety, Office of the Secretary of the Air Force, Room 4C885, the Pentagon, Washington, D.C. 20330, telephone 202–697–9297.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-18811 Filed 6-15-79; 8:45 am]

BILLING CODE 3910-01-M

Office of the Secretary of Defense

Defense Science Board Task Force on V/STOL Aircraft, Phase II; Change in Notice

The referenced used to close the 25–29 June 1979 meeting of the Defense Science Board Task Force on V/STOL Aircraft, Phase II as published in the **Federal Register** (Vol. 44, No. 106, dated May 31, 1979, FR Doc. 79–16920) is quoted incorrectly. The fifth line, last paragraph of published notice should read ". . . 5 U.S.C. 552b(c)(1)(1976); and that. . . ." In all other respects, the original notice cited above remains the same.

Dated: June 13, 1979.

H.E. Lofdahl,

Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-18948 Filed 6-15-79; 8:45 am]

BILLING CODE 3810-70-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a Panel of the DIA advisory Committee will be held as follows: Thursday & Friday, 26–27, July 1979, Institute for Defense Analyses, 400 Army-Navy Drive, Arlington, Virginia 22202.

The entire meeting, commencing at 0900 hours, each day, is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on the growth and the potential implications of Soviet technology.

Dated: June 13, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-18949 Filed 6-15-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 79-CERT-005]

Anchor Hocking Corp.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Take notice that on April 20, 1979, Anchor Hocking Corporation, 109 North Broad Street, Lancaster, Ohio 43130, filed an application pursuant to 10 CFR Part 595 (44 FR 20398, April 5, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C. 20461, between 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Anchor Hocking stated that the volume of natural gas subject to certification is 3,000 Mcf per day, and the eligible sellers are Gas Transport, Inc., 109 North Broad Street, Lancaster, Ohio 43130, and Carl E. Smith, Inc., P.O. Box 4, Sandyville, West Virginia 25275. This natural gas will be used to displace approximately 175,500 barrels of No. 6 fuel oil containing up to 2 percent of sulphur per year at Anchor Hocking's glass manufacturing plant in Salem, New Jersey. The gas will be transported by Columbia Gas Transmission Corporation, Charleston, West Virginia 25325, and by Transcontinental Gas Pipe Line Corporation, Houston, Texas 77100.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Anchor Hocking and any persons filing comments, and filed in the **Federal Register.**

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18859 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-023]

Georgia-Pacific Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on May 25, 1979, Georgia-Pacific Corporation (Georgia-Pacific), P.O. Box 756, Lovell, Wyoming 82431, filed an application pursuant to 10 CFR 595 (44 FR 20398, April 15, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Room 6317-B, 2000 M Street, NW., Washington, D.C. 20461, between 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Georgia-Pacific stated that it was requesting certification to use natural gas at its gypsum manufacturing facility at Lovell, Wyoming, and that it could purchase up to 500,000 Mcf per year of natural gas for use at that facility for five years from the Montana Power Company, 40 East Broadway, Butler, Montana 59701. This natural gas will be used to displace approximately 2,500,000 gallons per year of Number 2 fuel oil with a sulfer content range of 0.3-0.396 percent depending on the supplier, now used at the gypsum facility.

The natural gas will be transported to Georgia-Pacific's gypsum facility at Lovell, Wyoming, by Montana-Dakota Utilities Company, 400 North Fourth Street, Bismarck, North Dakota 59501.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumcstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, NW., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Georgia-Pacific and any persons filing comments, and filed in the **Federal Register.**

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18857 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-020]

Public Service Electric and Gas Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on May 17, 1979, the Public Service Electric and Gas Company (Public Service) 80 Park Place, Newark, New Jersey 07101, filed an application pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Public Service stated that it had entered into three separate arrangements to purchase approximately 24.1 billion cubic feet (Bcf) of natural gas for various public service electric generation facilities in New Jersey for a one-year period. The eligible sellers and transporters are as follows:

a. Seller: National Gas and Oil Corporation, 1500 Granville Road, Newark, Ohio 43055. Transporter: Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77001.

b. Seller: Equitable Gas Company, 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219.

Transporters: Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77001; Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77001.

c. Seller: Delhi Gas Pipeline Corporation, P.O. Box 22623, Dallas, Texas 75284 (Transcontinental Gas Pipe Line Corporation Acting as Agent).
Transporter: Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77001.

This 24.1 Bcf per year of natural gas will be used to displace approximately 4 million barrels of middle distillate and residual fuel oil. Because the quantities of gas to be used at each of the New Jersey facilities of Public Service might be subject to considerable variations, Public Service requests certification without assigning specific volumes to specific generating facilities. An estimate of the distribution of the natural gas between electric generating locations is included in the application.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any persons wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Public Service and any persons filing comments, and filed in the **Federal Register.**

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18858 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-021]

Long Island Lighting Co., Mineola, N.Y.; Application for Certification of the use of Natural Gas to Displace Fuel Oil

Take notice that on May 17, 1979, the Long Island Lighting Company (LILCO), 250 Old Country Road, Mineola, New York 11501, filed an application pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C., 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, LILCO stated that it has an agreement with Delhi Gas Pipeline Corporation (Delhi), Fidelity Union Tower, Dallas, Texas 75201, to receive 10,000 Mcf per day for one year (3,650 MMcf) commencing with the date of initial delivery, and 40, 000 Mcf per day for a second year (14,600 MMcf).

The application also states that 3,450,000 barrels of fuel oil can be displaced by that amount of natural gas at LILCO's E. F. Barrett, Glenwood, and Far Rockaway Electric Plants for a 12-month period from May 1, 1979. The natural gas will be transported by Transcontinental Gas Pipe Line Corporation (TRANSCO), 2700 South Post Oak Road, P.O. Box 1396, Houston, Texas 77001.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning the application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to LILCO and any persons filing comments, and filed in the **Federal Register.**

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18861 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-028]

System Fuels, Inc.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Take notice that on May 30, 1979, System Fuels, Inc., (SFI), 225 Baronne Street, New Orleans, Louisiana 70112, for use by its parent companies, Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., and by Arkansas-Missouri Power Company, all operating electric generating companies of Middle South Utilities, Inc., filed an application pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application. SFI's application for certification is on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, SFI stated that the volume of natural gas subject to certification for use at various facilities of the above companies located in Missouri, Arkansas, Louisiana, and Mississippi, may be as much as 120,000 Mcf per day. This natural gas will be used to displace up to 25,000 barrels per day of middle distillate (including No. 2 fuel oil) and up to 20,000 barrels per day of residual fuel oil (No. 5 and No. 6) having a sulfur content of 1 percent, 1½ percent or 3 percent depending on the facilities in which the fuel oil is displaced. SFI anticipates the displacement of at least 1,500,000 barrels of middle distillate, including No. 2 fuel oil, during the next 12 months in addition to a presently undetermined quantity of residual fuel oil. SFI states it will attempt to use the natural gas to maximize the displacement of No. 2 fuel oil first, then other middle distillates, and finally, residual fuels oils (including Nos. 5 and 6).

The eligible sellers of the gas are: Channel Industries Gas Company, Houston, Texas 77001; Louisiana Intrastate Gas Corporation, Alexandria, Louisiana 71301; and Louisiana Resources Company, Tulsa, Oklahoma

74101. The gas will be transported by: United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77001; Tennessee Gas Pipeline Company, P.O. Box 2611, Houston, Texas 77001; Florida Gas Company, P.O. Box 44, Winter Park, Florida 32790; and Arkansas Louisiana Gas Company, Arkla Building, Shreveport, Louisiana 71151.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to SFI and any persons filing comments, and filed in the **Federal Register**.

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18860 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Order issued on June 30, 1977, to the unit named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Units	Location
OCU-0400	The Chesapeake Corp.	West Point Mill	8	West Point, Va.

The Prohibition Order, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited this unit from burning natural gas or petroleum products as their primary energy source.

By letter of February 6, 1979, Garland T. Edmonds, Vice President of the Chesapeake Corporation, reported to DOE that Unit 8 of the West Point Mill will soon be converted from the burning of oil to the burning of coal as its primary energy source pursuant to the terms of the outstanding Prohibition Order.

Based upon this information, DOE finds that the outstanding Prohibition Order issued to Unit 8 of the West Point Mill has attained the originally stated purpose, causing the conversion of this unit from the burning of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and improve the environment.

In view of this accomplishment, DOE finds that further action toward making the outstanding Prohibition Order effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Order are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Chesapeake Corporation's West Point Mill, Unit 8." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 254-6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18904 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the unit named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Units	Location
OCU-0004	Brown Co.	Parchment plant	9 & 10	Parchment, Mich.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have required that this unit be designed and constructed so as to be capable of using coal as its primary energy source.

Based upon a review of the potential environmental impacts of converting the Parchment Units 9 and 10 to coal combustion, DOE is rescinding the Prohibition Orders issued under the Energy Supply and Environmental Coordination Act.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell).

All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Brown Company's Parchment, Michigan Plant, Units 9 and 10." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254-6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18905 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Units	Location
OCU-0989	Continental Forest Industries	Hopewell Mill	2 & 3	Hopewell, Va.
OCU-0991	do	Port Wentworth Mill	1, 2, & 3	Port Wentworth, Ga.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 23, 1979, R. S. Magruder, Director of Environmental and Energy Management for Continental Forest Industries, reported to DOE that Units 2 and 3, of the Hopewell Mill have been converted from the burning of oil and gas to the burning of bark, black liquor and waste as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information, DOE finds that the outstanding Prohibition Orders issued to Units 2 and 3 of the Hopewell Mill have attained their originally stated purpose, causing the conversion of their units from the burning of oil and gas to bark, black liquor and waste in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment.

In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

In this same letter of February 23, 1979, Mr. Magruder reported that Units 1, 2 and 3 of the Port Wentworth Mill would soon be replaced by a new unit, designated #3 Chemical Recovery Unit, now in the final stages of construction.

In view of Continental Forest Industries ongoing modernization effort at Port Wentworth plus management plans for further future improvements which will eventually lead to an equivalent savings of 190,000 bbls of oil per year, DOE is rescinding the Prohibition Order issued under the Energy Supply and Environmental Coordination Act.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell).

All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Orders, Hopewell Mill, Units 2 and 3, and Port Wentworth Mill, Units

1, 2 and 3." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fules Regulation, Economic Regulatory Administration.

[FR Doc. 79-18806 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977 and July 14, 1978, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

Docket No.	Owner	Plant	Units	Location
OCU-2840	Avtex Fibers, Inc	Front Royal	1, 2, & 3	Front Royal, Va.
OCU-2840	do	do	4 & 5	Do.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 7, 1979, Herbert S. Hall, Vice President of Avtex Fibers, Inc., reported to DOE that Units 1, 2, 3, 4, and 5 of the Front royal Plant have been converted from the burning of oil to the burning of coal as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information, DOE finds that the outstanding Prohibition Orders issued to Units 1, 2, 3, 4, and 5 of the Front Royal Plant have attained their originally stated purpose, causing the conversion of their unit from the burning of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and improve the environment.

In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Avtex Fibers, Inc., Front Royal Plant, Units 1, 2, 3, 4, and 5." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18806 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

Docket No.	Owner	Plant	Units	Location
OCU-1356	A. E. Staley Manufacturing Co	Decaur plant	19 & 20	Decatur, Ill.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 23, 1979, W. P. Hagnebach, Director of Environmental Sciences for A. E. Staley Manufacturing Company, reported to DOE that Units 19 and 20, of the Decatur Plant will soon be converted from the burning of oil to the burning of coal as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information, DOE finds that the outstanding Prohibition Orders issued to Units 19 and 20 of the Decatur Plant have attained their originally stated purpose of assisting meeting the essential needs of the United States, for fuels by causing the conversion of these units from the burning of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell).

All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, A. E. Staley Manufacturing Company, Units 19 and 20." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254-6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18899 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

Docket No.	Owner	Plant	Units	Location
OCU-2979	Kennecott Copper Corp	Utah power plant	1, 2, 3, & 4	Salt Lake City, Utah

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 7, 1979, J. C. Larson, Special Project of the Utah Copper Division, reported to DOE that the affected units of the Utah Power Plant are burning coal as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information, DOE finds that the outstanding Prohibition Orders issued to Units 1, 2, 3, and 4 of the Utah Plant have attained their originally stated purpose of assisting the essential needs of the United States for fuels by the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action toward making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission of the Kennecott Copper Corporation, Units 1, 2, 3, and 4." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the

proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18900 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environment Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Order issued on June 30, 1977, to the unit named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Unit	Location
OCU-3066	Westvaco	Charleston plant	5	Charleston, S.C.

The Prohibition Order, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited this unit from burning natural gas or petroleum products as their primary energy source.

By letter of February 5, 1979, David L. Luke III, President of Westvaco, reported to DOE that Unit 5 of the Charleston Plant will soon be converted from the burning of oil to the burning of coal as its primary source pursuant to the term of the outstanding Prohibition Order.

Based upon this information, DOE finds that the outstanding Prohibition Order issued to Unit 5 of the Charleston Plant has attained its originally stated purpose of assisting the essential needs of the United States for fuels by causing the conversion of this unit from the buring of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Order effective would not be in the public interest and accordingly, rescission of the order is now appropriate.

Comments on DOE's intention to rescind the Prohibition Order are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Managment, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Westvaco's Charleston Plant, Unit 5." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the enevelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18901 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Units	Location
OCU-1512	E. I. du Pont de Nemours & Co.	Seaford plant	2 & 3	Seaford, Del.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 9, 1979, Mark J. Caplan, of the Legal Department of E. I. du Pont de Nemours & Company, reported to DOE that Units 2 and 3 of the Seaford Plant are burning coal as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information DOE finds that the outstanding Prohibition Orders issued to Units 2 and 3 of the Seaford Plant have attained their originally stated purpose of assisting in meeting the essential needs of the United States for fuels by causing the burning of coal as a primary energy source in a manner consistent with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, E. I. du Pont de Nemours and Company's Seaford Plant, Units 2 and 3." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254-6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C., June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18902 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Order issued on June 30, 1977, to the unit named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Unit	Location
OCU-1716	Union Carbide Corp	Institute Plant	12	Institute, W. Va.

The Prohibition Order, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 7, 1979, A. Bruce Burns of the Union Carbide Corporation, reported to DOE that Unit 12 of the Institute Plant has been converted from the burning of coal as their primary energy source pursuant to the terms of the outstanding Prohibition Order.

Based upon this information, DOE finds that the outstanding Prohibition Order issued to Unit 12 of the Institute Plant has attained its originally stated purpose of assisting the essential needs of the United States for fuels by causing the conversion of this unit from the burning of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Order effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Order are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Union Carbide Corporation's Institute Plant, Unit 12." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of

submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 254-6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18903 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Golden Gate Petroleum; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to the Golden Gate Petroleum, 465 California Street, San Francisco, California 98104.

This Proposed Remedial Order charges Golden Gate Petroleum with pricing violations in the amount of $965,727.00, connected with the resale of residual fuel oil during the time period November 1, 1973 through August 31, 1975, in the States of California, Nevada and Arizona.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111, phone 415/556-7200. On or before July 3, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193 of the DOE Regulations.

Issued in Washington, D.C., on the 8th day of June 1979.

Jack L. Wood,

District Manager of Enforcement, Western District, Economic Regulatory Administration.

[FR Doc. 79-18907 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Action Taken on Consent Orders.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firms listed below during the month of May 1979. These Consent Orders concern prices charged by retail motor gasoline dealers allegedly in excess of the maximum lawful selling price for motor gasoline. The purpose and effect of these Consent Orders is to bring the consenting firms into present compliance with the Mandatory Petroleum Allocation and Price Regulations and they do not address or limit any liability with respect to the consenting firms' prior compliance or possible violation of the aforementioned regulations. Pursuant to the Consent Orders, the consenting firms agree to the following actions:

1. Reduce prices for each grade of gasoline to no more than the maximum lawful selling price;

2. Post the maximum lawful selling price for each grade of gasoline on the face of each pump in numbers and letters not less than one-half inch in height; and

3. Properly maintain records required under the aforementioned regulations.

For further information regarding these Consent Orders, please contact Mr. Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597-3870.

Firm name	Address	Audit date
Krewstown Service Station	Krewstown and Surrey Road, Philadelphia, Pa. 19115	5/4/79
G & H Shell	Roosevelt Blvd. and Red Lion Road, Philadelphia, Pa. 19115.	5/4/79
Turco's Exxon	Route 129, Billerica, Mass	5/7/79
Carl & Sons Exxon	18-22 Ferry Street, Hudson, N.H.	5/8/79
Reading Shell	749 Main Street, Reading, Mass.	5/8/79
Regini's Exxon	47 Jerome Avenue, Bloomfield, Conn.	5/9/79
Tony's Mobil	73 Essex Street, Gloucester, Mass.	5/9/79
Tally's Auto Sales Exxon	2 Washington Street, Gloucester, Mass.	5/9/79
Colonial Shell	Route 139, Pembrooke, Mass.	5/10/79
Al's Mobil Service Station	6 Willow Street, Manchester, N.H.	5/10/79
King's County Service Station	1935 Coney Island Avenue, Brooklyn, N.Y. 11230	5/16/79
Main Street Shell	43-45 Main Street, Flushing, N.Y. 11355	5/18/79
Boston Road Service Station	2475 Boston Road, Bronx, N.Y. 10467	5/21/79
Parker's Texaco Station	102 West Street, Rutland, Vermont	5/23/79
Mason's Corner Mobil	865 Brighton Avenue, Portland, Maine	5/23/79
LaSalle Oil Co	809 Third Street, Dunmore, Pa. 19512	5/23/79
Lee's Texaco Station	391 Kidder Street, Wilkes Barre, Pa. 18702	5/23/79
Mahantan Street Mobil	Lenox and Mahantan Streets, Norwood, Mass.	5/24/79
Payne's Gulf Service	707 Neponset Street, Norwood, Mass.	5/24/79
Freeway Motors Exxon	1150 Providence Highway, Norwood, Mass.	5/24/79
Westwood Service Center Mobil	710 High Street, Westwood, Mass.	5/24/79
Springfield Gulf	11 Bishop Avenue, Springfield, Pa.	5/30/79
C & N Sunoco	112-12 Astoria Boulevard, Elmhurst, N.Y. 11369	5/25/79
Robert Strohecker's Sunoco	K Street and Erie Avenue, Philadelphia, Pa.	5/31/79

Issued in Philadelphia on the 6th day of June 1979.

Herbert M. Heitzer,

District Manager of Enforcement.

[FR Doc. 79-18959 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Action Taken on Consent Orders.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firms listed below during the month of May 1979. The Consent Orders represent resolutions of outstanding compliance investigations or proceedings by the DOE and the firms which involve a sum of less than $500,000 in the aggregate, excluding penalties and interest. For Consent Orders involving sums of $500,000 or

more. Notice will be separately published in the **Federal Register**. These Consent Orders are concerned exclusively with payment of the refunded amounts to injured parties for alleged overcharges made by the specified companies during the time periods indicated below through direct refunds or rollbacks of prices.

For further information regarding these Consent Orders, please contact Mr. Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–3870.

Firm name and address	Refund amount	Product	Period covered	Recipients of refund
Gladwin & Lane Inc., 224 Elm St., Westfield, Mass. 01085.	$45,000	No. 2 oil	Nov. 1, 1973 to Apr. 30, 1974.	Retail accounts.

Issued in Philadelphia on the 6th day of June 1979.

Herbert M. Heitzer,

District Manager of Enforcement.

[FR Doc. 79-18960 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Interim Remedial Orders for Immediate Compliance

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Interim Remedial Orders for Immediate Compliance (IROICs) were issued by the Office of Enforcement, ERA, to the firms listed below during the month of May 1979. These IROICs concern prices charged by retail motor gasoline dealers in excess of the maximum lawful selling prices for motor gasoline. To prevent further irreparable harm to the public interest which might result if these firms continued to charge prices the lawfulness of which could not be justified, these IROICs were issued in accordance with 10 C.F.R. 205.199D and ordered the firms to come into compliance with legal requirements by taking the following actions:

1. Reduce prices for each grade of gasoline to no more than the maximum lawful selling price;

2. Post the maximum lawful selling price for each grade of gasoline on the face of each pump in numbers and letters not less than one-half inch in height; and

3. Properly maintain records required under the Mandatory Petroleum Allocation and Price Regulations, Title 10, Code of Federal Regulations.

In the alternative, these firms were ordered to come forth within five days with support for the lawfulness of the maximum lawful selling prices they otherwise contend are appropriate.

For further information regarding these IROICs, plesae contact Mr. Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–3870.

Firm name	Address	Audit date
Burke's Mobil Service	Route 322 and Route 162, West Chester, Pa. 19380	5/1/79

Issued in Philadelphia on the 6th day of June, 1979.

Herbert M. Heitzer,

District Manager of Enforcement.

[FR Doc. 79-18957 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Interim Remedial Orders for Immediate Compliance

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Interim Remedial Orders for Immediate Compliance (IROICs) were issued by the Office of Enforcement, ERA, to the firms listed below during the month of May 1979. These IROICs concern the modifying of normal business practices so as to result in the violation of the provisions of the Mandatory Petroleum Allocation and Price Regulations, Title 10, Code of Federal Regulations. To prevent further irreparable harm to the public interest which might result if these firms continued their course of conduct, these IROIC's were issued in accordance with 10 CFR 205.199D and ordered the firms to come into compliance with legal requirements by taking the following actions:

1. Cease and desist from employing any form of discriminatory practices as set forth in 10 CFR 210.62(b); and

2. Conform its business practices to those practices followed by the firm during its base period.

In the alternative, these firms were ordered to come forth within five days with support for the lawfulness of the practices they otherwise contend are appropriate.

For further information regarding these IROICs, please contact Mr. Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–3870.

Firm name	Address	Audit date
S & S Arco	Fourth and Spring Gardens Street, Philadelphia, Pennsylvania.	5/29/79

Issued in Philadelphia on the 6th day of June 1979.

Herbert M. Heitzer,

District Manager of Enforcement.

[FR Doc. 79-18958 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP78-256]

Algonquin LNG, Inc.; Informal Conference

June 8, 1979

Take notice that an informal conference in the above-captioned causes will be held on June 26, 1979, at 10:00 a.m. in Hearing Room F at the Interstate Commerce Commission, 12th and Constitution Avenue N.W., Washington, D.C. 20004. All parties should be prepared to discuss the

technical aspects and possible settlement of the proposals. All persons are invited to attend, but advised that mere attendance and/or participation in this conference's discussions will not serve to make the same persons formally parties to these proceedings.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18770 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-405]

Arkansas Power & Light Co.; Filing

June 11, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, Middle South Services (Services), acting as agent for Arkansas Power & Light Company (AP&L), tendered for filing a letter Agreement dated January 29, 1979, between AP&L and Oklahoma Gas & Electric Company (OG&E) for transmission services through the System of AP&L of 150mW of capacity and associated energy from OG&E to Gulf States Utility Company (GSU).

AP&L requests an effective date of January 1, 1979, and therefore requests waiver of the Commission's notice requirements. AP&L further states that the rate for this transmission service has previously been approved in docket No. ER77-535 and that no additional facilities will be required.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before July 2, 1979. 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. 79-18771 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-411]

Central Hudson Gas & Electric Corp.; Filing

June 11, 1979.

Take notice that Central Hudson Gas & Electric Company on June 1, 1979, tendered for filing Schedule A applicable to actual charges for 1978 to Consolidated Edison Company of New York pursuant to the Rock Tavern Substation Agreement dated December 29, 1972.

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, N.E., 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 July 3, 1979. 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. 79-18772 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-399]

The Cleveland Electric Illuminating Co.; Filing of Changes in Rates and Charges

June 11, 1979.

The filing Company submits the following:

Take notice that The Cleveland Electric Illuminating Company (CEI on May 31, 1979, tendered for filing Revised Service Schedule B—Firm Power Service to its Rates Schedule FERC No. 12, containing revised rates and charges applicable to CEI's firm power service to the City of Cleveland, and Revised Sheet No. 6 to its FERC Electric Tariff, Original Volume No. 1, for transmission service, containing revised rates and charges applicable to customers under CEI's Tariff. CEI proposed to place the Revised Service Schedule B to its Rate Schedule FERC No. 12 and Revised Sheet No. 6 to its FERC Electric Tariff, Original Volume No. 1 into effect as of August 1, 1979. The revised rates and charges would increase revenues from sales under Service Schedule B to Rate Schedule FERC No. 12 by $3,194,000 based on calendar year 1979. CEI is unable to project revenues from its Tariff for transmission service.

CEI states that it expects to realize a rate of return from service under Service Schedule B of only 1.76 percent for calendar year 1979 under the presently effective Supplement No. 2 to Rate Schedule FERC No. 12. The proposed rates contained in Revised Service Schedule B to Rate Schedule FERC No. 12 have been designed to enable CEI to have the opportunity to earn a rate of return of 6.07 percent, whereas the proposed rates contained in Revised Sheet No. 6 to CEI's Electric Tariff Original Volume No. 1 would allow an opportunity of earning 5.99 percent.

CEI states that a copy of the appropriate portions of the filing has been served upon CEI's customers and the Public Utilities Commission of Ohio.

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, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rule of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 2, 1979. 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. 79-18773 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-413]

The Connecticut Light and Power Co.; Purchase Agreement

June 11, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units dated March

20, 1979 between (1) CL&P and The Hartford Electric Light Company (HELCO), and (2) Central Vermont Public Service Corporation (CVPS).

CL&P states that the Purchase Agreement provides for a sale to CVPS of a specified percentage of capacity and energy from five gas turbine generating units during the period from April 1, 1979 to November 30, 1979, together with related transmission service.

CL&P requests that the Commission, pursuant to Section 35.11 of its regulations, permit the rate schedule filed to become effective on April 1, 1979.

CL&P states that the Capacity Charge for the proposed service was a negotiated rate. The monthly Transmission Charge is equal to one-twelfth of the annual average cost of transmission service on the Northeast Utilities (NU) system determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the transmission charge rate ($KW/month), and (ii) the number of kilowatts of winter capability which CVPS is entitled to receive, reduced to give due recognition of the payments made by CVPS for transmission services on intervening systems. The Variable Maintenance charges were derived from historical costs and the Additional Maintenance Charge is twice the Variable Maintenance Charge.

HELCO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut, HELCO, Hartford, Connecticut, and CVPS, Rutland, Vermont.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

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 Capital Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 3, 1979. Protests will be considered by the Commission in determinimg 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18774 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-400]

Duke Power Co.; Supplement to Electric Power Contract

June 11, 1979.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing on June 1, 1979 a supplement to the Company's Electric Power Contract with the Town of Dallas. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 254.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following contract demand: Delivery Point No. 2 of 3,000 Kw.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of August 20, 1979.

According to Duke Power copies of this filing were mailed to the Town of Dallas and the North Carolina 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 Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 2, 1979. 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. 79-18775 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP79-12]

El Paso Natural Gas Co.; Certification of Settlement Agreement

June 8, 1979.

Take notice that June 5, 1979, the Presiding Administrative Law Judge certified a stipulation and agreement which resolves all issues in this proceeding, except that of tax normalization, which has been set for hearing.

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. 20426, and should serve the same on all parties to this proceeding. Comments are due by June 22, 1979. All comments will be considered by the Commission in determining the appropriate action to be taken. Copies of the agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18765 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-407]

Empire District Electric Co.; Filing

June 11, 1979.

The filing Company submits the following:

Take notice that the Empire District Electric Company on June 1, 1979, tendered for filing proposed changes in its FERC Electric Service Tariff, Volume No. One. The proposed changes would increase revenues from present jurisdictional sales and service to the City of Monett, Missouri by $481,444 based on the 12-month period ending February 28, 1978.

The presently effective rates are based on contractual agreement made up to eleven years ago. Since that time Empire has experienced substantial increase in all elements of its cost, including fuel, labor, interest, taxes and construction to provide additional capacity and meet environmental requirements.

Copies of this filing were served upon the public utility's jurisdictional

customers and the Missouri Public Service Commission.

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 St., N.E., Washington, D.C. 20426, in accordance with Paragraph 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 2, 1979. 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. 79-18776 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-416]

Florida Power & Light Co.; Amendment to Agreement To Provide Specified Transmission Service

June 8, 1979.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL) on June 4, 1979, tendered for filing an amendment to an agreement executed only by it, entitled "Amendment Number Three To Agreement To Provide Specified Transmission Service Between Florida Power & Light Company and City of Homestead." Under the Amendment, FPL is modifying certain terms and conditions not affecting rates concerning the transmission of power and energy by FPL for the City of Homestead (City) as is required by the City in the implementation of its interchange agreements with other utility systems in Florida.

FPL requests an effective date for this Agreement if no later than 60 days after the date of filing. FPL states that a copy of the filing was served on the Utilities Director of the City of Homestead, Florida.

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, N.E., 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 June 29, 1979. 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. 79-18787 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Four Star Development Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 7, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana

Department of Natural Resources Office of Conservation

FERC Control Number: JD79-6189
API Well Number: 17-111-21745
Section of NGPA: 103
Operator: Four Star Development Corporation
Well Name: Frost Lumber Ind. Inc. No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 36.865 MMcf.

FERC Control Number: JD79-6190
API Well Number: 17-017-21885
Section of NGPA: 108
Operator: Erin Exploration Assoc.
Well Name: Noel No. 2 150749
Field: Longwood
County: Caddo Parish, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: 1600 MMcf.

FERC Control Number: JD79-6191
API Well Number: 17-017-21319
Section of NGPA: 108
Operator: Pelican Gas Production Assoc.
Well Name: H. A. Cushman No. 1 144227
Field: Longwood
County: Caddo Parish, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: 3,600 MMcf.

FERC Control Number: JD79-6192
API Well Number: 17-017-21579
Section of NGPA: 108
Operator: Pelican Gas Production Assoc.
Well Name: Noel No. 1 147261
Field: Longwood Field
County: Caddo, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: NA.

FERC Control Number: JD79-6193
API Well Number: 17-1-922090
Section of NGPA: 103
Operator: Goldking Production Company
Well Name: Wallace Ellender No. 1
Field: Northeast Montegut (11700 RA SUB)
County: Terrebonne, Louisiana
Purchaser: Louisiana Intrastate Gas Co.
Volume: NA.

FERC Control Number: JD79-6194
API Well Number: 17-109-22058
Section of NGPA: 103
Operator: Pel-Tex Oil Company, Inc.
Well Name: L. L. & E. "B" 12
Field: Lake Hatch
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipe Line Co.
Volume: 360 MMcf.

FERC Control Number: JD79-6195
API Well Number: 17-109-22058
Section of NGPA: 103
Operator: Pel-Tex Oil Company, Inc.
Well Name: L. L. & E. "B" 12-D
Field: Lake Hatch
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipe Line Co.
Volume: 12 MMcf.

FERC Control Number: JD79-6196
API Well Number: 17-089-20363
Section of NGPA: 102
Operator: Texoil Company
Well Name: Matassa Ra Sua: Sixty Acres No. 1
Field: Kenner
County: St. Charles, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 300 MMcf.

FERC Control Number: JD79-6197
API Well Number: 17-067-00438
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 19
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 6.2 MMcf.

FERC Control Number: JD79-6198
API Well Number: 17-067-00419
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 20
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 3.3 MMcf.

FERC Control Number: JD79-6199
API Well Number: 17-067-00417
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 26
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-6200
API Well Number: 17-067-00434
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 28
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 10.6 MMcf.

FERC Control Number: JD79-6201
API Well Number: 17-067-00418

Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 31
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 2.6 MMcf.

FERC Control Number: JD79-6202
API Well Number: 17-017-21324
Section of NGPA: 108
Operator: Pelican Gas Production Assoc.
Well Name: S. P. Moneyham No. 1 144344
Field: Longwood Field
County: Caddo Parish, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: 1000 MMcf.

FERC Control Number: JD79-6203
API Well Number: 17-061-20140
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: CV RA SU F; Wilson Estate No. 1
Field: Clay
County: Lincoln, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 38 MMcf.

FERC Control Number: JD79-6204
API Well Number: 17-061-20140
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Hoss RA SU H; Wilson Estate No. 1-D
Field: Clay
County: Lincoln, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 409 MMcf.

FERC Control Number: JD79-6205
API Well Number: 17-061-20154
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: CV RA SU G; Roy No. 1
Field: Clay
County: Lincoln, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 447 MMcf.

FERC Control Number: JD79-6206
API Well Number: 17-015-21097
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Gray RA SU H; Willamette No. 1
Field: Rocky Mount
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 336 MMcf.

FERC Control Number: JD79-6207
API Well Number: 17-015-21104
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Gray RA SU J; Hughes No. 1
Field: Rocky Mount
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 18 MMcf.

FERC Control Number: JD79-6208
API Well Number: 17-015-21068
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Mid CV RA SU A; Antrim Estate No. 2
Field: Rocky Mount
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 260 MMcf.

FERC Control Number: JD79-6209
API Well Number: 17-015-21026
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Gray RA SU B; Burton No. 1
Field: Rocky Mount
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 204 MMcf.

FERC Control Number: JD79-6210
API Well Number: 17-111-01407
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Navarro Fee No. 2
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 8.5 MMcf.

FERC Control Number: JD79-6211
API Well Number: 17-111-00591
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Navarro Fee No. 3
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 8.5 MMcf.

FERC Control Number: JD79-6212
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Nesmith No. 1
Field: Monroe Gas Field
County: Ouachita, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 5.9 MMcf.

FERC Control Number: JD79-6213
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Nolan No. 1
Field: Monroe Gas Field
County: Ouachita, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 5.8 MMcf.

FERC Control Number: JD79-6214
API Well Number: 17-111-01413
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Ouachita National Bank No. 76
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 7.0 MMcf.

FERC Control Number: JD79-6215
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Parks No. 63
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 18.0 MMcf.

FERC Control Number: JD79-6216
API Well Number: 17-111-01816
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Peek No. 60
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 11.5 MMcf.

FERC Control Number: JD79-6217
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Perry No. 1
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 6.6 MMcf.

FERC Control Number: JD79-6218
API Well Number: 17-111-21223
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-153 (formerly Luff-Grayling D-1)
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 18.0 MMcf.

FERC Control Number: JD79-6219
API Well Number: 17-111-01244
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Green No. 1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 1.5 MMcf.

FERC Control Number: JD79-6220
API Well Number: 17-067-00546
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Griffing No. 1
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 2.7 MMcf.

FERC Control Number: JD79-6221
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Griffing No. 2
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 17.0 MMcf.

FERC Control Number: JD79-6222
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Gulley No. 1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 7.3 MMcf.

FERC Control Number: JD79-6223
API Well Number: 17-111-01235
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Haile No. 77
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.3 MMcf.

FERC Control Number: JD79-6224
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Harris C No. 1

Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 9.1 MMcf.

FERC Control Number: JD79-6225
API Well Number: 17-027-00601
Section of NGPA: 108
Operator: Gulf Oil Corporation
Well Name: Hall Sul; Eva Bennett et al. No. 23-8-1
Field: Lisbon
County: Claiborne, Louisiana
Purchaser: Texas Gas Transmission
Volume: 20 MMcf.

FERC Control Number: JD79-6226
API Well Number: 17-111-00541
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: W. B. McKinnie No. 1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.7 MMcf.

FERC Control Number: JD79-6227
API Well Number: 17-111-00469
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: McKinnie N-1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.7 MMcf.

FERC Control Number: JD79-6228
API Well Number: 17-111-00465
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: McKinnie B-1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 1.4 MMcf.

FERC Control Number: JD79-6229
API Well Number: 17-111-00549
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: La Gas Lands No. 1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.8 MMcf.

The applications for determinations in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18801 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP79-75]

Gas Research Institute; Annual Application

June 8, 1979.

Take notice that on June 4, 1979, Gas Research Institute (GRI) filed its third annual application, including its updated five-year R&D plan, requesting advance approval of its 1980-1984 Five-Year R&D Plan and, specifically, of its 1980 R&D Program and the funding thereof, pursuant to the Natural Gas Act and the Commission's Regulations thereunder, particularly 18 CFR 154.38(d)(5).

The first GRI application, dealing with GRI's First Five-Year R&D Plan and initial R&D Program was filed on March 11, 1977, and approved by the Commission in Opinion No. 11, *Opinion and Order Approving the Initial Research, Development and Demonstration Program of Gas Research Institute*, Docket No. RM77-14, issued March 22, 1978. In Opinion No. 11, the Commission found GRI to be a "RD&D organization" within the meaning of Section 154.38(d)(5) of the Commission's Regulations. The Commission approved GRI's initial application with the understanding that GRI will review, annually, and update its five-year plan and funding requirements for presentation to the Commission together with annual applications for advance approval pursuant to the Commission's Regulations.

The second GRI application, dealing with GRI's 1979-1983 Five-Year R&D Plan and 1979 R&D Program, was filed on June 30, 1978 and approved by the Commission in Opinion No. 30, *Opinion and Order Approving The Gas Research Institute's 1979 Research and Development Program*, Docket No. RP78-76, issued September 21, 1978.

The Commission's Regulations state that the principal tests for the adequacy of the proposed application shall be the following guidelines:

1. Evidence that GRI's RD&D objectives have been clearly established.

2. Evidence that the plan evolves from these RD&D objectives and adequately utilizes the viewpoints of scientific, engineering, industry, economic, consumers and environmental interests.

3. Evidence that an effective mechanism exists and is used for coordinating this research and development plan with other relevant efforts of national scope.

4. Evidence that the program and plan are well conceived and have a reasonable chance of benefiting the ratepayer in a reasonable period of time, having due regard to the basic, exploratory or applied nature of each submitted RD&D project.

5. Evidence that whatever achievements may result, including the knowledge gained or technology developed from the RD&D effort, if any, will accrue to the benefit of the sponsoring jurisdictional companies and their customers.

GRI states that its third application follows the principles considered by the Commission in Opinion Nos. 11 and 30 and *Order No. 566, Order Prescribing Changes in Accounting and Rate Treatment for Research, Development and Demonstration Expenditures*, Docket No. RM76-17, issued June 3, 1977. In its third application GRI seeks advance approval for its 1980 R&D Program which proposes that $54,745,000 be collected during the twelve (12) months ending December 31, 1980 to support R&D activities in five technical areas, i.e., Supply, Economics and Systems Analysis, Environment and Safety, Efficient Utilization and Basic Research and to cover the cost of Planning and Administration. Applicant states that its application was filed in accordance with the provisions of Order No. 566 which requires "RD&D organizations" to submit, annually, a five-year program plan at least 180 days prior to the commencement of the five-year program plan, which is scheduled to commence on January 1, 1980.

GRI states that the proposed unit cost of GRI's 1980 R&D Program is 5.0 mills per Mcf or equivalent to become effective January 1, 1980. This General R&D Funding Unit is proposed to be applied to the services included in GRI's Program Funding Services in 1980 which include jurisdictional, direct sale and intrastate volumes of GRI's members and which are estimated to be 10,854 Bcf.

GRI's filing was accompanied by workpapers providing detail about its application. These workpapers are available for inspection in the Commission's Office of Public Information.

The Appendix to GRI's application contains a list of GRI members and state regulatory commissions which were

served with a copy of GRI's application on June 4, 1979. Such members and commissions are hereby permitted to participate in this proceeding as intervenors and need *not* file formal petitions to intervene or notices of intervention.

Any other person desiring to be heard or to make any protest with reference to said application should, on or before June 25, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a comment, protest, or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR 1.8, 1.10). All comments or 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, other than those listed in the Appendix who are automatically entitled to participate, must file a petition to intervene in accordance with the Commission's Rules.

Additionally, take notice that a Commission staff report on GRI's filing will be served on all parties and filed with the Commission as a public document on July 23, 1979. Also, in accordance with a working agreement between the FERC and the Under Secretary of Energy, Department of Energy (DOE), the Energy Research Advisory Board (ERAB) of DOE will provide FERC with an advisory review of the GRI's application. The FERC has requested that ERAB comment on the following: (1) GRI management of its R&D program; (2) Coordination of GRI program with DOE and other gas R&D efforts; (3) The substance and adequacy of GRI's R&D program. The ERAB's report will be filed with the Secretary of Energy, who upon approval, will transmit the report to FERC. The report will be filed with FERC and accompany the staff report. We shall further provide for the filing of additional comments by all parties concurrently with Staff's and ERAB's report on July 23, 1979. Comments on Staff's and ERAB's report by all parties except GRI shall be filed August 13, 1979. Reply comments by GRI shall be filed on August 27, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18788 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Gulf Oil Corp.; Determination by a Jurisdictional Agency Under the Natural Policy Act of 1978

June 5, 1979.

On May 17, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

STATE OF LOUISIANA

DEPARTMENT OF NATURAL RESOURCES

FERC Control Number: JD79-6285
API Well Number: 17-089-20336
Section of NGPA: 102
Operator: Gulf Oil Corporation
Well Name: Delta Securities Co., Inc. #134
Field: Bayou Couba
County: St. Charles
Purchaser: Transcontinental Gas Pipeline
Volume: 100 MMcf.

FERC Control Number: JD79-6286
API Well Number: 17-101-21093
Section of NGPA: 103
Operator: Texaco Inc.
Well Name: SL 340 Cote Blanche Island #172
Field: Cote Blanche Island
County: St. Mary
Purchaser: Columbia Gas Transmission Corp.
Volume: 274 MMcf.

FERC Control Number: JD79-6287
API Well Number: 17-113-20750
Section of NGPA: 107
Operator: The Superior Oil Company
Well Name: Burnell D. Hardee No. 3
Field: Southeast Gueydan
County: Vermillion Parish
Purchaser: Michigan Wisconsin Pipe Line Co.
Volume: 2,020 MMcf.

FERC Control Number: JD79-6288
API Well Number: 17-017-22555
Section of NGPA: 103
Operator: McGoldrick Oil Company
Well Name: McDade No. 14
Field: Caddo Pine Island
County: Caddo
Purchaser: United Gas Pipeline Company
Volume: 6 MMcf.

FERC Control Number: JD79-6289
API Well Number: 17-119-201810000
Section of NGPA: 103
Operator: Art Machin & Associates, Inc.,
Well Name: Pet Ra Su DD; Cecil Bailey #1
Field: North Shongaloo-Red Rock
County: Webster Parish
Purchaser: United Gas Pipe Line Co.,
Volume: 8 MMcf.

FERC Control Number: JD79-6290
API Well Number: 17-061-004090000
Section of NGPA: 108
Operator: Murphy Oil Corporation
Well Name: U Hoss L Suf; Sherrard 1-D
Field: Simsboro
County: Lincoln
Purchaser: Arkansas Louisiana Gas Company
Volume: 18 MMcf.

FERC Control Number: JD79-6291
API Well Number: 17-061-004080000
Section of NGPA: 108
Operator: Murphy Oil Corporation
Well Name: Fwl Sua; givens 2D, Serial No. 44893
Field: Simsboro Field
County: Lincoln
Purchaser: Arkansas Louisiana Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79-6292
API Well Number: 17-061-200110000
Section of NGPA: 108
Operator: Murphy Oil Corporation
Well Name: M Hoss Suf; Clay Colvin B-2
Field: Ruston Field
County: Lincoln
Purchaser: Mississippi River Transmission Corp.
Volume: NA.

FERC Control Number: JD79-6293
API Well Number: 17-061-20178
Section of NGPA: 103
Operator: Franks Petroleum Inc., et al.
Well Name: CRA Suk; Simmons No. 1
Field: Ruston
County: Lincoln
Purchaser: Arkansas Louisiana Gas Company
Volume: 133.955 MMcf.

FERC Control Number: JD79-6294
API Well Number: 17-02-700608
Section of NGPA: 108
Operator: Gulf Oil Corporation
Well Name: Hall Sul; W. B. Williams No. 24-11-1
Field: Libson
County: Claiborne
Purchaser: Texas Gas Transmission
Volume: 18 MMcf.

FERC Control Number: JD79-6295
API Well Number: 17-127-20659
Section of NGPA: 103
Operator: Hogan Drilling Company, Inc.
Well Name: Olinkraft #1
Field: East Sikes
County: Winn
Purchaser: United Gas Pipeline Company
Volume: 58.4 MMcf.

FERC Control Number: JD79-6296
API Well Number: 17-127-20703
Section of NGPA: 103
Operator: Hogan Drilling Company, Inc.
Well Name: Olinkraft #3
Field: East Sikes
County: Winn
Purchaser: United Gas Pipeline Company
Volume: 25.4.

FERC Control Number: JD79-6297
API Well Number: 17-119-201730000
Section of NGPA: 103
Operator: Richard B. Nelson, et al.
Well Name: Hoss A RA SU BB; Elias Bailey; ES 001; 154372
Field: Ada
County: Webster
Purchaser: Arkansas-Louisiana Gas Company
Volume: 72 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825

North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18802 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-404]

Idaho Power Co.; Filing

June 11, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, the Idaho Power Company tendered for filing summary of sales made under the company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during April, 1979, along with cost justification for the rate charged.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18777 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-402]

Illinois Power Co.; Filing

June 11, 1979.

Take notice that Illinois Power Company on May 31, 1979 tendered for filing Modification No. 1 dated May 3, 1979 to the Interconnection Agreement dated January 14, 1975 with the City of Springfield, Illinois. Illinois Power indicate that Modification No. 1 revises the reservation charges for Short Term Firm Power, Short Term Non-Firm Power and Maintenance Power and revises the energy charge for Emergency Energy.

Illinois Power requests waiver of the Commission's notice requirements to allow for an effective date of June 1, 1979.

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, N.E., 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 petitions or protests should be filed on or before July 2, 1979. 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. 79-18778 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-403]

Illinois Power Co.; Filing Amendment No. 5

June 11, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, Illinois Power Company ("Illinois Power") tendered for filing proposed Amendment No. 5, dated May 1, 1979, to the Interchange Agreement, dated March 15, 1973, between Iowa-Illinois Gas and Electric Company ("Iowa-Illinois") and Illinois Power Company.

Illinois Power indicates that this filing is made for an increase for Short-Term Firm Capacity and Short-Term Non-Firm Power reservation charges.

Ilinois Power states that a copy of the filing was served upon Iowa-Illinois, the Illinois Commerce Commission, and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file comments or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 or 1.10) of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18779 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

J. Burns Brown; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 8, 1979.

On May 22, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Montana Department of Natural Resources and Conservation

Board of Oil and Gas Conservation

FERC Control Number: JD79-6576
API Well Number: 25-041-21891
Section of NGPA: 108
Operator: J. Burns Brown
Well Name: Phillips 26-1
Field: Badlands Gas Field
County: Hill, Mt.
Purchaser: Northern Natural Gas Company
Volume: 6.0 MMcf.

FERC Control Number: JD79-6577
API Well Number: 25-041-21836
Section of NGPA: 108
Operator: J. Burns Brown
Well Name: Long Estate 31-1
Field: Badlands Gas Field
County: Hill, Mt.
Purchaser: Northern Natural Gas Company
Volume: 18.0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any

correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18798 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-406]

Kansas Power & Light Co.; Filing

June 11, 1979.

Take notice that Kansas Power and Light Company on June 1, 1979 tendered for filing a proposal to amend Article II of the Power service Agreement dated May 26, 1976 with the City of Holton, Kansas. The proposal contemplates a change in metering and certain changes in the terms and conditions in the City's rate schedule.

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, N.E., 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 petitions or protests should be filed on or before July 2, 1979. 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. 79-18780 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP 79-19]

Montana-Dakota Utilities Co.; Protest and Petition for Relief

June 4, 1979.

Take notice that on May 16, 1979, Holly Sugar Corporation (Holly), P.O. Box 1052, Colorado Springs, Colorado 80901, filed in Docket No. GP 79-19 a protest of the actions of Montana Dakota Utilities Co. (MDU) and petition for relief pursuant to §§ 1.6 and 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.6 and 1.7) and § 281.110 of the Interim Curtailment Rule issued pursuant to the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the protest and petition which are on file with the Commission and open to public inspection.

Holly is a manufacturer of sugar, operating several plants at which sugar is processed from sugarbeets, among them one situated near the Town of Worland, Washakie County, Wyoming, and one near Sidney, Richland County, Montana. Holly states that MDU has furnished natural gas at the Sidney and Worland plants under negotiated industrial interruptible contracts and that until 1976, it used natural gas at said plants as its sole energy source except for negligible quantities of oil, the required stand-by fuel, during peak load interruptions.

In 1976 MDU instituted an allocation plan (the Plan) and Holly alleges that at MDU's instance, several of MDU's major customers, including Holly, entered into a stipulation and agreement, approving the Plan, by the terms of which an order of priority was established and customers with lowest priority (4) agreed to a program the effect of which would be to reduce their annual consumption each year thereafter by 20 percent cumulatively. Standard contracts thereafter were offered such customers on a fiscal year July 1–June 30 basis. By agreement, dated June 1, 1978, for the term July 1, 1978–June 30, 1979, Holly states that it was restricted to 40 percent of its base year (1976) consumption of priority 4 usage as defined in the Plan. The plan is pending before the Commission.

Holly asserts that in comments filed April 2, 1979, pursuant to a conference in Docket No. RP76-91 to consider the effect of the NGPA upon current curtailment plans, MDU stated:

"Since the volumetric limitations under the present contracts serve as a cap through June 30, 1979, MDU believes it is in harmony with the intent of the Commission's interim rule to maintain the same "cap" for the remaining four months during which the Interim Curtailment Rule is to be in effect—i.e., July 1, 1979 through October 31, 1979.

Consequently, new contracts embracing the period July 1, 1979 through October 31, 1979 will establish volumetric limitations at the present level, which is 40 percent of requirements, that is during that four-month period, the contract volume will be 4/12 of 40 percent of Base Period Requirements.

Holly states that reflecting such intention, MDU wrote Holly on April 30, 1979, as follows:

Section 2.2(a) of our FERC Gas Tariff, First Revised Volume No. 1, requires that Montana-Dakota Utilities Co. shall notify all customers whose base period requirements cannot be completely met, of the percent of service which such customer will receive during the following Supply Year. In compliance with that requirement, we wish to advise you that for the Supply Year 1979–80 (beginning July 1, 1979, and ending June 30, 1980), the curtailment rate will be eighty percent (80%) of your Priority 4 Base Period Requirements as contained in the tariff. You will, therefore, be allotted twenty percent (20%) of the Priority 4 base period requirement volume plus one hundred percent (100%) of the Priority 2 base period requirement for the 1979–80 Supply Year.

A new contract covering the 1979–80 Supply Year, setting forth the new volumes allotted to your plant, will be prepared and submitted to you in the near future. The new contract will incorporate the effect of exemptions or special conditions legally imposed by regulatory bodies, if any, which may affect the volumes applicable to your plant.

Holly alleges that, as an agricultural producer, it is entitled to priority 2 treatment under the U.S. Department of Agriculture's Interim Rule issued pursuant to Section 401 of the NGPA, but that, in reaching a contrary conclusion on April 2, 1979, that its present contract represents a "cap," MDU reasoned as follows:

Section 281.107(c)(1) provides that MDU's supply obligation is:

"* * * the *lesser* of:

"(i) the volume certified by the Secretary of Agriculture as essential agricultural volumetric requirements and calculated under 7 CFR § 2900.4"; or

"(ii) the volume which may be delivered by the interstate pipeline to the direct sale customer without causing the interstate pipeline to exceed any volumetric limitations set out in the contract between the interstate pipeline and such direct sale customer (without regard to any contract provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline)."

Again, it is clear that the volumetric requirements calculated under Agriculture's rule exceed the volumetric limitations under the present contracts (*i.e.*, 40 percent of Base Period Requirements). Hence, under the Commission's rule, the volumetric limitations set forth in the contracts are a "cap" on MDU's supply obligation to essential agricultural use establishments. Accordingly, there is no authority for or requirement under the Commission's rule that "adjustments" exceed such limitation.

Holly contends that the problem with the above reasoning is that § 281.107(c)(1) refers only to "*the* contract" (emphasis added) and that *the* contract between it and MDU expires June 30, 1979. Holly maintains that after that, there is no reason for denying it the right to seek priority 2 volumetric entitlement unless Holly has subjected itself to some further contractual limitation by MDU in the meantime, which Holly states, it has not and will not do. Holly asserts that without executing such a contract, it may get no gas and that either it must abandon its rights to full entitlement under Section 401 of the NGPA by signing a new restrictive agreement for the coming season with a 20 percent "cap" or it must abandon its rights to service altogether.

Holly protests MDU's action in offering it, as of July 1, 1979, either a contract restricting it to 20 percent of its priority 4 usage or nothing at all, as either (or both) a misconstruction of the Interim Rules or an abandonment of its facilities servicing Holly without requisite approval of the Commission as mandated by Section 7(b) of the Natural Gas Act.

Holly prays that the Commission issue a declaratory order clarifying the following issues:

(1) regarding the aforementioned reference to "the contract," in the Interim Rule, whether such reference refers to unsigned future as well as currently effective contracts between supplier and customer or to currently effective curtailment plans regardless of the existence of individual contracts between supplier and customer;

(2) whether MDU's Plan, aforementioned, is a currently effective curtailment plan;

(3) whether MDU's Plan aforementioned, represents "the contract" referred to in the Interim Rule;

(4) whether MDU's action in offering Holly only a contract as of July 1, 1979 containing volumetric limitations in accordance with the Plan represents an abandonment under Section 7(b) of the Natural Gas Act; and

(5) whether MDU is authorized by Section 401 of the NGPA and the Interim Rule to offer Holly a new contract allowing it only 20 percent of its base period entitlement or whether MDU should offer Holly a contract containing the full volumetric limits to which it would have been entitled had the Plan not been instituted.

Based on the Commission's clarification of the foregoing, Holly prays that the Commission issue its order to MDU, requiring MDU to offer Holly, as of July 1, 1979, contracts at both its Worland and Sidney plants with volumetric limits of natural gas no less than its full base year entitlement.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, 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. 79-18781 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-21]

Montana-Dakota Utilities Co.; Petition for Declaratory Order

June 4, 1979.

Take notice that on May 16, 1979, The Great Western Sugar Company (Great Western), 1530 16th Street, Denver, Colorado 80217, filed in Docket No. GP79-21 a petition pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for a declaratory order with regard to the interpretation by Montana-Dakota Utilities Co. (MDU) of § 281.107(c)(1)(ii) of the Commission's Interim Curtailment Rule issued pursuant to the Natural Gas Policy Act of 1978 (NGPA) and stating that a pipeline's supply obligation to a direct essential agricultural user under § 281.107(c)(1)(ii) is determined by the full contractual volumes without regard to any limitation thereon resulting from curtailment, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Great Western owns and operates two factories, one located in Billings, Montana, and the other in Lovell, Wyoming, which use natural gas furnished by MDU in connection with the processing of sugar beets into refined sugar and dried beet pulp for use as a livestock feed. As such, Great Western asserts, it qualifies as an essential agricultural user or natural gas under the regulations issued by the Secretary of Agriculture pursuant to the authority delegated under Section 401 of the NGPA.

Great Western states that MDU has filed tariff sheets as part of its FERC Gas Tariff to provide on an interim basis a plan for the delivery of natural gas for essential agricultural and high priority uses in accordance with Section 401 of the NGPA and that § 281.107(c)(1) as incorporated into MDU's tariff provides as follows:

(c) *Essential agricultural supply obligation.*

(1) *Direct essential agricultural supply obligation.*

The direct essential agricultural supply obligation of an interstate pipeline for a particular curtailment period with respect to an essential agricultural user which is a direct sale customer of the interstate pipeline is the lesser of:

(i) the volume certified by the Secretary of Agriculture as essential agricultural volumetric requirements and calculated under 7 CFR § 2900.4; or

(ii) the volume which may be delivered by the interstate pipeline to the direct sale customer without causing the interstate pipeline to exceed any volumetric limitations set out in the contract between the interstate pipeline and such direct sale customer (without regard to any contract provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline).

Great Western asserts that in comments on the impact of NGPA submitted in Docket No. RP76-91, MDU noted that one of the Commission criteria for determining the volumetric entitlement of large direct essential argricutural users was the volumes certified by the Secretary of Agriculture and that MDU observed that under the Secretary's rule:

> * * * the volumetric requirements certified are the *higher* of (1) the highest volume of gas actually used during the most recent three years (corrected to include amounts of process (fn. omitted) and feedstock gas not used because of curtailment or plant shutdown) or (2) the maximum volume the customer would be entitled to purchase under MDU's curtailment plan *in effect on February 28, 1979.* Because the large volume * * * customers had, during the past three years, contracts representing various reduced levels of service (*i.e.*, below full 'Base Period Requirements' as set forth in the Tariff), it is apparent that the actual volumes of gas used (corrected for feedstock and process gas not used because of curtailment) will produce the higher calculation of requirements under Agriculture's rule, *i.e.*, the requirements calculated under (1) will exceed the volumetric limitations specified in the contracts in effect February 28, 1979." (Emphasis in original) (App., p. 5)

Great Western then indicates that further quoting the provision of Section 281.107(c)(1)(ii) set out *supra*, p. 2, MDU then went on to state (App., p.6):

* * * it is clear that the volumetric requirements calculated under Agriculture's rule exceed the volumetric limitations under the present contracts (*i.e.*, 40 percent of Base Period Requirements). Hence, under the Commission's rule, the volumetric limitations set forth in the contracts are a "cap" on MDU's supply obligation to essential agricultural use establishments. Accordingly, there is no authority for or requirement under the Commission's rule that "adjustments" exceed such limitation.

Since the volumetric limitations under the present contracts serve as a cap through June 30, 1979, MDU believes it is in harmony with the intent of the Commission's interim rule to maintain the same "cap" for the remaining four months during which the Interim Curtailment Rule is to be in effect—*i.e.*, July 1, 1979 through October 31, 1979.

Consequently, new contracts embracing the period July 1, 1979 through October 31, 1979 will establish volumetric limitations at the present level, which is 40 percent of requirements, that is during that four-month period the contract volume will be ⅘ of 40 percent of Base Period Regulations.[1]

Great Western submits that MDU's interpretation of Section 281.107(c)(1)(ii) as imposing a "cap" limiting its obligations to essential agricultural users to 40 percent of base period requirements grossly misconstrues the force and thrust of that provision. Great Western further submits that there is no basis for MDU's position that the volumetric limitations of 40 percent of base period requirements contained in its present contracts would continue in effect for the four months remaining after June 1979 that the Commission's Interim Rule is to be effective; to the contrary, Great Western alleges, the present contracts expire June 30, 1979, and new contracts are required for the post-June 30 period. Similarly unjustified, Great Western contends, is MDU's asserted belief that maintenance of the same "cap" for the post-June 30 period would be "in harmony with the intent of the Interim Rule," since there is nothing in the Interim Rule suggesting a Commission purpose that the same volumetric limitation levels be maintained from period to period within the time frame covered by the Rule. In any case, Great Western contends, assuming *arguendo* that, as MDU urges, the Commission intends the post-June 30 period to be treated the same as the prior period, MDU's conclusion that the 40 percent base period requirement operates as a volumetric limitation upon its obligations to direct essential agricultural users such as Great Western is belied by the parenthetical phrase in § 281.107(c)(1)(ii) "without regard to any other provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline."

Great Western states that in line with certain curtailment provisions in MDU's tariff, the contracts which MDU's customers enter into with MDU annually expressly provide the level of curtailment which MDU determines for the oncoming year beginning July 1, and, thus, MDU's annual contracts with Great Western not only make clear that they were being entered into in a curtailment context, but the total volumes specifically provided were patently a predetermined percentage of Great Western's agreed-upon base period requirements. Great Western submits that since the 40 percent of base period requirements provided in MDU's contracts with its category 4 customers is an integral part of MDU's curtailment plan purported based on the gas supply shortage on the MDU system, it is clear that under the parenthetical phrase in § 281.107(c)(1)(ii) the 40 percent limitation is to be disregarded in determining volumetric limitations for the purpose of that Section.

Accordingly, Great Western petitions the Commission to issue an order declaring that a pipeline supply obligation to a direct essential agricultural user under Section 281.107(c)(1)(ii) is determined by the full contractual volumes without regard to any limitation thereon resulting from curtailment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, 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. 79-18782 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[1] The 40 percent calculation applies only to the Base Period Requirements in the category being curtailed, namely, Priority 4.

[Docket No. ER79-415]

Montana Power Co.; Filing

June 8, 1979.

The filing Company submits the following: Take notice that on June 4, 1979, The Montana Power Company (Company) tendered for filing Supplement No. 2, dated May 8, 1979, to the Agreement For Purchase of Power between the Company and Big Horn County Electric Cooperative, Inc. (Rate Schedule FERC No. 40).

The Company states that Supplement No. 2 to the Agreement for Purchase of Power incorporates the Company's Rate Schedules REC–78 and REC–79, which were previously filed with the Commission in *The Montana Power Company*, Docket No. ER78–515. Supplement No. 2 also modifies the contract demand and indemnity provisions of the Agreement for Purchase of Power. The Company has proposed to make Supplement No. 2 to the Agreement for Purchase of Power effective on August 3, 1979.

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, N.E., 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 June 29, 1979. 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. 79-18789 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

NRM Petroleum Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978.

June 8, 1979.

On May 22, 1979, the Federal Energy Regulatory Commission received notices for the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of West Virginia, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79–6578
API Well Number: 47–021–2931

Section of NGPA: 103
Operator: NRM Petroleum Corporation
Well Name: Campbell #1
Field: Glenville
County: Gilmer, W. VA.
Purchaser: Consolidated Gas Supply Corp.
Volume: 8 MMcf.

FERC Control Number: JD79-6579
API Well Number: 47-001-1019
Section of NGPA: 103
Operator: NRM Petroleum Corporation
Well Name: Skayra #1
Field: Union
County: Barbour, W. VA.
Purchaser: Consolidated Gas Supply Corp.
Volume: 4.0 MMcf.

FERC Control Number: JD79-6580
API Well Number: 47-041-2152
Section of NGPA: 103
Operator: NRM Petroleum Corporation
Well Name: Pringle #1
Field: Hackers Creek
County: Lewis, W. VA.
Purchaser: Consolidated Gas Supply Corp.
Volume: 13 MMcf.

FERC Control Number: JD79-6586
API Well Number: 47-033-1210
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: H. G. Porter 12479
Field: W. VA. Other A-85772
County: Harrison, W. VA.
Purchaser: General System Purchasers
Volume: 22 MMcf.

FERC Control Number: JD79-6587
API Well Number: 47-033-1132
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: H. C. Morrison 12402
Field: W. VA. Other A-85772
County: Harrison, W. VA.
Purchaser: General System Purchasers
Volume: 36 MMcf.

FERC Control Number: JD79-6588
API Well Number: 47-017-1887
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: M. J. McMillan 12301
Field: W. VA. Other A-85772
County: Doddridge, W. VA.
Purchaser: General System Purchasers
Volume: 26 MMcf.

FERC Control Number: JD79-6589
API Well Number: 47-041-2147
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: J. B. Lovett 12310
Field: W. VA. Other A-85772
County: Lewis, W. VA.
Purchaser: General System Purchasers
Volume: 33 MMcf.

FERC Control Number: JD79-6590
API Well Number: 47-047-328
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: C. H. Hibbs 12276
Field: W. VA. Other A-85772
County: Marion, W. VA.
Purchaser: General System Purchasers
Volume: 40 MMcf.

FERC Control Number: JD79-6591
API Well Number: 47-0212-2994-0000
Section of NGPA: 103
Operator: Rockwell Petroleum Company
Well Name: Barker-Marshall #1
Field: Glenville District
County: Gilmer, W. VA.
Purchaser: Consolidated Gas Supply Corporation
Volume: 10.0 MMcf.

FERC Control Number: JD79-6592
API Well Number: 47-017-1901
Section of NGPA: 103
Operator: United Operating Company
Well Name: M. Haught Dodd-1901
Field: Fred's Run
County: Doddridge, W. VA.
Purchaser: Consolidated Gas Supply Corp.
Volume: 25 MMcf.

FERC Control Number: JD79-6593
API Well Number: 47-1072-0760-0000
Section of NGPA: 103
Operator: Appalachian Exploration & Devel., Inc.
Well Name: W. I. Cale #1
Field: Walker
County: Wood, W. VA.
Purchaser: Cabot Corporation
Volume: 9.1 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record in which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275. 203 and 18 CFR 275. 204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18804 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. E-9181]

Nantahala Power and Light Co.; Order Determining Fuel Clause Revenues for Purposes of Compliance, Ordering Refunds, and Terminating Proceeding

Issued June 8, 1979.

In a series of orders previously issued in this docket by the Federal Power Commission (FPC) and this Commission,[1] Nantahala's proposed purchased power adjustment clause was rejected. However Nantahala was permitted to retain out of the purchased power clause revenues the amounts to which it would have been entitled under a fuel cost adjustment clause conforming to the Commission's applicable regulations (18 CFR 35.14) set forth in Order No. 517. Nantahala claimed that of a total of $34.270 collected under the purchased power clause in this docket, it was entitled to retain $32,936 as representing the amount it allegedly would have recovered under a conforming fuel clause. Nantahala was required to document its claimed fuel clause revenue entitlement.

On August 21, 1978, Nantahala submitted calculations purportedly documenting its claim to the $32.936. On August 31, 1978, the town of Highlands, North Carolina, one of Nantahala's wholesale customers and an intervenor, filed a protest to Nantahala's proposed documentation alleging that the amount claimed by Nantahala was excessive and unjustified under the Commission's fuel clause regulations. Highlands' protest was joined by Nantahala's cooperative customers who are also intervenors in the proceeding. On September 29, 1978, Nantahala responded to the intervenors' objections. It acknowledged the merit of certain of Highlands' objections and submitted revised calculations resulting in a substantial reduction in its claim from $32,936 to $12,646. On October 27, 1978, Highlands filed a protest to Nantahala's recalculation, claiming that the company still had not complied with the Commission's fuel clause regulations. Highlands requested the Commission to consider reopening the proceeding to determine whether Nantahala should be required to refund all amounts collected under the purchased power adjustment clause. In the event the Commission were unwilling to do so, Highlands requested that Nantahala be required to refund all amounts collected in excess of the $12,646 claimed by Nantahala in its revised compliance filing.

On October 30, 1978, the Commission staff submitted comments in response to Nantahala's revised documentation. The staff provided detailed calculations showing that under the Commission's regulations Nantahala was entitled to a maximum of only $9,663. The staff requests the Commission to order

[1] Orders issued February 7, 1977; March 20 1978; and July 20, 1978.

refunds of all amounts collected by Nantahala in excess of $9,663 and to terminate the proceeding. On November 13, 1978, Highlands responded to the staff's comments. Highlands alleges that the staff's calculations do not precisely meet the requirements of the fuel clause regulations, but that refund of the amounts determined by the staff would be preferable to continued litigation of this cause.

Upon review, the Commission finds that the staff's calculations provide a reasonable and proper basis for determining Nantahala's refund obligation in this docket. The Commission further finds that the staff's calculations conform to the fuel clause regulations as nearly as may reasonably be required within the limits of available data, including the billing data relating to Nantahala's power purchases from TVA, and that such calculations provide a fair, reasonable, and accurate measure of the fuel costs associated with Nantahala's TVA purchases. Therefore in accordance with the staff's recommendation, Nantahala's refunds shall be established by reference to the calculated fuel clause revenue figure of $9,663.

The Commission orders: (A) On or before July, 3, 1979, Nantahala shall refund to its wholesale customers all amounts collected in this docket under its purchased power adjustment clause in excess of $9,663, together with interest at the rate of 9 percent per annum. Within 10 days thereafter, Nantahala shall submit a statement showing the calculation of refunds and interest paid.

(B) Upon compliance by Nantahala with ordering paragraph (A) above, this proceeding shall be terminated.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18780 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-380]

Northern Indiana Public Service Co., Notice of Tariff Change and Supplements to Service Agreements

June 8, 1979.

The filing company submits the following: Take notice that on May 21, 1979, Northern Indiana Public Service Company (NIPSCo) tendered for filing First Revised Sheet No. 3 to its FERC Electric Service Tariff—Third Revised Volume No. 1 which has been revised to include an additional delivery point for Kosciusko County Rural Electric Membership Corporation—Webster South. Northern Indiana Public Service Company also tendered for filing the following:

Exhibit B-13, a supplement to the Service Agreement between NIPSCo and Kosciusko County Rural Electric Membership Corporation, which covers the supply of electric energy for resale at a delivery point located in Tippecanoe Township, Kosciusko County, Indiana.

Copies of this filing were served upon all customers receiving electric service under NIPSCo's FERC Electric Service Tariff—Third Revised Volume No. 1 and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedaure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 25, 1979. 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. 79-18791 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-408]

Ohio Edison Co., Filing

June 11, 1979.

Take notice that Ohio Edison Company on June 1, 1979 tendered for filing a notice of cancellation of FERC Rate Schedule Nos. 5C and 5C-1 through 5C-11. Ohio Edison indicates that these schdules expired by their own terms on December 31, 1975.

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, N.E., 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 petitions or protests should be filed on or before July 2, 1979. 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. 79-18783 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. ER78-460 and ER78-483]

Potomac Edison Co.; Certification of Settlement Agreement

June 8, 1979.

On May 30, 1979, the Presiding Administrative Law Judge certified to the Commission a proposed settlement agreement filed by Potomac Edison Company (Edison). The agreement resolves all of the outstanding issues between Edison and its municipal and cooperative customers. The Commission Staff supports the settlement.

Any person desiring to comment or to protest said filing should file comments or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 petitions or protests should be filed on or before June 29, 1979. 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. 79-18792 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Primos Production Co., *et al.*; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 8, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana

Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-6166
API Well Number: 1706700342
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 31

Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Company
Volume: 17.30 MMcf.

FERC Control Number: JD79-6167
API Well Number: 1706700346
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 32
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Company
Volume: 9.03

FERC Control Number: JD79-6168
API Well Number: 1706700391
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 33
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Company
Volume: 3.27

FERC Control Number: JD79-6169
API Well Number: 1706700396
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 34
Field: Monroe Gas Field
County: Morehouse
Purchaser: United Gas Pipeline Company
Volume: 4.97 MMcf.

FERC Control Number: JD79-6170
API Well Number: 1706700400
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 37
Field: Monroe Gas Field
County: Morehouse
Purchaser: United Gas Pipeline Company
Volume: 2.01 MMcf.

FERC Control Number: JD79-6171
API Well Number: 1706700393
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 38
Field: Monroe Gas Field
County: Morehouse
Purchaser: United Gas Pipeline Company
Volume: 3.35 MMcf.

FERC Control Number: JD79-6172
API Well Number: 17-113-20716
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: S.L. 3052 No. 35
Field: LacBlanc
County: Vermilion Parish, Louisiana
Purchaser: Tennessee Gas Pipe Line Co.
Volume: 101.2 MMcf.

FERC Control Number: JD79-6173
API Well Number: 17-101-21009
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: Belle Isle Corp. No. 77
Field: Belle Isle
County: St. Mary, Louisiana
Purchaser: United Gas Pipe Line Company
Volume: 125 MMcf.

FERC Control Number: JD79-6174
API Well Number: 17-087-20153
Section of NGPA: 107
Operator: Chevron U.S.A. Inc.
Well Name: S.L. 6647 No. 3
Field: Rigolets
County: St. Bernard, Louisiana
Purchaser: New Orleans Public Service Inc.
Volume: 1198.8 MMcf.

FERC Control Number: JD79-6175
API Well Number: 17-725-20188
Section of NGPA: 103
Operator: Chevron U.S.A. Inc.
Well Name: S.L. 1354 No. 27
Field: Main Pass Block 69
County: Plaquemines, Louisiana
Purchaser: Southern Natural Gas Co.
Volume: 2.60 MMcf.

FERC Control Number: JD79-6176
API Well Number: 17-725-20167
Section of NGPA: 103
Operator: Chevron U.S.A. Inc.
Well Name: S.L. 1277 No. 24
Field: Main Pass Block 69
County: Plaquemines, Louisiana
Purchaser: Southern Natural Gas Company
Volume: NA

FERC Control Number: JD79-6177
API Well Number: 1772620141
Section of NGPA: 103
Operator: Sabine Production Company
Well Name: S/L 7102 No. 1
Field: Breton Sound Block 53
County: Plaquemines Parish, Louisiana
Purchaser: Texas Eastern Transmission Corp.
Volume: 182.5 MMcf.

FERC Control Number: JD79-6178
API Well Number: 1772620150
Section of NGPA: 103
Operator: Sabine Production Company
Well Name: S/L 7102 No. 2
Field: Breton Sound Block 53
County: Plaquemines Parish, Louisiana
Purchaser: Texas Eastern Transmission Corp.
Volume: 182.5 MMcf.

FERC Control Number: JD79-6179
API Well Number: 1705120461
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Exxon Fee Avondale 12-D
Field: Avondale
County: Jefferson Parish, Louisiana
Purchaser: United Gas Pipe Line Company
Volume: 130 MMcf.

FERC Control Number: JD79-6180
API Well Number: 17-113-20757
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: S.L. 3057 No. 33
Field: Lacblanc
County: Vermilion Parish, Louisiana
Purchaser: Tennessee Gas Pipe Line Company
Volume: 2,210 MMcf.

FERC Control Number: JD79-6181
API Well Number: 1700120643
Section of NGPA: 103
Operator: Pel-Tex Oil Company, Inc.
Well Name: No. 1 M. M. Kerr
Field: Ellis
County: Acadia Parish, Louisiana
Purchaser: Columbia Gas Transmission Corp.
Volume: 900 MMcf.

FERC Control Number: JD79-6182
API Well Number: 17-109-22027
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: Laterra Co., Inc. "A" No. 36
Field: Bayou Penchant
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipe Line Co.
Volume: 1,588 MMcf.

FERC Control Number: JD79-6183
API Well Number: 17-109-21867
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: Laterre Co., Inc. "A" No. 34
Field: Bayou Penchant
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipe Line Company
Volume: 1,208 MMcf.

FERC Control Number: JD79-6184
API Well Number: 1711121749
Section of NGPA: 103
Operator: Four Star Development Corp.
Well Name: Union Power Co., Inc. No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 40.750 MMcf.

FERC Control Number: JD79-6185
API Well Number: 1711121759
Section of NGPA: 103
Operator: Four Star Development Corp.
Well Name: Mary Lee et al. No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 51.700 MMcf.

FERC Control Number: JD79-6186
API Well Number: 1711121752
Section of NGPA: 103
Operator: Four Star Development Corp.
Well Name: G. A. McCormick No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 31.025 MMcf.

FERC Control Number: JD79-6187
API Well Number: 1711121733
Section of NGPA: 103
Operator: Four Star Development Corporation
Well Name: W. C. Martin et al. No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 27.375 MMcf.

FERC Control Number: JD79-6188
API Well Number: 1701320283
Section of NGPA: 108
Operator: Bodcaw Company
Well Name: Hoss C Su 65; Payton No. 1
Field: Danville
County: Bienville, Louisiana
Purchaser: La. Gas Intrastate, Inc. of Shreveport
Volume: 14.670 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with

18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18600 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-410]

Puget Sound Power & Light Co.; Filing

June 11, 1979.

Take notice that Puget Sound Power & Light Company on June 1, 1979 tendered for filing First Revised Exhibits A and B Superseding Original Exhibits A and B. Puget Sound indicates that these Revised Exhibits represent cost support data to reflect increases in the actual costs of the Company's coal-fixed generating resources.

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, N.W., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 3, 1979. 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. 79-18784 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Ravencliffs Development Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 17, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of West Virginia

FERC Control Number: JD79-5875
API Well Number: 47-109-2-352
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—29
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Trasmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5876
API Well Number: 47-109-2-687
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—67
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5877
API Well Number: 47-109-2-686
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—66
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5878
API Well Number: 47-109-2-402
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—37
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5879
API Well Number: 47-109-2-558
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—48
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.599 MMcf.

FERC Control Number: JD79-5880
API Well Number: 47-109-2-755
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—76
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 11.054 MMcf.

FERC Control Number: JD79-5881
API Well Number: 47-109-2-563
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—50
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp
Volume: 13.457 MMcf.

FERC Control Number: JD79-5882
API Well Number: 47-109-2-381
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Wyoming Land Co.—34
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5883
API Well Number: 47-109-2-5
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—9
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5884
API Well Number: 47-109-2-498
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—44
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5885
API Well Number: 47-109-2-662
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—58
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5886
API Well Number: 47-109-2-415
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—39
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5887
API Well Number: 47-109-2-245
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co.—23
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5888
API Well Number: 47-109-2-296
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—25
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5889
API Well Number: 47-109-2-63
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Wyoming Land Co—18
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5890
API Well Number: 47-109-2-441
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y &O Coal Co—40
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5891
API Well Number: 47-109-2-541
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—47
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5892
API Well Number: 47-109-2-559
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—49
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5893
API Well Number: 47-109-2-9
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—12
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5894
API Well Number: 47-109-2-794
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—79
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.149 MMcf.

FERC Control Number: JD79-5895
API Well Number: 47-109-2-389
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—35
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5896
API Well Number: 47-109-2-682
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—63
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5897
API Well Number: 47-109-2-757
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—77
Field: Ravencliff
County: Wyoming, W. VA.
Purchaser: Columbia Gas Transmission Corp.
Volume: 12.120 MMcf.

FERC Control Number: JD79-5898
API Well Number: 47-109-2-742
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Wyoming Land Co—75
Field: Ravencliff
County: Wyoming, W. VA.
Purchaser: Columbia Gas Transmission Corp.
Volume: 18.800 MMcf.

FERC Control Number: JD79-5899
API Well Number: 47-109-2-696
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—69
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5900
API Well Number: 47-109-2-708
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—72
Field: Ravencliff
County: Wyoming, W. VA.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5901
API Well Number: 47-109-2-735
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—74
Field: Ravencliff
County: Wyoming, W. VA.
Purchaser: Columbia Gas Transmission Corp.
Volume: 11.312 MMcf.

FERC Control Number: JD79-5902
API Well Number: 47-109-2-678
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—61
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5903
API Well Number: 47-109-2-683
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—64
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5904
API Well Number: 47-109-2-810
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—2
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5905
API Well Number: 47-109-2-1
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—6
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5906
API Well Number: 47-109-2-2
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—8
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5907
API Well Number: 47-109-2-6
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—10
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5908
API Well Number: 47-109-2-659
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—57
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5909
API Well Number: 47-109-2-636
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—56
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5910
API Well Number: 47-109-2-591
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—52
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5911
API Well Number: 47-109-2-611
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—53
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5912
API Well Number: 47-109-2-351
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—28
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5913
API Well Number: 47-109-2-376
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—33
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5914
API Well Number: 47-109-2-28
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—17
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5915
API Well Number: 47-109-2-15
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—16
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5916
API Well Number: 47-109-2-623

Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—54
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5917
API Well Number: 47-109-2-508
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—45
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5918
API Well Number: 47-109-2-605
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—51
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5919
API Well Number: 47-109-2-667
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—60
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5920
API Well Number: 47-109-2-632
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—55
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5921
API Well Number: 47-109-2-809
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—1
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5922
API Well Number: 47-109-2-811
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—4
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5923
API Well Number: 47-109-2-718
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—73
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5924
API Well Number: 47-109-2-700
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—71
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5925
API Well Number: 47-109-2-7
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—11
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5926
API Well Number: 47-081-2-126
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—24
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5927
API Well Number: 41-109-2-478
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—43
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5928
API Well Number: 47-109-2-465
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—42
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18803 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER78-514]

Superior Water, Light & Power Co.; Motion To Withdraw Application

June 11, 1979.

Take notice that Superior Water, Light and Power Company (Superior) on March 15, 1979 tendered for filing a motion to withdraw its application for a rate increase.

On July 28, 1978 Superior tendered for filing a proposed revised Rate Schedule W-7 to the applicable to Dahlberg Light and Power Company. By order dated August 31, 1978 the Commission suspended the effectiveness of Superior's revised Rate Schedule W-7 until December 7, 1978, after which it became effective subject to refund; the Commission ordered that a hearing be held with respect to the proposed rates.

Superior indicates that it no longer wants to pursue its proposed rate increase through the hearing process and would like to withdraw its application. Superior states that upon Commission approval of this motion Superior would refund to Dahlberg the excess revenues collected since December 7, 1978 under the proposed Rate Schedule W-7, together with interest at 9% per annum, and would reinstate Rate Schedule W-6.

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, N.E., 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 petitions or protests should be filed on or before July 2, 1979. 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. 79-18795 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-412]

Union Electric Co.; Revised Service Schedule

June 11, 1979.

The filing Company submits the following:

Take notice that on May 24, 1979 Union Electric Company (Union) tendered for filing Second Amendment and Third Revised Schedule II to the Interchange Agreement dated April 11, 1967 between Union and Missouri Public Service Company.

Union indicates that said agreements provide for revisions in certain rates under said Interchange Agreement.

Union requests an effective date of August 1, 1979 for the Amendment and revised Schedule.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 3, 1979. 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. 79-18796 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP 79-28; API No. 03-071-10126]

U.S. Geological Survey (Mid-Continent Area) Section 108 NGPA Determination Regarding Federal 31 No. 1-12 Well; Preliminary Finding

Issued June 7, 1979.

On April 26, 1979, the Oil and Gas Supervisor for the Mid-Continent Area of the U.S. Geological Survey submitted to the Federal Energy Regulatory Commission (Commission) a notice of determination that the Federal 31 No. 1-12 Well met all the requirements of a stripper well under section 108 of the Natural Gas Policy Act of 1978 (NGPA) and Commission regulations implementing that section. The Commission published notice of the determination on May 7, 1979.

Section 108 of the NGPA provides that the rate of natural gas production from a stripper well shall not exceed an average of 60 Mcf per production day. Section 271.804(a) of the Commission's regulations stipulates that for purposes of determining the rate of production from a well for which a stripper well determination is sought, the total volume of natural gas produced from the well shall constitute its daily production, regardless of whether the well is completed in more than one interval.

The well completion report submitted with this determination indicates that the well is a dual completion. However, the production records submitted are applicable to production from only one of the producing levels. Accordingly, the materials accompanying the determination fail to provide figures reflecting the total volume of gas produced from the well.

On the basis of our review submitted with this determination, the Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i), that the determination submitted by the Oil and Gas Supervisor, Mid-Continent Area, U.S. Geological Survey, that the Federal 31 No. 1-12 Well qualifies as a section 108 stripper well, is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18793 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-401]

Virginia Electric Power Co.;

Filing June 11, 1979.

Take notice that the Virginia Electric and Power Company (VEPCO), on June 1, 1979 tendered for filing a request for a new delivery point for the Prince George Electric Cooperative designated Bacons Castle Delivery Point. VEPCO requests an effective date of May 4, 1979 and therefore requests waiver of the Commission's notice requirement.

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, N.E., 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 petitions or protests should be filed on or before July 2, 1979. 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 P. Plumb,

Secretary.

[FR Doc. 79-18797 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-409]

Washington Water Power Co.; Filing

June 8, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, The Washington Water Power Company (Washington) tendered for filing copies of Letter Agreements between Washington and San Diego Gas & Electric Company, Pacific Gas and Electric Company and Southern California Edison Company. Washington states that these Letter Agreements apply to the delivery of energy from Washington that is surplus to its immediate needs.

Washington further states that a portion of the energy delivered could be returned to Washington, at its request, prior to December 31, 1979. Washington indicates that the rate at which the energy is purchased will be the rate set forth in Washington's rate schedule FPC No. 88 (Wholesale Nonfirm Energy For Export), the applicable price under said rate schedule to be agreed upon before such energy is scheduled.

Washington proposes an effective date of March 1, 1979, and therefore requests waiver of the Commission's notice requirements.

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, N.E., 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 June 29, 1979. 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. 79-18794 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

FM and TV Translator Applications Ready and Available for Processing

Adopted: June 11, 1979.

Released: June 12, 1979.

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 July 27, 1979, the TV and FM translator applications listed in the attached Appendix below will be considered ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.591(b) of the 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 July 26, 1979, 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 July 26, 1979.

Any party in interest desiring to file pleadings concerning any pending TV FM translator application, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the rules, which specifies the time for filing and other requirements relating to such pleadings.

Federal Communications Commission.

William J. Tricarico,

Secretary.

UHF TV Translator Applications

BPTT-781101IB (new), Hawaiian Ocean View Estates, Hawaii, Hawaii Public Broadcasting Authority. Req: Channel 69, 800-806 MHz, 100 watts. Primary: KMEB-TV, Wailuku, Hawaii.

BPTT-790124IA (new), Planada, Hornitos & Catheys Valley, California, Pappas Telecasting Incorporated. Req: Channel 55, 716-722 MHz, 100 watts. Primary: KMPH-TV, Tulare, California.

BPTT-790125IC (new), Milford, Hamilton's Fort & Newcastle, Utah, Springfield Television of Utah, Inc. Req: Channel 59, 740-746 MHz, 100 watts. Primary: KSTU-TV, Salt Lake City, Utah.

BPTT-790306IB (new), Portales & Dora, New Mexico, Stanley Marsh 3, Tom F. Marsh, Michael Marsh & Estelle Marsh Watlington (Limited Partner), A Partnership d/b as Marsh Media, Ltd. Req: Channel 67, 788-794 MHz, 100 watts. Primary: KVII-TV, Amarillo, Texas.

BPTT-790307IG (new), Donnelly & Herman, Minnesota, Tri-County UHF-TV, Inc., Req: Channel 57, 728-734 MHz, 100 watts. Primary: KTHI-TV, Fargo/Grand Forks, North Dakota.

BPTT-790307IH (new), Donnelly & Herman, Minnesota, Tri-County UHF-TV, Inc. Req: Channel 59, 740-746 MHz, 100 watts. Primary: KMSP-TV, Minneapolis, Minnesota.

BPTT-790307II (new), Donnelly & Herman, Minnesota, Tri-County UHF-TV, Inc. Req: Channel 61, 752-758 MHz, 100 watts. Primary: KDLO-TV, Florence/Watertown, South Dakota.

BPTT-790321IA (new), St. James, Minnesota, Minnesota-Iowa Television Company. Req: Channel 32, 578-584 MHz, 1000 watts. Primary: KAAL-TV, Austin, Minnesota.

BPTT-790327IC (new), St. James Minnesota, Watonwan TV Improvement Association. Req: Channel 44, 650-656 MHz, 100 watts. Primary: KMSP-TV, Minneapolis, Minnesota.

BPTT-790118IL (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 68, 794-800 MHz, 100 watts. Primary: WVEC-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IC (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 36, 602-608 MHz, 100 watts. Primary: WYAH-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118ID (new), Tangier, Virginia, County of Accomack, Virginia. Req: Channel 46, 662-668 MHz, 110 watts. Primary: WHRO-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IE (new), Tangier, Virginia, County of Accomack, Virginia. Req: Channel 48, 647-680 MHz, 10 watts. Primary: WYAH-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IF (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 52, 698-704 MHz, 100 watts. Primary: WHRO—TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IG (new), Tangier, Virginia, County of Accomack, Virginia. Req: Channel 54, 710-716 MHz, 10 watts. Primary: WAVY-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IH (new), Tangier, Virginia, County of Accomack, Virginia. Req: Channel 56, 722-728 MHz, 10 watts. Primary: WTAR-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118II (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 58, 734-740 MHz, 100 watts. Primary: WTAR-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IJ (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 63, 764-770 MHz, 100 watts. Primary: WAVY-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IK (new), Tangier Virginia, County of Accomack, Virginia. Req: Channel 65, 776-782 MHz, 10 watts Primary: WVEC-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790424IA (NEW), Santa Barbara, Goleta & Carpinteria, California, Icthus Ministries, Inc. Req: Channel 65, 776-782 MHz, 100 watts. Primary: KTBN-TV, Fontana, California.

BPTT-790409IB (NEW), Bowman & Surrounding Area, North Dakota, Bowman TV Booster, Inc. Req: Channel 67, 788-794 MHz, 100 watts. Primary: KHSD-TV, South Dakota.

BPTT-790409IC (NEW), Bowman & Surrrounding Area, North Dakota, Bowman TV Booster, Inc. Req: Channel 69, 800-806 MHz, 100 watts. Primary: KIVV-TV, South Dakota.

BPTT-790420IA (NEW), Mayaguez, Puerto Rico, Quality Telecasting Corporation. Req: Channel 16, 482-488 MHz, 1000 watts. Primary: WORA-TV, Mayaguez, Puerto Rico.

VHF TV Translator Applications

BPTTV-790126IA (NEW), Denio, Nevada, Red Point Community Club, Inc. Req: Channel 9, 186-192 MHz, 1 watt. Primary: KIVI-TV, Nampa, Idaho.

BPTTV-790126IB (NEW), Denio, Nevada, Red Point Community Club, Inc. Req: Channel 11, 198-204 MHz, 1 watt. Primary: KBCI-TV, Boise, Idaho.

BPTTV-790126IC (NEW), Howard, Montana, Forsyth TV Tax District, Req: Channel 6, 82-88 MHz, 10 watts. Primary: KULR-TV, Billings, Montana.

BPTTV-790126ID (NEW), Rosebud & East Rural Area, Montana, Forsyth TV Tax, District. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KULR-TV, Billings, Montana.

BPTTV-790126IE (NEW), Forsyth & East Rural Area, Montana, Forsyth TV Tax District. Req: Channel 12, 204-210 MHz, 10 watts. Primary: KTVQ-TV, Billings, Montana.

BPTTV-790201IJ (NEW), Valdez, Alaska, City of Valdez. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790201IK (NEW), Kodiak, Alaska, Kodiak Public Broadcasting, Corporation. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790201IL (NEW), Petersburg, Alaska, Narrows Broadcasting, Corporation. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, & KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790201IM (NEW), Kotzebue, Alaska, Kotzebue Broadcasting, Inc. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790201IN (NEW), Nome, Alaska, City of Nome. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, & KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790312IC (NEW), Schroon Lake, New York, Town of Schroon. Req: Channel 7, 174–180 MHz, 1 watt. Primary: WETK–TV, Burlington, Vermont.

BPTTV-790312ID (NEW), Schroon Lake, New York, Town of Schroon. Req: Channel 9, 186–192 MHz, 1 watt. Primary: WEZF–TV, Burlington, Vermont.

UHF TV Translator Applications

BPTT-790306IA (NEW), St. James, Minnesota, Hubbard Broadcasting, Inc. Req: Channel 32, 578–584 MHz, 1000 watts. Primary: KSTP–TV, St. Paul, Minnesota.

FM Translator Applications

BPFT-790201IO (NEW), Dothan, Alabama, The Dothan Area Christian Radio Association. Req: Channel 204, 88.3 MHz, 1 watt. Primary: WPCS–FM, Pensacola, Florida.

BPFT-790201IP (NEW), Ashland & Washburn, Wisconsin, Chequeamegon Christian Message, Inc. Req: Channel 265, 100.9 MHz, 1 watt. Primary: WWIB–FM, Ladysmith, Wisconsin.

BPFT-790202IE (NEW), South Lake Tahoe & Kings Beach, California, Western Inspirational Broadcasters, Inc. Req: Channel 221, 92.1 MHz, 10 watts. Primary: KNIS–FM, Carson City, Nevada.

BPFT-790206IB (NEW), Oroville & Tonasket, Washington, KOMW, Incorporated. Req: Channel 269, 101.7 MHz, 10 watts. Primary: KOMW–FM, Omak, Washington.

BPFT-790215IR (NEW), Alturas, California, Sierra Cascade Communications, Inc. Req: Channel 265, 100.9 MHz, 10 watts. Primary: KTMT–FM, Medford, Oregon.

BPFT-790215IS (K265AB), Grants Pass, Oregon, Sierra Cascade Communications, Inc. Req: Change frequency to Channel 276–103.1 MHz.

BPFT-790309IH (NEW), Coon Valley, Wisconsin, Wisconsin Christian Broadcasting Foundation, Inc. Req: Channel 292, 106.3 MHz, 1.0 watt. Primary: WWIB–FM, Ladysmith, Wisconsin.

BMPFT-790518IB (K252AJ), Absarokee, Montana, Absarokee Community TV Club, Inc. Req: Change frequency to Channel 257, 99.3 MHz.

[FR Doc. 79-18915 Filed 6-15-79; 8:45 am]

BILLING CODE 6712-01-M

[FCC 79-332]

Commission Orders Return to Substantial Compliance Standard in Evaluating Ascertainment Showings

June 18, 1979.

The Commission has modified the standard that will be applied in evaluating ascertainment surveys of community problems, needs and interests made in conjunction with the filing of applications for new AM, FM, and TV stations. The modification was made in conjunction with the Report and Order in *Revised Procedures for the Processing of Contested Broadcast Applications*, General Docket No. 79–137, FCC 79–331, adopted on June 1, 1979.

In 1971, the Commission adopted the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971), as a "statement intended to clarify and provide guidelines as to Commission policies and requirements." 27 FCC 2d at 651. The Commission said that it was striving for "a degree of flexibility" and that "[g]uidelines that are too specific may result in too rigid an approach." *Id.* In subsequent adjudications, the Commission articulated a policy of "substantial compliance" with the Primer guidelines. *E.g., Greenfield Broadcasting Corp.*, 30 FCC 2d 774 (1971); *The Evening News Association*, 35 FCC 2d 366 (1972); *New Broadcasting Corp.*, 37 FCC 2d 662 (1972); *The Outlet Co.*, 38 FCC 2d 355 (1972); *RadiOhio, Inc.*, 38 FCC 2d 721 (1972); *Mahoning Valley Broadcasting Corp.*, 39 FCC 2d 52 (1972).

However, in 1974, the Commission in examining an ascertainment survey which did not include consultations with leaders of a significant interest group in the community to be served, concluded, as provided in Question and Answer 16 of the *Primer*, that the applicant's ascertainment survey was defective. *Voice of Dixie, inc.*, 45 FCC 2d 1027, *recon. denied*, 47 FCC 2d 526 (1974).

Following the Decision in *Voice of Dixie*, greater emphasis has been placed on strict compliance with all provisions of the Primer, which has fostered unnecessary litigation and time-consuming delays in the processing of broadcast applications by overemphasizing the importance of even trivial variations from the Primer's supposedly flexible guidelines. Ascertainment showings have become the source of much nitpicking in competitive multiparty cases, even though matters of decisional significance were not at issue. The continuation of such an approach is incompatible with the Commission's keen desire, as expressed in the new *Report and Order*, to streamline and expedite application processing.

For these reasons, we have determined that the practice of requiring strict compliance with the Primer on ascertainment should no longer be the criterion for passing upon the adequacy of an applicant's showing in this regard. Rather, we will return to the previous body of precedent which identified substantial compliance as being sufficient.

Although the Commission has previously recognized that "substantial compliance" is an imprecise term and that its meaning must be established based on experience gained in processing applications and in the light of the purposes and policies that the particular regulatory program seeks to effect (see *CATV of Rockford, Inc.*, 38 FCC 2d 10 (1972), the Commission believes that the above-cited cases and other prior processing experience provide sufficient guidance to the processing staff and the public as to how the term will again be construed in ascertainment examinations.

The revised standard will be applicable immediately at all levels of the adjudicatory process and to all pending applications (contested and uncontested) and proceedings where ascertainment questions arise.

Action by the Commission June 1, 1979. Commissioners Ferris (Chairman), Lee, Quello, Washburn and Fogarty, with Commissioner Brown concurring and issuing a statement.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Concurring Statement of Commissioner Tyrone Brown

Re: *Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 73 of the Commission's Rules*

I fully support the thrust of the Commission's action in adopting revised rules and procedures to expedite the processing of contested broadcast applications for new facilities. By adopting the recommendations of the Contractor's Report we will, in substance, simplify and shorten the current cut-off list procedures; eliminate the sending of "deficiency letters" as part of the processing procedures, except where the staff needs further information; restrict the pre-designation voluntary amendment of applications; eliminate the current provision for predesignation issue pleadings; and require pleadings affecting issues to be filed with the Administration Law Judge after designation.

I applaud the efforts and results of the Contractor, Max Paglin, who has performed yeoman's work and has produced a truly important procedural reform embodied in one of the best written documents I have seen in my tenure as a Commissioner. The current procedures encourage delay and waste of Commission and party resources and also have an adverse impact on applicants and petitioners who do not possess deep pockets. The procedural changes the Contractor recommends can be expected to ameliorate these problems and make a substantial dent in our current backlog of applications for new broadcast facilities. I endorse this part of the "Paglin Report" without reservation.

The second portion of the Contractor's Report causes me some concern and is the impetus for this concurring statement. Under

the revised "procedures" adopted today, the Commission changes the groundrules for handling the review of applicants' community ascertainment and financial qualifications showings. Under the new procedures, applicants need only make a threshold showing of substantial compliance with FCC policies and rules to pass initial Commission muster.

Several points are worth emphasizing. First, the procedures and polices we have adopted today apply only to applications for *new* broadcast facilities against which mutually-exclusive applications or petitions to deny are filed. Except to the extent certain filing deadlines are conformed, no changes are intended in the procedures or policies applied to renewal applications.

Second, the requirement of a threshold showing of "substantial compliance" for *financial* showings causes me little concern because the adequacy of such showings is fairly easy to determine and we have been applying a "substantial compliance" test. However, the same is not the case with ascertainment.

At least since the decision in *Voice of Dixie, Inc.* 45 FCC 2d 1027, *recon. denied*, 47 FCC 2d 526 (1974), the Commission has applied a "strict compliance" test to measure the adequacy of ascertainment showings submitted by applicants for new facilities. The procedures adopted today purport to return to the pre-*Voice of Dixie* "substantial compliance" test as a measure of the adequacy of an applicant's ascertainment showing. Based upon the comments made on the Paglin proposals and my understanding of the standards applied before the *Voice of Dixie* case, I would have no problem with reversing that case and returning to a policy of "substantial compliance." In my opinion, the real purpose of ascertainment is to require that broadcasters have contact and dialogue with their communities. The mechanistic approach to ascertainment, and therefore the nit-picking approach to challenging ascertainment, serve no real purpose. Thus substantial compliance with the purpose of ascertainment should be all that we need require.

However, we must make clear what we mean by substantial compliance. There may be some confusion about the standard to be applied by our staff and in the adjudicative process in determining whether there has been substantial compliance. This is so because, while the test is intended to be that applied before the *Voice of Dixie* decision, the Report and Order adopted today suggests otherwise in at least one passage. In adopting the Contractor's recommendation (with minor modifications) we noted that:

"The test to be used regarding the showing required to reopen the question of the adequacy of the ascertainment survey, by way of motion to enlarge issues, will be limited to *misrepresentation* or *gross omission* of some *decisionally significant* area which would make the survey *totally unacceptable.*" (Par. 54; emphasis added).

My initial opinion was that this standard for *review* of the staff's action was one which would permit acceptance of ascertainment showings only minimally complying with the *Primer* and other Commission policies. For if the staff determined that the application substantially complied with our policies (a determination in which "only the applicant and the staff are involved") even if it did not, it seemed to me that a review standard requiring a showing of "misrepresentation or gross omission of some decisionally significant area which would make the survey totally unacceptable" in most instances precluded any further examination of the showing.

However, to the extent that that language suggested a standard other than that which existed prior to *Voice of Dixie*, it is not so intended by the Commission. In discussion at the meeting at which we adopted this Report the staff assured us that the review standard permitted an ALJ to enlarge issues if a showing was made that the applicant's ascertainment survey did not substantially comply with our policies. And the tests for substantial compliance are those applied before the *Voice of Dixie* case. (See *Report and Order*, note 9). Also reassuring are subsequent passages in the Report and Order at paragraph 54: "(W)e will return to the previous body of precedent which identified substantial compliance as being sufficient. These criteria shall be applied *at all levels of the adjudicative process * * *" (emphasis added).*

I am also concerned that insufficient notice was given to interested parties about the change in the Commission's policy regarding the acceptability of ascertainment showings. The focus of the Report and the discussions both outside and within the Commission have been on the procedural aspects of the Report and the efforts to ameliorate the backlog in applications for new broadcast facilities. Since the procedural changes as well as the Commission's reversal of the *Voice of Dixie* policy apply to petitions to deny new applications, I considered urging the Commission to submit the Report for further public comment with a special emphasis put on the ascertainment issue.

I am persuaded, however, that the backlog situation in processing our new applications compels us to move as quickly as possible and that we have technically complied with all notice and comment requirements. Moreover, those interested groups which have not commented in this proceeding but might have done so if it were clear that a change in the ascertainment compliance standard was intended, still have an opportunity to comment by filing for reconsideration of the Commission's action.

One final point. The changes made today are procedural in nature and are not intended to eliminate the substantive ascertainment requirements or the procedural requirements of the *Primer. Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). Nor are they intended to denigrate the requirement of substantial compliance with the *Primer.* Finally they are not intended to affect the ascertainment showings required of renewal applicants who are subject to the renewal *Primer. Ascertainment of Community Problems by Renewal Applicants*, 57 FCC 2d 248 (1975), *recon. granted in part*, 61 FCC 2d 1 (1976). The Commission is looking into the substance of ascertainment and the *Primer* requirements in another proceeding. I am sure the Commission intends the staff to apply the existing rules in the interim, and interested parties should be guided accordingly.

[FR Doc. 79-18817 Filed 6-15-79; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

[Temporary Regulation D-63]

Federal Property Management Regulations

Subject: Delegation of Authority.

1. *Purpose.* This regulation delegates authority to the Secretary of Labor to appoint uniformed guards employed by the Department of Labor as special police to provide law enforcement services at Job Corps Centers on property under exclusive Federal legislative jurisdiction. These facilities are located at Edinburg, Indiana; Morganfield, Kentucky; Excelsior Springs, Missouri; Edison, New Jersey; Astoria, Oregon; McKinney, Texas; and San Marcos, Texas.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the Act of June 1, 1948 (62 Stat. 281), as amended, authority is hereby delegated to the Secretary of Labor to appoint uniformed guards as special police to enforce Federal law in protecting life and property and preserving the peace at Job Corps Centers under exclusive Federal jurisdiction as cited above.

b. The Secretary of Labor may redelegate this authority to any officer or employee of the Department of Labor.

c. This authority shall be exercised in accordance with the limitations and requirements of the above cited acts and the policies, procedures, and controls prescribed by the General Services Administration.

4. *Effect on other directives.* Temporary Regulation D-61 dated August 28, 1977, is revoked.

Dated: June 5, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FR Doc. 79-18812 Filed 6-15-79; 8:45 am]

BILLING CODE 6820-27-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

Advisory Council and Subcommittee Meetings

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 bodies scheduled to meet during the month of July 1979:

Name: National Guidelines, Goals, Priorities, and Standards Subcommittee of the National Council on Health Planning and Development.
Date and Time: July 12, 1979, 10:00 a.m.–12:00 Noon.
Place: Hubert H. Humphrey building, Conference Rooms 703A–705A, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The objectives of the National Guidelines, Goals, Priorities, and Standards Subcommittee are to study the experience nationwide in the public and private sectors with the adoption and/or adjustment of the National Guidelines for Health Planning and their impact and recommend changes as appropriate; study the experience of the Health Systems Agencies and State Health Planning and Development Agencies nationwide in implementation of high priority goals and sub-goals and their impact; advise the Council in identifying additional high priority goals and sub-goals; investigate and coordinate information on demonstrations underway by provider, reimbursement, regulatory, labor, industry, and community groups on sub-goals, such as those on alcoholism and prevention; study, investigate and identify research needs appropriate to the formulation, adjustment and refinement of the National Guidelines, and study and develop improved indicators to assess the impact of the Guidelines or the need for revisions; and recommend to the Council on the need for further development and/or revision of the National Guidelines.

Agenda. Status reports on ongoing studies related to Guidelines development. Report on the Emergency Medical Service policies in California, and discussion of site visit plans for the Subcommittee

* * * * *

Name: Technology and Productivity Subcommittee of the National Council on Health Planning and Development.
Date and Time: July 12, 1979, 3:00 p.m.–5:00 p.m.
Place: Hubert H. Humphrey Building, Conference Rooms 723A–727A, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The objective of the Technology and Productivity Subcommittee is to advise the full Council on matters related to the productivity of the health care delivery system and to the implications of new medical technology for the organization, delivery and equitable distribution of health care services. "Technology" includes the drugs, devices and medical and surgical procedures used in medical care and the organizational and supportive systems within which such care is delivered. "Productivity" is the efficiency with which health care is delivered.

The Subcommittee is to deliberate and to make recommendations to the full Council on matters chosen from among those brought to it by Council members, HEW staff and advisory committees, other Federal departments, congressional committees and staff, provider groups and the public at large. The Subcommittee in addition will study and investigate the current needs for assistance of HSAs and SHPDAs in the area of evaluating productivity improvement and new medical technology, help transmit concerns of HSAs and SHPDAs to appropriate Federal agencies, and review the current resources both within the Federal Government and among the educational, research and other developmental agencies for providing needed assistance to HSAs and SHPDAs. In addition, it will review technology assessment activities within the Department in order to assure they are relevant to the needs of the HSAs and are useful in the development and implementation of national standards, goals, and guidelines, and for the establishment of priorities with those goals.

Agenda: The Subcommittee will review the productivity monographs for distribution to the Council.

* * * * *

Name: Implementation and Administration Subcommittee of the National Council on Health Planning and Development.
Date and Time: July 12, 1979, 4:30 p.m.—6:30 p.m.
Place: Hubert H. Humphrey Building, Conference Rooms 703A–705A, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The objective of the Implementation and Administration Subcommittee is to study and make recommendations on the implementation and administration of Titles XV and XVI of the Public Health Service Act. Specific areas for the Subcommittee's consideration are (1) the impact of HEW's implementation/administration on the effectiveness of Health Systems Agencies and State Health Planning and Development Agencies; (2) the effectiveness of the interrelationships between health planning agencies and HEW, Central and Regional Offices; (3) the timing and strategy of implementation and of the dissemination and distribution of regulatory and technical material; (4) how to better meet the needs of HSAs and SHPDAs; and (5) the review of the Council's responsibilities under section 1122 of the Social Security Act.

Agenda. The Subcommittee will continue consideration of work program priorities, including consumer participation, consider a section 1122 case, and other issues.

* * * * *

Name: National Council on Health Planning and Development.
Date and Time: July 13, 1979, 8:45 a.m.–3:00 p.m.
Place: Main Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Pub. L. 93–641, (2) the implementation and administration of Title XV and XVI of Pub. L. 93–641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda. Status reports on the Health Planning Legislation, Council

Subcommittee Work Activities, and the Bureau of Health Planning and Agencies activities. The development of the Massachusetts State Health Plan, a case study. Follow-up of previous Council discussions on HMO policy and employment issues on closure and conversion programs.

Anyone requiring information regarding the subject Council 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, Maryland 20782. Telephone (301) 436–7175.

Agenda items are subject to change as priorities dictate.

Dated: June 12, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79-18809 Filed 6-15-79; 8:45 am]

BILLING CODE 4110-83-M

Office of the Secretary

Protection of Human Subjects; HEW Support of Human In Vitro Fertilization and Embryo Transfer: Report of the Ethics Advisory Board

AGENCY: Department of Health, Education, and Welfare.

SUMMARY: Departmental regulations governing the protection of human subjects prohibit the support of research involving human *in vitro* fertilization until the Ethics Advisory Board has advised the Secretary as to its ethical acceptability. In 1977, the Department received an application for support of such research which was forwarded to the Board for review early in 1978. Following the birth of a baby conceived by means of *in vitro* fertilization in England, the Secretary directed the Board to broaden its study of the individual research proposal to include the scientific, ethical, legal and social aspects of human *in vitro* fertilization and embryo transfer in general. This report is the product of that study. The Department has decided to publish the report of the Board and to solicit public comment before making any determination on the sensitive issues involved.

ADDRESS: Written comments, data, views, arguments, and inquiries concerning the report and conclusions of the Ethics Advisory Board may be sent to: Mr. F. William Dommel, Jr., Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Please arrange comments by conclusion number in order to facilitate analysis. Additional copies of this notice may be obtained by writing to the same address. All comments received will be available for inspection in Room 303, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland, weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m.

DATES: To assure full consideration, all comments should be submitted on or before August 17, 1979. After receipt and review of such comments, the Department will take appropriate action based upon its consideration of this report and the relevant comments submitted.

Dated: June 8, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

ETHICS ADVISORY BOARD

Department of Health, Education, and Welfare

Report and Conclusions: HEW Support of Research Involving Human in Vitro Fertilization and Embryo Transfer

May 4, 1979.

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Preface

Current regulations of the Department of Health, Education, and Welfare (HEW) prohibit the support of research involving the fertilization of a woman's egg (ovum) outside her body (*in vitro* fertilization) until the Ethics Advisory Board has advised the Secretary as to its ethical acceptability. In 1977, the Department received an application for support of such research and, after it has been approved from a scientific point of view, forward it to the Board. At its meeting in May 1978, the Board agreed to review the research proposal.

Over the summer, the announcement of the birth of a baby following *in vitro* fertilization in England aroused great public interest; it appears that a number of couples are ready and eager to avail themselves of such procedures in order to overcome infertility. Therefore, in September, Secretary Califano asked the Board to broaden its consideration of the pending application to include the scientific, ethical, legal and social issues surrounding human *in vitro* fertilization and embryo transfer in general.

This report is the result of over a half a year of study during which the Board asked scholars and experts in the fields of reproductive science, ethics, theology, law and the social sciences, to prepare reports and discuss the issues with Board members in public meetings. In addition, the Board held a series of eleven public hearings throughout the country in which private individuals, professional societies and public interest groups had an opportunity to present their views. The Board also received over 2,000 pieces of correspondence including letters, postcards and formal testimony, all of which were copied and distributed to each of the members.

Chapter I of the report provides background information about the human reproductive process and research involving *in vitro* fertilization and embryo transfer. Chapter II explores the technical and ethical issues surrounding such research in humans and Chapter III addresses the technical and ethical issues surrounding the use of the procedures in clinical practice. Chapter IV presents a review of the legal issues, and Chapter V summarizes public attitudes as presented to the board and as determined by recent public opinion polls. The Board's conclusions are set forth in Chapter VI.

The Board hopes that its deliberations and conclusions will be useful to the Secretary and staff of the Department in making decisions regarding the support and conduct of research involving human *in vitro* fertilization and embryo transfer.

* * * * *

An appendix containing papers prepared for the Board by scholars in the fields of reproductive science, ethics, theology, law, statistics, and social policy will be available through the U.S. Government Printing Office. Ordering information may be obtained from the Ethics Advisory Board, Westwood Building, Room 125, 5333 Westbard Avenue, Bethesda, Maryland 20016, telephone (301) 496–7776.

Chapter I—Background

A. The Normal Human Reproductive Process

Through long years of painstaking study reproductive biologists have been able to acquire significant information concerning the human reproductive process. The gathering of data on this process has presented formidable obstacles, since fertilization and the earliest days of embryonic development occur within the woman's body where, for both technical and ethical reasons, they are not readily accessible for scientific study.

According to the best available evidence, for the average couple the performance of the human reproductive system is only partially "efficient." That is, not every meeting of sperm and ovum results in the production of a viable embryo. One study estimates that in 16% of the cases where human ova are exposed to sperm, fertilizaiton fails to occur. When fertilization does occur, the rate of embryonic loss during the first week is estimated to be 18% and in the second week an additional 32%. According to this study, only 37% of human zygotes survive to be delivered subsequently as live infants.[1] Statistical surveys of the length of time generally required to establish a pregnancy seem to lend support to these estimates.[2]

These relatively high rates of embryonic loss are due in part to external environmental factors which impede continued embryonic development and in part to chromosomal or genetic abnormalities in the embryo itself. The exact proportion of embryonic loss due to each of these factors in unknown. However, one study estimates that perhaps 50% of the embryonic loss subsequent to successful fertilization is due to chromosomal aberrations.[3] Thus, natural selection against most embryos with serious chromosomal abnormalities seems to occur during pregnancy, particularly during the first eights weeks following fertilization.

B. Previous Research With and Application of in Vitro Fertilization and/or Embryo Transfer

1. General.—In previous research with humans and other species three major techniques have been employed: (a) *in vitro* fertilization without subsequent transfer of the embryo to the uterus of a female: (b) *in vitro* fertilization followed by embryo transfer; and (c) embryo transfer following fertilization by mating or artifical insemination. Only the first and second techniques have been employed with human beings.

For *in vitro* fertilization (in either the first or second cases listed above) a method must be found for harvesting ova from the female and for brining the ova into contact with sperm from the male in the laboratory setting. In human beings ova are usually secured from the female by means of a surgical procedure called laparoscopy. A needle is passed through the woman's navel and brought into proximity to one or both of her ovaries. Through visual sighting follicles containing mature ova are located, and the ova are removed from the follicles by means of the needle. Human females normally produce only one mature ovum per menstrual cyle; however, if certain hormones ar administered early in a given menstrual cycle, multiple ova are produced which can then be harvested during a single laparoscopic procedure.

Following the successful harvesting of ova, the ova and sperm from a male are placed in a laboratory medium where ova and sperm complete maturation and fertilization occurs. The early embryo is then transferred to a different laboratory medium for subsequent growth. In the first case noted above the embryo is retained in culture in the laboratory setting. In the second case the embryo is transferred to the uterus of a female—either the female donor of the ova or another female whose hormonal cycle is at approximately the same stage as the cycle of the donor female. If the transfer is successful, implantation and subsequent development of the embryo occur in the uterus of the recipient female.

In the third case fertilization occurs *in vivo* in the animal, either through mating or through artificial insemination. The ova may be either those of the inseminated female or those of a donor. Following fertilization but prior to implantation, the resulting embryo or embryos are removed from the reproductive tract of the female and are transferred to the reproductive tract(s) of one or more recipient females. If the transfer is successful, implantation and

subsequent embryonic development occur in the recipient female(s).

In summary, the following combinations of *in vitro* fertilization and/or embryo transfer are possible:

i. *In vitro* fertilization without embryo transfer

ii. *In vitro* fertilization and subsequent embryo transfer

a. Transfer to the uterus of the donor

b. Transfer to the uterus of one or more other females

iii. *In vivo* fertilization and subsequent embryo transfer

a. Fertilization by means of mating

b. Fertilization by means of artificial insemination

c. Ova of the mated or inseminated female

d. Donor ova introduced into the female prior to fertilization.

2. Research and Applications with Animal Species.—a. Nonprimate Laboratory Animals. Successful laboratory experiments with embryo transfer of early rabbit embryos predated by almost 70 years the first successful experiment with *in vitro* fertilization. In 1890 Walter Heape—working in Cambridge, England—succeeded in transferring two embryos from an Angora doe rabbit which had been mated with an Angora buck into the oviduct of a Belgian hare doe which had itself mated several hours before. Six offspring were born to the Belgian hare doe, of which two were clearly Angoras.[4] A similar technique was applied to cultured mouse blastocysts in 1958 by Anne McClaren and John D. Biggers. Some of the offspring grew to adulthood and reproduced naturally to yield a second generation.[5]

Between 1930 and 1959 many investigators sought to imitate the process of embryonic development in the laboratory setting by means of *in vitro* fertilization. However, the researchers failed to devise sufficiently stringent criteria to demonstrate that early embryonic development was indeed the result of fertilization of ova by sperm rather than the effect of laboratory manipulation of the unfertilized ovum. (Severe trauma to the ovum, *e.g.*, puncture or electric shock, can in some cases induce cell division without fertilization. In 1959, however, M. C. Chang of the Worcester Foundation in Massachusetts succeeded in documenting *in vitro* fertilization in the rabbit by taking sperm from male rabbits with specific traits not present in the female ovum donor. The presence of the male traits in the offspring (following embryo transfer and subsequent development) provided unequivocal proof that the sperm had indeed transmitted genetic information to the offspring.[6]

Since 1933 there have been 5 published studies of embryo transfer following *in vivo* fertilization in rabbits, 3 in rats, and 1 in mice.[7] From 1959 to the present, 13 papers (including Chang's initial paper) on *in vitro* fertilization followed by embryo transfer in rabbits have been published, 8 papers on the same procedure in mice, and 1 in rats. In 3 of those studies, 1 on rats and 2 on rabbits, abnormal offspring were reported; however, the causes of the abnormalities are unknown.[8]

Many studies in experimental embryology do not include embryo transfer as a component; rather, they involve various types of laboratory investigation of the early embryo—whether produced by *in vivo* or *in vitro* fertilization. These non-transfer studies examine such topics as mechanisms of normal and abnormal fertilization; the earliest stages of embryonic development; causes of abnormality in early embryos; and the effect of various environmental factors, *e.g.*, radiation, freezing, and various chemicals, on fertilization and early development.[9] Research techniques employed in the study of these topics include fertilization *in vitro*; *in vitro* culture of early embryos to and beyond the blastocyst stage; the fusion of embryonic cells with other cells; the infection of embryonic cells with viruses; the introduction of various changes (chemical or temperature changes, for example) into the embryonic environment; biochemical studies of embryonic cells; and microscopic analysis of embryonic cells.[10]

The technique of superovulation—that is, the administration of a hormone which induces the female to produce a larger than usual number of ova—has sometimes been employed in conjunction with *in vitro* fertilization. Superovulation has been studied rather extensively in rabbits. In one controlled comparison of normally ovulated and superovulated oocytes (total number = 538) 60.1% of embryos obtained following superovulation and 54.6% of those obtained following normal ovulation developed into normal young.[11] In contrast, several other studies in rabbits, as well as in mice, have concluded that an increase in the incidence of chromosomal aberrations occurs following superovulation.[12]

The effects of freezing mammalian embryos have also been studied in considerable detail. The most studied species is the mouse. In one study mouse embryos stored at −195° C for 369 days were cultured and transferred after having been frozen and thawed. The freezing process caused some cellular damage, as evidenced by the fact that a smaller percentage of frozen embryos survived than did unfrozen controls. However, previously frozen offspring were normal and grew and reproduced at the same rate as control animals. The second-generation progeny of the frozen embryos were also normal.[13]

b. Farm Animals. In research with farm animals—particularly, cows, horses, sheep, goats, and pigs—the primary emphasis has been on application rather than on the development of basic knowledge. For this reason, more work has been done on embryo transfer following *in vivo* fertilization than on *in vitro* fertilization itself. Research both with *in vitro* fertilization and with embryo transfer is dwarfed by the use of artificial insemination for commercial breeding purposes: with the aid of artificial insemination no fewer than 100,000,000 cattle have been produced in the United States alone.[14]

Relatively little laboratory research with *in vitro* fertilization or with *in vivo* fertilization using donated ova has been performed in farm animals. Five successful studies in cattle, three in sheep, and one in pigs have been reported.[15]

In contrast, embryo transfer following *in vivo* fertilization of the female's own ova has been widely employed, primarily in cattle, during the past five years. Indeed, thousands of progeny have been produced by this method. Techniques for recovering early embryos from the female following fertilization include both surgical and nonsurgical means. Offspring from embryo transfer appear to be normal, although no carefully controlled study of the outcome of pregnancy has been undertaken.[16]

Two additional techniques which can be employed in conjunction with *in vitro* fertilization and/or embryo transfer have been studied in farm animals. In two studies efforts were made to evaluate the overall quality of early cattle embryos by examining them for compactness, symmetry, and density. These subjective qualitative assessments were successful in predicting differential rates of subsequent pregnancy.[17] A second technique which has been employed experimentally with cattle embryos is the determination of sex through removing cells from the trophoblastic layer of the early embryo. However, many embryos are damaged in the process of sex determination.[18]

c. Non-Human Primates. Relatively little research on *in vitro* fertilization and/or embryo transfer has been performed with non-human primates. Three studies beginning with that of Gould and associates in 1973[19] and continuing with the work of Dukelow and Kuehl[20] have demonstrated fertilization *in vitro* with the squirrel monkey. *In vitro* fertilization studies with the Olive baboon and the rhesus monkey have not yet provided definitive proof that fertilization has in fact occurred. However, in 1976 D. C. Kraemer and associates reported the successful transfer of an embryo from an Olive baboon to a synchronized female following *in vivo* fertilization.[21] Similarly, in 1977 J. H. Marston and associates reported a successful embryo transfer from one oviduct to the other in a female rhesus monkey after *in vivo* fertilization.[22]

The meager data from primate research may reflect technical and funding limitatons on the one hand, or a lack of interest or incentive on the other. Gould has noted that primate research is expensive and that the competition for research funds is a limiting factor. He further observes that investigators may be confronting "as yet unidentified problems regarding the culture requirements for successful maintenance on nonhuman primate gametes *in vitro*."[23] By contrast, Sackett and Smith have expressed confidence that there would be no problem in obtaining a sufficient number of primates to undertake research in this area; further, they report that reliable normative data regarding fertilization, pregnancy, and early development exist against which to measure deviations from the norm resulting from *in vitro* fertilization and embryo transfer.[24]

3. Research and Applications in Humans.—Most successful human research has been concentratred on achieving *in vitro* fertilization and on culturing early human embryos in the laboratory. Efforts at clinical application of *in vitro* fertilization and embryo transfer to overcome infertility were notably unsuccessful until the latter half of 1978 and early 1979 when the delivery of three apparently healthy infants following these procedures was announced.

The first well documented achievement of *in vitro* fertilization with human gametes was reported in 1970 by R. G. Edwards, P. C. Steptoe, and J. M. Purdy.[25] Since 1970 there have been seven additional scientific reports of successful *in vitro* fertilization—four by R. G. Edwards and his colleagues,[26] two by A. Lopata and associates in Australia,[27] and one by Soupart and Strong in the United States.[28] No details concerning the apparently successful *in vitro* fertilization in Calcutta, India, have been published.

Embryo transfer in humans has been attempted only following *in vitro* fertilization. A total of three reports of such efforts have appeared in the scientific literature, one by the Australian group (in 1973),[29] and two by Edwards and Steptoe (in 1976 and 1978).[30] The first attempt led to raised levels of human chorionic gonadotropin in the maternal blood, but implantation was not documented. The second resulted in an ectopic pregnancy in one of the woman's Fallopian tubes. As is well known, the third reported attempt culminated in the birth of a female infant. In oral presentations to scientific meetings, Edwards and Steptoe have reported the birth of a second healthy child, a male, as well as the occurrence of spontaneous abortions in two additional pregnancies initiated by means of *in vitro* fertilization and embryo transfer. The four pregnancies reported by Edwards and Steptoe followed 32 attempts at embryo transfer.[31] In addition, the birth of a female child in India following *in vitro* fertilization and embryo transfer has been reported in the press.[32]

The potential risks of several aspects of human *in vitro* fertilization and embryo transfer have received some discussion in the scientific literature. The technique of superovulation is frequently (though not necessarily) employed in efforts to recover multiple oocytes for *in vitro* fertilization. One report indicates that the technique of superovulation may be associated with higher rates of a chromosomal abnormality (trisomy) in humans.[33] Similarly, evidence from research with mice suggest that too-high a concentration of sperm around the ovum *in vitro* may result in its fertilization by multiple sperm and thus lead to another type of abnormality (triploidy) in the embryo.[34]

In vitro fertilization techniques may also bypass a natural screening process to which sperm are subjected in human reproduction *in vitro*. There is some evidence to indicate that the female reproductive tract selectively eliminates many abnormal sperm. In one study of the human Fallopian tube, for example, it was demonstrated that few morphologically abnormal sperm reach the site of fertilization.[35] Similar observations have been made in studies of mice.[36] the extent of this risk, as well as the two types of risks noted in the preceding paragraph, is unknown.

Two other theoretical sources of risk to human embryos have not been documented in research performed to date: The risk of inducing point mutation or teratogenic effects in the early embryo.[37] The mammalian embryo is highly resistent to environmental insults. Massive insults generally kill rather than merely damage the preimplantation embryo.

These five types of potential risks in humans are, at present, either theoretical or hypothesized on the basis of rather limited data. In addition, even if superovulation or *in vitro* fertilization were to produce a chromosomally or genetically abnormal embryo, there is only a low probability that such an embryo would develop to term. The natural process by which most abnormal early embryos are lost during the early weeks of pregnancy would presumably be operative following *in vitro* fertilization, as well.

C. *The First Phase of the Ethical Debate*

Within the American context, the public debate concerning ethical aspects of *in vitro* fertilization was initiated by biologist James Watson. In an extended statement presented in January 1971 to the Panel on Science and Technology of the House Committee on Science and Astronautics, Watson expressed concern that research advances in human *in vitro* fertilization and the cloning of frogs could in the future lead to attemps to clone human beings.[38] Watson's views were given wide circulation through being excerpted in the May 1971 issue of Atlantic magazine.[39]

An essay defending *in vitro* fertilization appeared in *Nature* in May 1971—the same month that Watson's comments were published in the *Atlantic*. The *Nature* essay, written by British biologist R. G. Edwards and American lawyer David Sharpe, indicated potential benefits of *in vitro* fertilization research and advocated interdisciplinary consultation as the best method for social monitoring of the research.[40]

In late 1971 and the first half of 1972, ethical critiques of *in vitro* fertilization were eloquently presented by biologist-philosopher Leon Kass and theologian Paul Ramsey. The essays of Ramsey and Kass, published in leading medical and public-policy journals, questioned the means being employed in *in vitro* fertilization research and voiced concern about the potential future applications of the research.[41,42] In announcing that it would publish the Ramsey essay, the *Journal of the American Medical Association*

editorially called for a moratorium on human *in vitro* fertilization research.[43]

From mid-1972 to early 1974 relatively little ethical analysis of *in vitro* fertilization was published. A Ciba Foundation symposium on "The Law and Ethics of AID and Embryo Transfer" was held in 1972.[44] In an invitational symposium published in the November 1973 issue of the *Journal of Reproductive Medicine*, several authors—including veterinarian Banjamin Brackett, ethicist Joseph Fletcher, and physicians Luigi Mastroianni and Landrum Shettles—presented sharply divergent viewpoints.[45] In addition, the Committee on the Life Sciences and Social Policy of the National Research Council, whose executive secretary was Leon Kass, completed a detailed technology assessment of *in vitro* fertilization in 1973. Publication of the report was delayed until 1977.[46]

In 1974 the ethical discussion of *in vitro* fertilization seemed to revive. Biologist R. G. Edwards published an extensive survey of medical, ethical, and legal questions surrounding the technique. Edwards devoted particular attention to answering the ethical objections which had previously been raised by Kass and Ramsey.[47] During the same year Joseph Fletcher published *The Ethics of Genetic Control*. In this work Fletcher affirmed the value, indeed the superiority, of numerous genetic and reproductive technologies, including *in vitro* fertilization, as compared with the conventional method of human reproduction.[48]

Between the publication of the National Research Council's technology assessment in 1975 and the middle of 1978 little new ethical literature on *in vitro* fertilization appeared. The first phase in the ethical debate in *in vitro* fertilization thus concluded with a pause. Not until the birth of a child conceived with the aid of the technique did the pause end and the second phase of the ethical debate begin.

D. *The Evoluation of HEW Involvement*

HEW involvement in setting guidelines for research involving *in vitro* fertilization and/or embryo transfer has resulted in the publication of three documents: A "draft working document of proposed policy" (November 16, 1973);[49] a set of proposed regulations (August 23, 1974);[50] and final regulations (August 8, 1975).[51] It is perhaps worthy of note that the questions of fetal research, research with pregnant women, and research involving children received substantially greater attention in the three HEW documents than did the issue of *in vitro* fertilization. This differential allocation of attention accurately reflected the public-policy setting of 1973, when fetal research, in particular, was a matter of significant public controversy. The relative de-emphasis of *in vitro* fertilization in the HEW guidelines also reflected the view that successful embryo transfer in humans was not likely to be technically feasible in the near future.

The successive versions of HEW guidelines and rules published between 1973 and 1975 tended toward less detail in their stipulations and toward a greater emphasis on a review procedure for proposed research with human *in vitro* fertilization and/or embryo transfer. The 1973 draft policy stipulated that:

1. "Care must be taken not to bring human ova fertilized *in vitro* to viability * * *"
2. "All proposals for research involving human *in vitro* fertilization must be reviewed by the Ethical Review Board."
3. "No research involving the implantation of human ova fertilized in the laboratory into recipient women should be supported until the appropriate scientific review boards are satisfied that there has been sufficient work in animals (including sub-human primates) to demonstrate the safety of the technique. It is recommended that this determination of safety include studies of natural born offspring of the products of *in vitro* fertilization."
4. "No implementation of human ova fertilized in the laboratory should be attempted until guidelines are developed governing the responsibilities of the donor and recipient 'parents' and of research institutions and personnel."[52]

In August 1974, subsequent to the passage of legislation establishing the National Commission for the Protection of Human Subjects but prior to the Commission's first meeting, HEW published proposed rule-making on research with several specific groups of human subjects. This document responded to comments on the November 16, 1973 preliminary draft regarding *in vitro* fertilization research, clarified the definition of a fetus, and suggested issues to be considered by the Ethical Advisory Board in its review of any proposed HEW supported research involving human *in vitro* fertilization or embryo transfer. In this 1974 document "fetus" was defined to include "both the product of *in vivo* conception and the product of *in vitro* fertilization which is subsequently implanted in the donor of the ovum."[53] With respect to unimplanted human embryos, the 1974 rules proposed no specific guidelines.

However, the 1974 HEW document recommended that the Ethical Advisory Board take into account certain issues in reviewing research proposals involving *in vitro* fertilization and/or embryo transfer:

With respect to the fertilization of human ova *in vitro*, it is expected that the Board will consider the extent to which current technology permits the continued development of such ova, as well as the legal and ethical issues surrounding the initiation and disposition of the products of such research.

With respect to implantation of fertilized human ova, it is expected that the Board will consider such factors as the safety of the technique (with respect to offspring) as demonstrated in animal studies, and clarification of the legal responsibilities of the donor and recipient parent(s) as well as the research personnel.[54]

In August 1975, Hew responded to the National Commission's report and recommendations concerning fetal research. Since the Commission had not specifically addressed the issue of research involving *in vitro* fertilization and/or embryo transfer, HEW chose not to promulgate substantive regulations governing such research. It did, however, clearly reiterate a procedural requirement:

(e) No application or proposal involving human *in vitro* fertilization may be funded by the Department or any component thereof until the application or proposal has been reviewed by the Ethical Advisory Board and the Board has rendered advice as to its acceptability from an ethical standpoint.[55]

The effect of this review requirement between August 1975 and September 1977, when the Ethics Advisory Board was appointed by HEW Secretary Califano, was to place a *de facto* moratorium on all HEW supported human research involving *in vitro* fertilization and/or embryo transfer.

Footnotes

1. Biggers, John D., *In Vitro* Fertilization, Embryo Culture and Embryo Transfer in the Human, a paper prepared for the Ethics Advisory Board, 1978, Table 2, p. 10, citing Leridon, H., Demographie des Echers de la Reproduction, in: Boue, A. and Thibault, C., eds., *Les Accidents Chromosomiques de la Reproduction*, Paris, Centre International de l'Enfance, 1973, pp. 13–27.

Biggers, *op. cit.*, p. 11, citing Roberts, C. J. and Lowe, C. R., Where Have all the Conceptions Gone?, *Lancet*, vol. i, pp. 498–499, 1975.

Biggers, *op. cit.*, p. 13, citing Boue, J. G. and Boue, A., Chromosomal Anomalies in Early Spontaneous Abortion, *Current Topics in Pathology*, vol. 62, 1976, pp. 193–208.

4. Biggers, *op. cit.*, p. 19, citing Heape, W., Preliminary Note on the Transplantation and Growth of Mammalian Ova with a Uterine Fostermother, *Proceedings of the Royal Society*, vol. 48, 1890, pp. 457–458.

5. Biggers, *op. cit.*, p. 19, citing McLaren, A. and Biggers, J. D., Successful Development

and Birth of Mice Cultivated *In Vitro* as Early Embryos, *Nature*, vol. 182, 1959, pp. 877–878.

6. Biggers, *op. cit.*, p. 20, citing Chang, M. C., Fertilization of Rabbit Ova *In Vitro*, *Nature*, vol. 184, 1959, pp. 466–467.

7. Rice, Catherine, Supplement to: *In Vitro* Fertilization, Embryo Culture and Embryo Transfer in the Human by John D. Biggers, 1978, Table 1, pp. 1–6.

8. Biggers, *op. cit.*, Table 7, p. 40.

9. *Ibid.*, Table 3, p. 22; see also Walters, LeRoy, Ethical Issues in Human *In Vitro* Fertilization and Research Involving Early Human Embryos, a paper prepared for the Ethics Advisory Board, 1978, p. 32, citing Fowler, Ruth E. and Edwards R. G., The Genetics of Early Human Development, in: Steinberg, Arthur G. and Bearn, Alexander G., eds., *Progress in Medical Genetics*, Vol. IX, New York, Grune and Stratton, 1973, pp. 92–95; Karp, L. E. and Donahue, R. P., preimplantational Ectogenesis—Science and Speculation Concerning In Vitro Fertilization and Related Procedures (Medical Progress), *Western Journal of Medicine*, vol. 124, p. 296, April 1976; National Research Council, Assembly of Behavioral and Social Sciences, Committee on the Life Sciences and Social Policy, *Assessing Biomedical Technologies: An Inquiry Into the Nature of the Process*, Washington, D.C., National Academy of Sciences, 1975, p. 27.

10. Culture of human embryos beyond the blastocyst stage has not yet been reported in the scientific literature. Walters, *op cit.*, p. 32. The use of several of these techniques in research with non-human embryos is described by Edwards, R. G., Fertilization of Human Eggs *In Vitro*: Morals, Ethics, and the Law, *Quarterly Review of Biology*, vol. 49, March, 1974, pp. 3–8.

11. Foote, Robert H., *In Vitro* Fertilization in Perspective, Relative to the Science and Art of Domestic Animal Reproduction, a paper prepared for the Ethics Advisory Board, 1978, p. 6, citing Maurer, R. R., Hunt, W. L., Van Vleck, L. D., and Foote, R. H., Developmental Potential of Superovulated Rabbit Ova, *Journal of Reproduction and Fertility*, vol. 15, 1968, pp. 171–175.

12. Biggers, *op cit.*, p. 33, citing Fujimoto, S., Pahlaven, N. and Dukelow, W. R., Chromosome Abnormalities in Rabbit Preimplantation Blastocysts Induced by Superovulation, *Journal of Reproduction and Fertility*, vol. 40, 1974, pp. 177–181; Fujimoto, S., Passantino, T. J., and Koenczoel, I., A Preliminary Note on Chromsome Abnormalities, in Intratubal Rabbit Embryos, *Proceedings of the Japanese Academy*, vol. 51, 1975, pp. 51–55; Takagi, N., and Sasaki, M., Digynic Triploidy After Superovulation in Mine, *Nature*, vol. 264, 1976, pp. 278–281; Maudlin, I., and Fraser, L.P., the Effect of PMSG Dose on the incidence of Chromosomal Anomalies in Mouse Embryos Fertilized *In Vitro*, *Journal of Reproduction and Fertility*, vol. 50, 1977, pp. 275–280.

Foote, *op cit.*, p. 16, citing Maurer, R.R., Bank, H., and Staples R.E., Pre- and Postnatal Development of Mouse Embryos After Storage for Different Periods at Cryogenic Temperatures, *Biology of Reproduction*, vol. 16, 1977, pp. 139–146.

14. Foote, *op cit.*, p. 5.

15. *Ibid.*, pp. 10–14.

16. *Ibid.*, p. 17, citing Betteridge, K.J., ed., *Embryo Transfer in Farm Animals*, Ottawa, Ontario, Canada Department of Agriculture, Monograph, vol. 16, 1977.

17. Foote, *op cit.*, p. 18, citing Shea, B.F., Hines, D. J., Lightfoot, D.E., Ollis, G.W., and Olson, S.M., The Transfer of Bovine Embryos, in: Rowson, L. E. A., ed., *Egg Transfer in Cattle*, Luxembourg, Commission of European Communities, EUR 5491, 1976, pp. 145–152; Elsden, R. P., Nelson, L. D., and Seidel, G. E., Jr., Superovulation of Cows with Follicle Stimulating Hormone and Pregnant Mare's Serum Gonadotropin, *Theriogenology*, vol. 9, 1978, pp. 17–26.

18. Foote, *op cit.*, p. 19, citing Hare, W. C. D. and Betteridge, K. H., Relationship of Embryo Sexing to Other Methods of Prenatal Sex Determination in Farm Animals: A Review, *Theriogenology*, vol. 9, 1978, pp. 27–43.

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22. Gould, *op cit.*, pp. 7–8, citing Marston, J.H., Penn, R., and Sivelle, P.C., Successful Autotransfer of Tubal Eggs in the Rhesus Monkey (Macaca Mulatta), *Journal of Reproduction and Fertility*, vol. 49, 1977, pp. 175–176.

23. Gould, *op cit.*, p. 13.

24. Sackett, G.P., A Nonhuman Primate Research Model of Developmental Risk Following *In Vitro* Fertilization and Embryo Transfer, a paper prepared for the Ethics Advisory Board, 1979.

25. Biggers, *op cit.*, p. 27, citing Edwards, R.G., Steptoe, P.C., and Purdy, J.M., Fertilization and Cleavage *In Vitro* of Preovular Human Oocytes, *Nature*, vol. 227, 1970, pp. 1307–1309.

26. Biggers, *op cit.*, pp. 27–28, citing Steptoe, P.C., Edwards, R.G., and Purdy, J.M., Human Blastocysts Grown in Culture, *Nature*, vol. 119, 1971, pp. 132–133; Steptoe, P.C., and Edwards, R.G., Preimplantation of a Human Embryo with Subsequent Tubal Pregnancy, *Lancet*, vol. I, 1976, pp. 880–882; Steptoe, P.C., and Edwards, R.G., Birth after the Reimplantation of a Human Embryo, *Lancet*, vol. ii, 1978, p. 336.

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28. Biggers, *op. cit.*, pp. 30–31, citing Soupart, P. and Strong, P. A., Ultrastructural Observations on Human Oocytes Fertilized *In Vitro*, *Fertility and Sterility*, vol. 25, 1974, pp. 11–44.

29. Biggers, *op. cit.*, pp. 30–31, citing DeKretzer, *et al.*, Transfer of a Human Zygote, *Lancet*, vol. ii, 1973, pp. 728–729.

30. Biggers, *op. cit.*, p. 29, citing Steptoe, P. C., and Edwards, R. G., Reimplantation of a Human Embryo with Subsequent Tubal Pregnancy, *Lancet*, vol. i, 1976, pp. 880–882; Steptoe, P. C., and Edwards, R. G., Birth after the Reimplantation of a Human Embryo, *Lancet*, vol. ii, 1978, p. 366.

31. Short, R. V., Summary of the Presentation of Dr. P. C. Steptoe and Dr. R. G. Edwards at the Royal College of Obstetricians on Friday, January 26th, 1979, written report presented to the Ethics Advisory Board, February 2, 1979.

32. Test Tube Baby, World's Second, Born in India, *Washington Post*, October 6, 1978.

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34. Biggers, *op. cit.*, p. 33, citing Fraser, L. R., Zenellotti, H. M., Paton, G. R., and Drury, L. M., Increased Incidence of Triploidy in Embryos Derived from Mouse Eggs Fertilized *In Vitro*, *Nature*, vol. 260, 1976, pp. 39–40; Fraser, L. R., and Maudlin, I., Relationship Between Sperm Concentration and the Incidence of Polyspermy in Mouse Embryos Fertilized *In Vitro*, *Journal of Reproduction and Fertility*, vol. 52, 1978, pp. 103–106.

35. Biggers, *op. cit.*, p. 33, citing Ahlgren, M., Sperm Transport to and Survival in the Human Fallopian Tube, *Gynecologic Investigation*, vol. 6, 1975, pp. 200–214.

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52. *Federal Register*, vol. 38, November 16, 1973, p. 31743.

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Chapter II—Laboratory Research Involving Human In Vitro Fertilization and/or the Culture of Early Human Embryos: Technical and Ethical Issues

The technical and ethical issues surrounding *in vitro* Fertilization using human gametes depend, to some extent, on whether or not the procedure is performed with the intent of transferring the resulting embryos to women for further development. The discussion in this chapter relates to *in vitro* fertilization of human ova when there is no intention of transferring the product to establish a pregnancy. Chapter III deals with human *in vitro* fertilization performed with the specific intent of initiating a pregnancy.

These two chapters focus primary attention on technical and ethical issues as presented to the Ethics Advisory Board in papers prepared by its consultants. Thus, they do not summarize the primary scientific and ethical publications concerning *in vitro* fertilization and/or embryo transfer.

In one of the papers prepared at the request of the Board, LeRoy Walters surveyed the ethical literature on *in vitro* fertilization published through August 1978.[1] This survey noted that most of the ethical discussion on *in vitro* fertilization has concentrated on clinical applications of the technique (the topic of Chapter III) rather than on laboratory research with early human embryos (the topic of the present chapter). Central issues in the ethical literature on basic research with human embryos included the moral status of the early embryo, the need for such research, and the potential long-term consequences of the research. According to the same survey, commentators on ethical issues in the application of *in vitro* fertilization and/or embryo transfer discussed, among other topics, the need for *in vitro* fertilization as a method for overcoming infertility, the adequacy of prior laboratory and animal research, the risks of *in vitro* fertilization and embryo transfer to the ovum donor as well as to potential offspring, and the appropriateness of allocating scarce health care resources to the clinical application of such techniques. Many of these issues recurred in the papers presented to the Board, which are systematically reviewed in this and the following chapter.

A. The Goals and Potential Benefits of the Research. As noted in the preceding chapter many studies in experimental embryology do not include embryo transfer as a component. Several possible goals of laboratory research with human embryos have been identified:

1. Developing or testing more adequate contraceptives; [2]

2. Determining causes of infertility; [3]

3. Investigating the circumstances leading to the development of hyatidiform moles and their potential transformation into malignant tumors; [4]

4. Evaluating the effect of noxious agents or teratogens on the early embryo by means of an *in vitro* screening system; [5]

5. Studying the mechanisms by which chromosomal abnormalities are produced; [6] and

6. Investigating the totipotential cells of very early embryos to increase understanding of normal and abnormal cell growth and differentiation.[7]

One additional potential goal of human *in vitro* fertilization and embryo culture is more controversial and therefore merits more detailed comment. R.V. Short suggests that a kind of *in vitro* assessment (or "toxicology testing") study might be performed to determine whether *in vitro* fertilization produces a higher incidence of embryonic abnormalities than the conventional *in vivo* method of human reproduction. In Short's view, if *in vitro* fertilization techniques do in fact lead to an excess of embryonic abnormalities, it would be preferable to discover that excess in the laboratory rather than at the time of amniocentesis or birth. Short argues that such a controlled *in vitro* study would also provide information concerning the probable success rate of *in vitro* fertilization.[8]

Several objections can be raised to such a proposal, as Short himself observes. First, there would be little basis for comparison following such a laboratory study since data concerning the incidence of abnormalities, particularly chromsomal abnormalities, in early human embryos following *in vivo* fertilization are quite limited. In fact, the totality of *in vivo* information relating to human preimplantation ova and embryos is "confined to 15 specimens, 9 recovered from the oviduct and 6 from the uterus." [9] At least two replies to this objection can be made. First, James Schlesselman notes that one can extrapolate statistically from three major studies of the incidence of chromosomal abnormalities following *in vivo* fertilization [10] that the natural incidence of such abnormalities in humans is between 396 per 1,000 and 477 per 1,000 at the time of implantation; prior to implantation the incidence of such abnormalities is presumably somewhat higher.[11] Schlesselman concludes that a 40–50% chromosomal abnormality rate in human embryos following *in vivo* fertilization is a reasonable baseline against which to compare the results of *in vitro* fertilization. A second reply is proposed by Short himself, who suggests that one could perform a controlled study of the actual incidence of embryonic defects following *in vivo* fertilization by flushing early embryos from the reproductive tracts of consenting volunteer research subjects. Short concedes that this aspect of the proposed risk-assessment study would present both medical and ethical difficulties of its own.[12]

A second possible objection to Short's proposal for a laboratory risk-assessment study is that it is unnecessary. This objection can take one of two forms. Schlesselman notes that for every 1,000 chromosomal abnormalities which are present in implanted blastocysts, only 5 to 7 survive to the point of live birth. Thus, 99.3% to 99.5% of chromosomally abnormal fetuses are eliminated *in vivo* through spontaneous abortion or fetal death. It follows, therefore, that even a doubling in the incidence of chromosomal abnormalities following *in vitro* fertilization—assuming that the technique or ancillary medical treatment did not facilitate the survival of abnormal embryos—would yield only an additional 6 to 7 chromosomally abnormal fetuses, which could, in Schlesselman's view, be detected by means of prenatal diagnosis and selectively aborted.[13]

An alternative argument against the necessity of Short's proposed risk-assessement study can be based on the essays of Biggers, who asserts that for the investigation of most questions concerning human reproduction a suitable animal model can be found. In his view, women should not be subjected to research risks and valuable human ova and embryos should not be used in research unless there is no reasonable alternative to a study in humans.[14]

Biggers' postion suggests a final issue to be considered under the rubric of goals and potential benefits of the research: How

stringent a standard should be set with respect to the *need* for laboratory research on human *in vitro* fertilization and embryo transfer? There are three possible answers to this question. The least stringent standard would be that benefits can be expected from the human research. A somewhat more stringent standard would be that human research should hold out the prospect of more significant or more reliable benefits than research employing animal models.[15] The most stringent standard would require that the promised benefits of human research be achievable *only* through research using human gametes and early human embryos.

B. *The Design of the Research.* Biggers emphasizes that research on human *in vitro* fertilization and embryo culture, since it involves human volunteers, "should only be undertaken if efficiently designed experiments of adequate size are possible." [16] In his view, this stipulation may require that collaborative trials be conducted. Schlesselman's discussion of appropriate sample size for answering specific questions regarding human *in vitro* fertilization illustrates both the complexity of the design issue and the essential role of the biostatistician in helping to plan laboratory research with human gametes and embryos.[17]

C. *The Consent of Sperm and Ovum Donors.* Most discussion of the consent question for laboratory studies of *in vitro* fertilization has focused on the ovum donor. In most cases ova are harvested from women with intact ovaries by means of laparoscopy. The donation of ova may be associated with receiving hormones to induce superovulation and/or to mature the ova *in vivo* prior to harvest. In some cases ova are harvested at the same time that a tubal ligation is performed. There is unanimous agreement that the informed consent of ovum donors must be secured in advance of their participation as research subjects.[18] In addition, the particular vulnerability of infertility patients, who are dependent on the health professions for assistance in achieving pregnancy and who nonetheless may be asked to serve as ovum donors, has been noted in the literature on the consent question.[19]

Less thoroughly discussed are the issues of consent by semen donors and the use of ova excised from ovarian tissue removed for clinical reasons. Consent by semen donors might be particularly difficult to secure if semen were secured from a sperm bank rather than from a prospectively recruited donor. The view expressed in one published assessment of *in vitro* fertilization is that prior consent should be secured from all males whose sperm are to be used for *in vitro* fertilization.[20]

The harvesting of ova from excised ovarian tissue may prove to be inefficient from a purely practical standpoint unless hormone treatments are administered in advance of surgery. Prior consent to such hormone treatment would presumably be secured. However, even if ova were harvested from such tissue, without the previous administration of hormone to the female patient, gradually evolving general standards with respect to the use of human tissues for research purposes[21] would seem to suggest the necessity for securing the patient's consent to the use of her ova in laboratory research.

D. *The Status of the Early Human Embryo.* Two primary objections to laboratory research with human *in vitro* fertilization and embryo culture have been raised. The first is that such research is incompatible with the respect that is due to early human embryos. The second is that the potential adverse consequences of the research outweigh the potential benefits. These two objections will be discussed in the present and the succeeding section of this chapter.

The shape of the embryonic status question differs somewhat in the laboratory research context and the clinical context. As Leon Kass points out, many human embryos which would be studied in the laboratory would have been created solely for research purposes.[22] The major alternative would be to perform laboratory studies on untransferred embryos remaining after the fertilization of multiple ova and the transfer of only one to the uterus. However, from a research design standpoint total reliance on the use of untransferred embryos would seem to exclude research on the fertilization process and on the earliest stages of embryonic development.

At least three distinguishable answers to the embryonic-status question in the research context have been proposed. Kass himself, impressed by the continuities in embryonic and fetal development and by the potential viability of the early human embryo if it is transferred at the proper time, argues (1) that embryos ought not be deliberately created for research purposes[23] and (2) that no invasive or manipulative research should be performed on already-existing human embryos.[24] Any other policy would, according to Kass, symbolize the belief that early human embryos are "things or mere stuff." [25]

A second position on the embryonic-status is presented by Charles Curran, who argues that:

> From my ethical perspective truly human life is present two to three weeks after conception or shortly after the implantation of the embryo. Hence experimentation after that time and attempts to culture embryos *in vitro* beyond this stage raise insurmountable ethical problems.[26]

However, even for research involving the earliest stages of embryonic life Curran asserts that "[t]he nature of the matter involved in the research calls for respect and economy avoiding unnecessary waste." [27]

A similar position is articulated by Clifford Grobstein who suggests that "human cells, tissues and organs that have no reasonable prospect of possessing or developing sentient awareness" are "human materials rather than human beings or persons." Grobstein notes that "there are established practices for dealing with and disposing of human materials, practices that take into account the special status they have, having originated as human." [28] Grobstein's position is characterized as being similar rather than identical to Curran's for two reasons. First, it is not clear that Curran would extend his principle of respect to include non-embryonic human organs, tissues, or cells. Second, the criterion of possessing a potential for sentience seems not to be a part of Curran's position on embryonic status. Indeed, one could construe this criterion broadly to include all preimplantation embryos since, as Kass notes, they could be transferred, implanted, and develop to maturity; or one could interpret the criterion narrowly to exclude all preimplantation embryos since it is infeasible, given the current state of medical technology, to culture human embryos *in vitro* beyond the blastocyst stage.

A third position on embryonic status, represented by Samuel Gorovitz, adopts sentience (rather than the potential for sentience) as the primary criterion for determining the moral status of the human embryo or fetus in Gorovitz's view:

> The status of the embryo is not equivalent to that of a person, a child, an infant, or a fetus—at least a fetus from the point of development of the capacity for even primitive sentience.[29]

If by "primitive sentience" Gorovitz means the capacity to respond to sensory stimuli, then the transition from embryonic to fetal status (at the eighth week of gestation) or, at the latest, the tenth gestational week of fetal development would seem to mark the transition from nonprotected to protected status.[30] In fact, however, Gorovitz notes that he would draw the

line of acceptability somewhat conservatively, that is, "rather close to the point where cell differentiation begins, rather far from the capacity for independent survival." [31]

A possible reason for the multiplicity of viewpoints on the status of the human embryo is suggested by Gorovitz. In his view, questions like embryonic status or the appropriate criteria of death are not matters of fact which can be clarified through appropriate research programs. Rather, these questions provide the occasion for individuals to make decisions and for societies to establish policies.[32] In contrast, while Kass does not directly address the fact/decision distinction, he clearly regards the discontinuity of fertilization and the continuity fo the embryonic development which follows as factual considerations which lead ineluctably to certain moral conclusions.[33]

E. *Potential Adverse Consequences of the Research.* Concerns about adverse consequences of laboratory research with human *in vitro* fertilization and embryo culture have been focused in three areas: (1) The same types of research *procedures* that have been performed with nonhuman mammalian embryos may be performed with human embryos; (2) certain undesirable technological or clinical *applications* may arise from such research; and (3) the research may have a desensitizing or dehumanizing *effect on investigators.*

Kass outlines some of the scientific procedures which in his view are likely to be applied in the future to human embryos:

1. Culture beyond the blastocyst stage;
2. Formation of hybrids or chimeras (intra-specific and inter-specific);
3. Gene, chomosome, and plasmid insertion, excison, or alteration;
4. Nuclear transplantation or cloning; and
5. The freezing of embryos.[34]

Kass ventures this prediction because, in his view, the same arguments which can be advanced to justify, for example, the simpler and earlier procedures proposed by Pierre Soupart can without *logical* contradiction be extended to the more ambitious and later procedures outlined above. Among these justifiying principles are the following:

1. "It is desirable to learn as much as possible about the process of fertilization, growth, implantation, and differentiation of human embryos and about human gene expression and its control.
2. "It would be desirable to acquire improved techniques for enhancing conception and implantation, for *preventing* conception and implantation, for the treatment of genetic and chromosomal abnormalities, etc.
3. "Finally, only research using human embryos can answer these questions and provide these techniques.
4. "There should be no censorship or limitation of scientific inquiry or research."[35]

Without specifically advocating the types of experiments which Kass regards as undesirable, Gorovitz adopts a general position which could in principle allow him to approve such experiments. If one extrapolates from Gorovitz's views on embryonic status, one concludes that he would approve any type of research procedure on the human embryo, provided only that the research terminated prior to the onset of embryonic or fetal sentience and that other canons of research ethics (consent of gamete donors, appropriate research design, etc.) were carefully followed.[36] Gorovitz explicitly accepts Kass's formal point that the justifying arguments for such research should be carefully formulated, in order to avoid the "slippery slope." [37] However, his material principle of drawing the dividing line at the point of sentience rather than fertilization or implantation seems, at least, to lead Gorovitz to approve as potentially beneficial the experiments which Kass regards as negative consequences of laboratory research with preimplantation embryos.

A specific research technique, interspecies fertilization using human sperm or ova, has provoked considerable discussion and therefore merits brief further comment. Cross-fertilization raises both conceptual and ethical questions. Conceptually, is fertilization research involving the use of only human sperm or human ova and the culture of the resultant hybrid embryo *human research?* Ethically, Kass regards such research as an adverse consequence of intraspecific *in vitro* fertilization. On the other hand, Short, while acknowledging that interspecific fertilization carries with it undertones of a novel type of genetic manipulation,[38] argues that technical and ethical hedges could be constructed to prevent what he regards as the major potential adverse consequence of such research—namely, any effort to transfer the hybrid embryo into the uterus of a human or animal female for further development.

A second type of potential adverse consequence identified by some critics of human *in vitro* fertilization and embryo culture concerns possible applications of the research rather than the research procedures themselves. Kass suggests that the research might lead to the banking of human ova or embryos for commercial purposes.[39] In the literature on this topic several other potential adverse consequences are noted: the cloning of human beings, the creation of human/animal hybrids, and the development of devices which would allow for the extracorporeal gestation, or ectogenesis, of human embryos and fetuses.[40] Without commenting specifically on these potential developments, Gorovitz expresses reservations about the wedge argument in its predictive (as distinguished from its logical) form. He also expresses confidence in the collective capacity of human beings to exercise good judgment, citing as examples public policy on abortion, appropriate treatment of newborn infants, the treatment of irretrievably comatose patients, and the setting of limits on the freedom of scientific inquiry.[41]

In an earlier essay on *in vitro* fertilization and cloning Leon Kass identified a third general type of potential adverse consequence which might result from laboratory research involving human embryos. According to Kass, one should "be concerned about the effects on the attitude toward and respect for human life engendered in persons who are engaged in such practices." [42] No other author has commented on the possibly dehumanizing effects on the researcher of human *in vitro* fertilization and embryo culture. It is probable that authors like Curran and Gorovitz would link the dehumanization question to the issue of embryonic or fetal status, arguing that only research on embryos which have developed beyond the two-to-three week stage (Curran) or to the point of sentience (Gorovitz) would show disrespect for the human embryo or fetus and that only research which manifested such disrespect would be likely to desensitize the researcher.

Footnotes

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2. Short, *op. cit.*, pp. 3–5; Mastroianni, *op. cit.*, p. 5.
3. Short, *op. cit.*, pp. 5–6.
4. Mastroianni, *op. cit.*, p. 5.
5. *Ibid.*
6. *Ibid.*
7. Short, *op. cit.*, pp. 6–7.
8. *Ibid.*, pp. 8–10.
9. Schlesselman, James J., How Does One Assess the risk of Abnormalities From Human *In Vitro* Fertilization?, a paper prepared for the Ethics Advisory Board, 1979, p. 17; cf. Biggers, John D., *In Vitro* Fertilization, Embryo Culture and Embryo Transfer in the Human, a paper prepared for

the Ethics Advisory Board, 1978, p. 6 and Appendix I, Table 3.

10. Schlesselman, *op. cit.*, pp. 7–8, citing, Boue, J. G. and Boue, A., Chromosomal Anomalies in Early Spontaneous Abortion, *Current Topics in Pathology*, vol. 62, 1976, pp. 193–208; Creasy, M. R., Crolla, J. A., and Alberman, E. D., A Cytogenetic Study of Human Spontaneous Abortions Using Banding Techniques, *Humangenetik*, vol. 31, 1976, pp. 177–196; Alberman, E. D. and Creasy, M. R., Frequency of Chromosomal Abnormalities in Miscarriages and Perinatal Deaths, *Journal of Medical Genetics*, vol. 14, 1977, pp. 313–315.

11. Schlesselman, *op. cit.*, p. 19.

12. Short, *op. cit.*, p. 10; cf. Schlesselman, *op. cit.*, pp. 24–25.

13. Schlesselman, *op. cit.*, p. 30.

14. Biggers, *op. cit.*, p. 412; cf. Kass, Leon R., Ethical Issues in Human *In Vitro* Fertilization, Embryo Culture and Research, and Embryo Transfer, a paper prepared for the Ethics Advisory Board, 1978, p. 27.

15. Walters, LeRoy, Ethical Issues in Human *In Vitro* Fertilization and Research Involving Early Human Embryos, a paper prepared for the Ethics Advisory Board, 1978, fn. 178, citing Mastroianni, Luigi, Jr., *In Vitro* Fertilization, in: Reich, Warren, ed., *Encyclopedia of Bioethics*, (vol. 4), New York, Free Press-Macmillan, 1978, pp. 1448–1451.

16. Biggers, *op. cit.*, p. 41a.

17. Schlesselman, *op. cit.*, pp. 20–27.

18. Short, *op. cit.*, p. 9; cf. Walters, *op. cit.*, pp. 37–38.

19. Walters, *op. cit.*, fn. 182, citing National Research Council, Assembly of Behavioral and Social Sciences, Committee on the Life Sciences and Social Policy, *Assessing Biomedical Technologies: An Inquiry into the Nature of the Process*, Washington, D.C., National Academy of Sciences, 1975, p. 27.

20. *Ibid.*

21. Holder, Angela R. and Levine, Robert J., Informed Consent for Research on Specimens Obtained at Autopsy or Surgery: A Case Study in the Overprotection of Human Subjects, *Clinical Research*, vol. 24, 1976, pp. 68–77.

22. Kass, *op. cit.*, fn. 14, p. 28.

23. *Ibid.*, p. 5.

24. *Ibid.*, pp. 10–11.

25. *Ibid.*, p. 11.

26. Curran, Charles E., *In Vitro* Fertilization and Embryo Transfer: From a Perspective of Moral Theology, a paper prepared for the Ethics Advisory Board, 1978, p. 22.

27. *Ibid.*, p. 26.

28. Grobstein, Clifford, Statement to the Ethics Advisory Board, Transcript of Meeting III, September 15, 1978, *National Technical Information Service*, PB–288 764, p. 229.

29. Gorovitz, Samuel, *In Vitro* Fertilization: Sense and Nonsense, a paper prepared for The Ethics Advisory Board, 1979, p. 28.

30. Williams, John W., *Williams Obstetrics*, Pritchard, Jack A. and MacDonald, Paul C., eds., 14th ed., New York, Appleton-Century-Crofts, 1971, p. 223.

31. Gorovitz, *op. cit.*, p. 28.

32. *Ibid.*, pp. 1–4.

33. Kass, *op. cit.*, pp. 5–7.

34. *Ibid.*, pp. 18–19.

35. *Ibid.*, p. 20.

36. Gorovitz, *op. cit.*, pp. 27–28.

37. *Ibid.*, p. 15.

38. Short, *op. cit.*, p. 7.

39. Kass, *op. cit.*, p. 19.

40. Walters, *op. cit.*, pp. 39–40.

41. Gorovitz, *op. cit.*, p. 14.

42. Kass, Leon, Making Babies—the New Biology and the 'Old' Morality, *Public Interest*, vol. 26, 1972, p. 33.

Chapter III—Clinical Applications of in Vitro Fertilization and/or Embryo Transfer: Technical and Ethical Issues

A. The Need for and Potential Benefits of In Vitro Fertilization and Embryo Transfer

The major potential benefit to be derived from clinical applications of *in vitro* fertilization and embryo transfer is that it may enable some otherwise-infertile women to conceive and bear children. Most commentators on the clinical use of *in vitro* fertilization and embryo transfer view the alleviation of infertility, particularly in the context of heterosexual marriage, as a desirable goal.[1] In opposition to this majority position, however, Stanley Hauerwas argues that even within marriage, resort to *in vitro* fertilization as a method to overcome infertility reflects an undue emphasis on the importance of biological parentage.[2]

There are at least two senses in which the *need* for this potential benefit has been discussed. First, how many women who wish to bear children are infertile because of blocked Fallopian tubes? Second, of these infertile women, how many need *in vitro* fertilization and embryo transfer in the sense that they have no alternative means for producing children of their own?

Precise data on the extent of need in these two senses are unavailable. Rough estimates of the upper limits of need in the United States are provided by Biggers:

> There are 60 million women reproductively active in the USA; seven percent of couples are infertile, and a third of these are infertile because of sterility of the wife. Thus, there are 1,400,000 sterile women in the population. Pathology of the oviduct accounts for 40 percent of the cases so that there are about 560,000 women with diseased oviducts.[3]

The major alternative to *in vitro* fertilization and embryo transfer for women is one of several surgical procedures available for repairing blocked oviducts: Salpingolysis, resection and reanastomosis, fimbrioplasty, and tubal implantation. According to a recent survey, the rates of term pregnancy following the first three of these procedures are 40-50%, 25–40%, and 10–25% respectively.[4] Thus, at least 280,000 U.S. women with tubal obstruction are not likely to achieve pregnancy by surgical methods alone. Of these women, an unknown number may also suffer from ovarian and/or uterine dysfunction and thus may be incapable of producing offspring even with the aid of *in vitro* fertilization and embryo transfer.[5] An additional adjustment in the estimate of the "need" for *in vitro* fertilization would be required if one were to consider women who had previously elected sterilization by tubal ligation but who later desire to become pregnant.

While the alleviation of infertility among couples is generally regarded as the major potential benefit of clinical *in vitro* fertilization and embryo transfer, some witnesses and some commentators in the literature have identified what they regard as additional benefits. Sid Leiman regards the surrogate-motherhood role as closely analogous to that of a wet nurse and therefore sees no ethical objection to extramarital involvement in gestation in cases in which intramarital reproduction is physically impossible.[6] In his writings on this topic R. G. Edwards mentions sex preselection as an additional potential benefit of clinical *in vitro* fertilization and embryo transfer.[7] Other potential benefits cited by various authors are pre-transfer screening for abnormalities,[8] re-transfer repair of defects,[9] and extracorporeal gestation.[10] The potential consequences enumerated in this paragraph are not universally judged to be beneficial, however, as Section F below illustrates.

B. The Need for and Adequacy of Prior Laboratory and Animal Research

Three major types of studies have been proposed as precursors to clinical applications of *in vitro* fertilization and embryo transfer: (1) Laboratory research on human sperm, ova, and embryos without embryo transfer, as described in Chapter 2, Section A above; (2) feasibility and safety studies in non-primate species; and (3) feasibility and safety studies in primates. Reservations have been expressed by some witnesses about each of these types of preliminary research.

Laboratory research with human sperm, ova, and embryos has been advocated most vigorously by R. V. Short. Short presents four arguments for a risk-assessment program based on such laboratory studies:

> 1. It would be better to discover an increased incidence, of abnormal embryos and/or low success rate "in the test tube rather than in the long-suffering female patient."

2. Laboratory tests could establish whether fertilization errors leading to potentially malignant trophoblastic tumors occur with *in vitro* fertilization.

3. Although chromosomally abnormal fetuses could be detected by amniocentesis, the discovery of such an affected fetus would confront an infertile couple with an agonizing decision; perhaps the decision would be viewed as a choice between having a handicapped child and no child at all.

4. Laboratory tests could establish whether the lack of the natural screen against defective sperm which is provided by the female reproductive tract leads to an increase in the number of abnormal embryos produced *in vitro*.[11]

Four possible lines of objection to the type of risk-assessment study proposed by Short are suggested by the testimony of other witnesses. Biggers notes that large numbers of human ova would need to be collected and used in such studies in order to attain statistical significance and that the research would therefore involve a substantial number of women acting as donors.[12] Second, even if risk-assessment studies with human sperm, ova, and embryos were considered a necessary preliminary step, it can be argued that such studies would not be sufficient, since they would not detect the subtle types of mental or developmental deficits which might be discovered in a carefully conducted study of primates.[13] (As will be noted below, Short regards primate studies as too time-consuming.[14]) Third, in Biggers' view, there is already sufficient evidence from laboratory studies with rats, mice, and rabbits and from the use of embryo transfer in farm animals to justify the conclusion that *in vitro* fertilization and embryo transfer do not produce a significant increase in the number of abnormal offspring. On this view, the conduct of laboratory studies as proposed by Short is unnecessary.[15] A final type of objection to risk-assessment studies with human gametes and embryos can be derived from Schlesselman's essay—namely, that the efficiency of the human female reproductive system in screening against chromosomally abnormal embryos is so high (99.3% to 99.5%) that proceeding directly to embryo transfer in humans would probably not lead to a significantly higher number of abnormal fetuses (presumably detected by amniocentesis) or handicapped offspring. According to Schlesselman, the primary result of an increase in the number of embryonic chromosomal abnormalities would be an increased rate of spontaneous abortion.[16]

A second proposal is to perform feasibility and safety studies in non-primate species of laboratory animals, *e.g.*, the mouse and the rabbit. Mastroianni, a proponent of prior studies in both primate and non-primate species, asserts that:

> • • • Extensive work in the laboratory animal should be a necessary prerequisite before proceeding with clinical trials. Statistically valid proof in animals that present techniques predictably produce normal offspring has not as yet been presented. Successful uterine transfer of *in vitro* fertilized ova has been accomplished in only two laboratory species.[17]

Short's position is in part similar to that of Mastroianni. In his view, the results of research with laboratory animals "although somewhat inadequate, are on the whole encouraging. The high abnormality rate in the rat experiment [conducted by Toyoda and Chang [18]] was probably not due to the *in vitro* procedure at all (Chang, personal communication) but nevertheless the experiment should be repeated." [19]

Kass indicates his agreement with the "cautious" position of Luigi Mastroianni, Benjamin Brackett, and R. V. Short that:

> • • • The risks for humans have not been sufficiently assessed, in large part because the risks in animals have been so poorly assessed (due to the small number of such births and to the absence of any *prospective* study to identify and evaluate deviations from the norm).[20]

Two objections have been raised regarding studies with non-primate laboratory animals. First, Barton Childs observes that most animal species are so inbred that it would be invalid to extrapolate from the results of *in vitro* fertilization studies, even in large numbers of laboratory animals, to the probable result of clinical applications in humans, who are outbred.[21] Second, in Biggers' view the results of studies with various laboratory animals and of the use of the procedures in farm animals already provide sufficient evidence of safety.[22]

A third possible objection to further studies with non-primate animals is implicit in the Sackett proposal: subtle mental deficits caused by *in vitro* fertilization might not be detected in non-primate animals.[23] Fourth and finally, Schlesselman's calculations concerning the low probability of producing abnormal human offspring following *in vitro* fertilization and embryo transfer [24] can be viewed as an argument against performing further risk-assessment studies with laboratory animals.

A third proposal for preliminary risk-assessment studies is advanced by Sackett. He recommends the conduct of a two-year trial in the pigtail monkey which would include (1) *in vitro* fertilization with some embryos transferred back to the donors of the ova and some transferred to other females, (2) a study of the incidence of abnormalities in products of *in vitro* fertilization, and (3) an assessment of learning abilities and development in the offspring of *in vitro* fertilization.[25] Gould advocates the use of another primate model, the squirrel monkey, for risk-assessment studies.[26]

Several objections have been or can be lodged against the proposal to perform primate risk-assessment studies. Short comments on the time-investment required:

> Whilst it would be helpful to have primate data, the constraints inherent in studying this problem in primates mean that it would be several years before adequate information would be forthcoming, and it would seem wrong to hold up progress until the information was available.[27]

Childs echoes this objection.[28] Second, as noted above, Childs argues that all non-human species are relatively or strictly inbred, so that the range of genetic variability present in humans cannot be duplicated in non-human species.[29] Two other general objections are also applicable to proposed primate research: (1) The studies already performed in several non-primate species provide sufficient evidence concerning risks (Biggers [30]), and (2) abnormal human embryos resulting from *in vitro* techniques are likely to be spontaneously aborted (Schlesselman [31]).

In summary, there is a clear division of opinion within the scientific and ethical communities concerning the need for and adequacy of prior laboratory and animal research. The extent of the disagreement is unclear because not all of the expert witnesses have discussed the three alternative risk-assessment strategies outlined above. In particular, few experts have had the opportunity to comment specifically on the Short and Sackett proposals.

The following positions, however, have been stated with clarity. Biggers regards further risk-assessment studies of any kind as unnecessary. Childs, while acknowledging the reassurance that further animal studies might provide, argues that such studies could never provide conclusive evidence. Short, Mastroianni, Kass, Sackett, and Gould *agree* that further risk-assessment studies should be performed but *disagree* on what kind of studies would be most feasible and appropriate. Short advocates the performance of *in vitro* studies with human sperm and ova and the replication of a single rat study; he

opposes primate studies on grounds of infeasibility and the amount of time required. Mastroianni and Kass support the performance of additional studies in animals, presumably in both primates and non-primates. Sackett and Gould regard non-primate risk-assessment studies as insufficient for drawing conclusions concerning primates and therefore recommend the conduct of primate research. In a word, there is majority support among the expert witnesses for some type of additional risk-assessment study but only minority support for any particular kind of study.

In addition, the data and calculations presented by Schlesselman may be relevant to the entire risk-assessment question. Schlesselman's thesis, which has not been commented on by proponents of risk-assessment studies, is that the probability of producing chromosomally-abnormal infants by means of clinical applications of *in vitro* fertilization and embryo transfer is quite low because of the human female's highly-efficient natural screen against chromosomally-abnormal embryos.

A little-discussed aspect of the risk-assessment debate is the kind of model (regarding proof of safety) which the protagonists have in mind. This model, in turn, can have important implications for the burden of proof issue. If one accepts the drug-testing model, as Short does, then the burden of proof is on investigators to demonstrate that the techniques of *in vitro* fertilization and embryo transfer are safe.[32] (It should be noted that, in a published essay, R. G. Edwards accepts the drug-tested model but argues that the results to date in several species of non-primate laboratory animals constitute sufficient proof of safety.[33]) On the other hand, if one adopts a surgery model, as Gorovitz does, than one can argue that the clinician is free to adopt new techniques unless opponents can demonstrate that prohibition of the techniques is justified.[34]

C. Risks of Procedures

1. Risks to Potential Offspring. The major sources of potential risk to offspring from *in vitro* fertilization and embryo transfer have been briefly outlined in Chapter 1, Section B.[35] In general, the surgical procedure of embryo transfer seems to occasion the least concern, in part perhaps because of the widespread use of embryo transfer following natural fertilization in farm animals.[36] The conditions under which the early embryo is cultured are also not a matter of primary concern, since the early mammalian embryo is known to be highly resistant to damage from environmental insults.[37] The major potential sources of damage to the early embryo are related to either the development of ova, the selection of sperm, the fertilization process, or the freezing of gametes or embryos. Specifically, potential sources of damage are the following:

a. Superovulation, sometimes employed prior to *in vitro* fertilization, may be correlated with an increase in the incidence of a chromosomal abnormality (trisomy) in embryos.[38]

b. The quality of sperm reaching and fertilizing the ovum *in vitro* may differ from the quality of sperm fertilizing the ovum in the Fallopian tube, since the female reproductive tract selects against some types of abnormal sperm.[39]

c. The quantity of sperm reaching the ovum simultaneously *in vitro* may break down the usual block to fertilization by multiple sperm; a polyploid embryo may result.[40]

d. The use of freezing techniques to preserve gametes or embryos may produce mutations.[41]

The precise extent to which each of these theoretical sources of risk is likely to be realized in human clinical applications of *in vitro* fertilization and embryo transfer cannot be estimated with certainty. The data and calculations of Schlesselman suggest that even if an excess of chromosomally abnormal embryos were produced by *in vitro* techniques, only a small proportion (less than 10%) would develop to term because of the natural process by which most such embryos are lost early in gestation. Whether the ancillary medical treatment associated with *in vitro* fertilization and embryo transfer would enhance the survivability of chromosomally abnormal embryos is unknown, as Schlesselman acknowledges.[42] Similarly, if subtler genetic (as distinguished from chromosomal) abnormalities were to result from *in vitro* techniques, the abnormal embryos might not be affected by the natural screening process described by Schlesselman.

Judgments about the *acceptability* of various levels of risk to offspring diverge. Kass would require that such risks be equivalent to or less than those of natural reproduction.[43] Curran adopts a similar (although perhaps slightly less stringent) position, arguing that the risks of the *in vitro* fertilization and transfer procedures to the offspring ought to be "about the same as in the normal process."[44] On the other hand, Bigger notes that there is an estimated three percent additional risk of abnormality in offspring suggested by animal studies, and suggests that such an added risk would be acceptable, particularly in light of the fact that some couples who receive genetic counseling are not deterred from procreation by a twenty-five percent risk of genetically-abnormal offspring.[45]

Schlesselman explicitly raises the question: To what are the risks of human *in vitro* fertilization being compared? His answer is that the women and embryos being used for comparison should have the same medical history relevant to their infertility as those undergoing *in vitro* fertilization and embryo transfer.

2. Risks to donors. Most discussion of risks to donors has focused on risks to the women donating ova. The following sources of risk have been identified:

a. Hormonal treatment of the women, sometimes employed to induce superovulation; this treatment can lead to ovarian hyperstimulation or ovarian cysts.[46]

b. Laparoscopy, a surgical procedure generally performed under general anesthesia; this procedure may have to be repeated.[47]

c. Ectopic pregnancy, a potential danger if the embryo fails to implant in the uterus.[48]

d. Careful monitoring of any resulting uterine pregnancy, often including amniocentesis.[49]

e. The possibility of a higher-than-average rate of embryo loss or spontaneous abortion.[50]

These risks are considered to be comparable to the risks faced by female infertility patients, in general, and by women who undergo surgery for the correction of blocked Fallopian tubes, in particular.[51]

D. The Consent of Sperm and Ovum Donors

The issue of informed consent by sperm and oocyte donors was not addressed by the expert witnesses who testified before the Board. In the literature, however, there is unanimous agreement that the informed consent of the would-be mother and presumably of both parents must be secured. Several specific items of information have been identified by various commentators as being material to the decision of the couple and therefore requiring disclosure:

a. The availability of potentially effective alternative therapies, *e.g.*, surgical reconstruction of the Fallopian tubes.[52]

b. The anticipated need for repeated laparoscopies.

c. The low probability of success.

d. The likelihood that the primary beneficiaries of the research will be other couples rather than the research participants themselves.[53]

e. The sources of the gametes to be used in the attempted *in vitro* fertilization (*i.e.*, a guarantee that only the sperm and ova of the couple will be employed).[54]

f. The disposition to be made of sperm, ova, and embryos not used in the transfer attempt.[55]

In the literature on informed consent, several commentators have remarked that infertility patients may be strongly influenced by their desperate desire to have children.[56] On the other hand, R.G. Edwards notes that many candidates for *in vitro* fertilization and embryo transfer are professional persons or their wives. Edwards expresses confidence that the patients seeking this therapy are fully capable of understanding and consenting to its procedures.[57]

E. The Status of the Early Human Embryo

The question of embryonic status in the clinical context differs to some extent from the same question in the laboratory-research context. Perhaps the most obvious difference is that in the clinical context there is at least a possibility that each embryo "created" will be transferred to the uterus, will implant, and will develop to the point of viability. Because of this difference in probabilities, as well as the directly-therapeutic intention present in the clinical context, most expert witnesses on ethical issues surrounding *in vitro* fertilization and embryo transfer viewed the status of the early embryo as less problematic in the clinical situation.

For persons who regard the embryo as deserving of respect or protection from the time of fertilization there are two major concerns: (1) Loss of embryos following transfer, and (2) the disposition of untransferred embryos. Kass argues that there is no qualitative difference between embryonic loss following natural reproduction and that which follows *in vitro* fertilization.[58] The second issue is somewhat more complex, however, since, as Kass notes, the "surplus" embryos can be transferred to women other than the donor, used for laboratory research purposes, or allowed to die.[59] A fourth possibility, not mentioned by Kass, would be to freeze the untransferred embryos, perhaps for later transfer to the same donor. Among the first three possibilities, Kass expresses a clear preference for allowing untransferred embryos to die. In his view, this choice is most compatible with concerns about lineage (which would argue against transfer to other women) and about the respect which is owed to early human embryos.[60] Curran's position on the discard of embryos is similar to that of Kass, although Curran adds the note that discards and losses should be minimized insofar as possible.[61]

A potential method for reducing the number of untransferred embryos is suggested by both Kass and Leiman:[62] Ova could be fertllized one at a time, and any additional ova could be stored, perhaps by freezing, for future attempts at *in vitro* fertilization and embryo transfer. A possible objection to this one-at-a-time procedure is that if fertilization failed to occur, embryo transfer might be delayed until the next menstrual cycle.

An issue not discussed by the expert witnesses and only hinted at in the literaure on *in vitro* fertilization is the disposition of grossly abnormal embryos. Some have argued that to decide that such embryos should not be transferred is the first step toward deciding which fetuses (or persons) are not worthy to live.

Finally, some witnesses such as Gorovitz and Short do not explicitly consider the issue of embryonic status in the clinical context. However, if one extrapolates from their views on embryonic status in general or on laboratory research with early embryos, one can conclude with some confidence that they would regard the embryonic loss following embryo transfer and the discard of untransferred embryos as ethically acceptable.

F. Potential Adverse Consequences of Clinical Applications

Two types of potential adverse consequences of *in vitro* fertilization and embryo transfer have been identified: (1) Adverse consequences for the family; and (2) other adverse consequences. Kass notes that even if the initial aim of clinical applications is to assist married couples to bear children of their own, the techniques employed provide "the *immediate* possibility" of egg donation (egg from donor, sperm from husband), embryo donation (egg and sperm both from outside the marriage), and foster pregnancy (another woman carrying the pregnancy to term).[63] In Kass's view, there will be a strong demand for such extramarital uses of the clinical procedures—a demand which, if fulfilled, will further compromise "the virtues of family, lineage, and heterosexuality" or weaken "the taboos against adultery and even incest."[64]

Responses to the thesis that clinical uses of *in vitro* fertilization and embryo transfer will weaken the family have taken two forms. The first, represented by Gorovitz, is to argue that the demand for labratory-assisted methods of reproduction in general will be limited and that other technological innovations (*e.g.*, modern contraceptive techniques) will have a much more significant adverse impact on the family.[65] A second kind of response, briefly developed by Leiman, is to deny that surrogate motherhood is necessarily detrimental to the family, if this novel method of becoming a parent is resorted to for good reasons (*e.g.*, if a couple would otherwise be unable to have a child).[66]

Other potential consequences considered adverse by some expert witnesses and commentators include:

a. The development of commercial ovum and embroyo banks.[67]

b. The genetic selection or manipulation of early embroyos.[68]

c. The transfer of nuclei from adult individuals to early embroyos, or cloning.[69]

d. Extracorporeal gestation, or bringing an embroyo all the way to viability in the laboratory.[70]

As noted in Section A of the present chapter, the second and fourth consequences in this list are regarded by some commentators as potential benefits of clinical *in vitro* fertilization and embryo transfer. Few have advocated that commercial ovum and embroyo banks be created or that human beings be cloned. Some commentators (for example, Gorovitz) have advanced the procedural suggestion that each potential consequence of *in vitro* fertilization and embryo transfer be carefully evaluated from the standpoint of both likelihood and probable impact.[71]

G. Questions of Allocation

Three general positions on the allocation issue can be distinguished. The first, represented by Biggers, is that applied laboratory research directed toward improving techniques for testing infertility by means of *in vitro* fertilization and embryo transfer should receive high priority—or, at least, that it should receive a higher priority than basic laboratory research involving human gametes and embroyos. The primary rationale for this position is Biggers' view that the supply of human ova available for research purposes is extremely limited and should devoted either to directly clinical purposes or to answering questions that cannot be satisfactorily resolved by studying laboratory animal.[72]

A second position, represented by Leiman[73] and Curran,[74] is that the federal government should support the clinical application of *in vitro* fertilization and embyro transfer. Leiman regards involuntary infertility as an extremely serious problem.

The rabbis put it this way, some fifteen centuries ago. Four are considered as if they

were dead: the poor, the diseased, the blind, and the childless.[75]

In his view, the public funding of medical means for overcoming infertility (for example, through Medicaid) is entirely appropriate. Indeed, Leiman argues that:

It would be a sad commentary on the American ethos if federal funds could be used for the taking of human life, that is, therapeutic abortion, but not the creation of human life, that is, therapeutic conception.[76]

Although Kass disagrees with this second position; he presents an additional argument which some have used to support it:

* * * As he who pays the piper calls the tune, Federal support would make easy the Federal regulation and supervision of this research.[77]

In contrast, a third position on allocation is that Federal funds should not be spent for *in vitro* fertilization and embryo transfer in clinical practice. Hauerwas, Gorovitz, and Kass all take this position, although for somewhat different reasons. In Hauerwas' view, the importance of being pregnant or of bearing a child that is genetically "one's own" has been overstated. Therefore the substantial investment of public funds to develop these anti-infertility techniques, particularly in light of other "immense needs of our society," (for example, the provision of an effective clotting factor for hemophiliacs) is inappropriate.[78] While he may not share Hauerwas' views on parenthood, Gorovitz agrees with his sense of priorities.

In the competition for support, the burden of making a convincing case should rest with the proponent of a given line of work. With forty million Americans having no adequate access to decent health care, with thousands of children born annually without prospect of a family to nurture them, with veneral disease—a major cause of infertility—on the rise, it is implausible that research into making IVF more readily and reliably available should be a project of high priority concern. It isn't so much the harm or risk it involves as the plainly greater importance of addressing more fundamental and widespread problems of health and the delivery of health care.[79]

Kass presents three arguments for assigning a low priority to clinical applications of *in vitro* fertilization and embryo transfer. First, in agreement with Hauerwas and Gorovitz, he asserts that other health-related needs are more pressing. Kass goes on to argue that even within the sphere of infertility research, other approaches will be more cost-effective:

* * * With money for research as limited as it is, research funds targeted for the relief of infertility should certainly go first to epidemiological and preventive measure—especially where the costs of success in the high-technology cure are likely to be *great*.[80]

Second, according to Kass, the non-financial costs of developing these technologies—that is, their potential adverse consequences—also militate against assigning their development a high priority.[81] Finally, Kass notes that a substantial number of American citizens are opposed on moral grounds to research on, or application of, *in vitro* fertilization in humans. In his view, these citizens would strenuously—and legitimately—object to any use of their taxes to promote human *in vitro* fertilization and embryo transfer.[82]

Footnotes

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2. Hauerwas, Stanley, Theological Reflections on *In Vitro* Fertilization, a paper prepared for the Ethics Advisory Board, 1978, pp. 6–12.

3. Biggers, John D., *In Vitro* Fertilization, Embryo Culture and Embryo Transfer in the Human, a paper prepared for the Ethics Advisory Board, 1978, p. 35.

4. Biggers, *op. cit.*, p. 36 and Table 4, p. 37, citing Shane, J. M., Schiff, I., and Wilson, E. A., The Infertile Couple, *Clinical Symposia*, vol. 28, 1976, pp. 1–40.

5. Biggers, *op. cit.*, p. 35; Kass, *op. cit.*, pp. 36–37.

6. Leiman, *op. cit.*, pp. 126–130.

7. Walters, LeRoy, Ethical Issues in Human *In Vitro* Fertilization and Research Involving Early Human Embryos, a paper prepared for the Ethics Advisory Board, 1978, fn. 112, citing Edwards, R. G., Fertilization of Human Eggs *In Vitro:* Morals, Ethics, and the Law, *Quarterly Review of Biology*, vol. 49, 1974, p. 12.

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12. Biggers, John D., Statement to the Ethics Advisory Board, Transcript of Meeting III, September 16, 1978, *National Technical Information Service* PB–288 764, pp. 235–239.

13. Sackett, Gene P., A Nonhuman Primate Model of Developmental Risk Following *In Vitro* Fertilization and Embryo Transfer, a paper prepared for the Ethics Advisory Board, 1979, pp. 26–28.

14. Short, *op. cit.*, p. 8.

15. Biggers, Statement to the Ethics Advisory Board, *op. cit.*, pp. 257, 260–261.

16. Schlesselman, James J., How Does One Assess the Risk of Abnormalities from Human *In Vitro* Fertilization?, a paper prepared for the Ethics Advisory Board, 1979, pp. 29–31.

17. Mastroianni, Luigi, Jr., *In Vitro* Fertilization and Embryo Transfer, a paper prepard for the Ethics Advisory Board, 1978, p. 6.

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19. Short, *op. cit.*, p. 8.

20. Kass, *op. cit.*, 1978, pp. 12–13.

21. Childs, Barton, Statement to the Ethics Advisory Board, Transcript of Meeting III, September 16, 1978, *National Technical Information Service*, PB–288 764, pp. 252–253.

22. Biggers, Statement to the Ethics Advisory Board, *op. cit.*, pp. 257, 260–261.

23. Sackett, *op. cit.*, pp. 26–28.

24. Schlesselman, *op. cit.*, pp. 29–31.

25. Sackett, *op. cit.*, pp. 31–32.

26. Gould, Kenneth G., Fertilization *In Vitro* of Nonhuman Primate Ova: Present Status and Rationale for Further Development of the Technique, a paper prepared for the Ethics Advisory Board, 1978, pp. 21–23.

27. Short, *op. cit.*, p. 8.

28. Childs, *op. cit.*, p. 232a.

29. *Ibid.*

30. Biggers, Statement to the Ethics Advisory Board, *op. cit.*, pp. 257, 260–261.

31. Schlesselman, *op. cit.*, pp. 29–31.

32. Short, *op. cit.*, pp. 8–10.

33. Walters, *op. cit.*, fn. 50, citing Edwards, R. G., Fertilization of Human Eggs *In Vitro:* Morals, Ethics and the Law, *Quarterly Review of Biology*, vol. 49, 1974, pp. 8–9.

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44. Curran, Charles E., *In Vitro* Fertilization and Embryo Transfer: From a Persepective of Moral Theology, a paper prepared for the Ethics Advisory Board, 1978, p. 19.
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46. Gould, *op. cit.*, p. 17; Mastroianni, *op. cit.*, p. 3.
47. Gould, *op. cit.*, pp. 17–18.
48. *Ibid.*, pp. 18–19.
49. *Ibid.*, p. 19.
50. Schlesselman, *op. cit.*, pp. 29–31.
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58. Kass, *op. cit.*, pp. 9–10.
59. *Ibid.*, p. 10.
60. *Ibid.*, pp. 9–11.
61. Curran, *op. cit.*, pp. 17, 26.
62. Kass, *op. cit.*, 1972, p. 34; Leiman, *op. cit.*, p. 126.
63. Kass, *op. cit.*, 1978, p. 15.
64. *Ibid.*
65. Gorovitz, *op. cit.*, pp. 20–21.
66. Leiman, *op. cit.*, pp. 128–129.
67. Kass, *op. cit.*, 1978, p. 19.
68. Walters, *op. cit.*, fn. 113 (see fn. 9 above).
69. *Ibid.*
70. *Ibid.*, fn. 118 (see fn. 10 above).
71. Gorovitz, *op. cit.*, pp. 14–15.
72. Biggers, Statement to the Ethics Advisory Board, *op. cit.*, pp. 236–237.
73. Leiman, *op. cit.*, pp. 130–131.
74. Curran, *op. cit.*, p. 28.
75. Leiman, *op. cit.*, p. 131.
76. *Ibid.*
77. Kass, *op. cit.*, 1978, p. 22.
78. Hauerwas, *op. cit.*, p. 18.
79. Gorovitz, *op. cit.*, p. 26.
80. Kass, *op. cit.*, 1978, p. 25.
81. *Ibid.*
82. *Ibid.*, pp. 28–29.

Chapter IV—Legal Issues Surrounding Human in Vitro Fertilization, Embryo Culture, and Embryo Transfer

Two papers written for the Board examined the legal issues surrounding human *in vitro* fertilization; one was prepared by Dennis Flannery and his colleaques at the Washington law firm of Wilmer, Cutler and Pickering, the other was written by Barbara Katz, Office of Legal Affairs, University of Colorado Medical Center. The discussion which follows reflects the legal analysis and conclusions presented by the two papers; in any areas where they differed, the differences are noted. Four main topics are addressed: (A) Existing law that might be applicable to human *in vitro* fertilization and embryo transfer; (B) Constitutional questions raised either by the use, or by restrictions imposed on the use, of the techniques; (C) possible implications for tort liability; and (D) criminal law.

A. Existing Federal and State Law Applicable to Human in Vitro Fertilization and/or Embryo Transfer

1. *Federal law.* The only existing federal control of human *in vitro* fertilization is a regulation of the Department of Health, Education, and Welfare:

> No application or proposal involving human *in vitro* fertilization may be funded by the Department or any component thereof until the application or proposal has been reviewed by the Ethical Advisory Board and the Board has rendered advice as to its acceptability from an ethical standpoint.[1]

In its notice of proposed rulemaking entitled "Protection of Human Subjects: Proposed Policy" issued August 23, 1974, the Department indicated the kind of issues it expected the Ethics Advisory Board to consider:

> With respect to the fertilization of human ova *in vitro*, it is expected that the Board will consider the extent to which current technology permits the continued development of such ova, as well as the legal and ethical issues surrounding the initiation and disposition of such products of research.
>
> With respect to implantation of fertilized human ova, it is expected that the Board will consider such factors as the safety of the technique (with respect to offspring) as demonstrated in animal studies and clarification of the legal responsibilities of the donor and recipient parent(s) as well as the research personnel.[2]

Two other general requirements of HEW regulations are presumably applicable to research involving human *in vitro* fertilization, as well. All such research conducted or supported by the Department must be reviewed by a local Institutional Review Board (IRB);[3] in addition, studies involving human *in vitro* fertilization should not be conducted or supported by HEW unless "appropriate studies on animals and nonpregnant individuals have been completed."[4]

Moreover, the Department interprets the National Research Act as authorizing (if not requiring) IRB review of human research not funded by HEW at any institution which receives a grant or contract involving human subjects under the Public Health Service Act.

> The Secretary shall by regulation require that each entity which applies for a grant or contract under this Act for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant or contract assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an 'Institutional Review Board') to review biomedical and behavioral research involving human subjects conducted at or sponsored by such entity in order to protect the rights of the human subjects of such research.[5]

However, the standards to be employed by the local Institutional Review Board in reviewing non-federally funded human research are not specified by the statute.

2. *State law.* No state has enacted legislation or promulgated regulations directly governing human *in vitro* fertilization and/or embryo transfer. Such laws or regulations could affect the conduct of research involving *in vitro* fertilization within particular jurisdictions, especially since the federal regulations governing such research specifically do not preempt state or local law in this sphere:

> 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.[6]

The types of existing law which provide the closest analogies to human *in vitro* fertilization and/or embryo transfer are state statutes or court decisions concerning (a) artificial insemination and (b) research involving human fetuses.

Within the context of family law, the issue of artificial insemination, especially artificial insemination with donor sperm (AID), has received

legislative or judicial attention in approximately one-third of the states. Case law concerning AID has focused primary attention on whether AID is equivalent to adultery and thus, whether children conceived as a result of AID are legitimate. (Legitimacy has implications both for inheritance rights and for claims to paternal support.) The general trend of recent case law, particularly in California and New York, has been toward the view that AID does not constitute adultery and that children conceived as a result of AID are legitimate.[7] Nineteen states have enacted legislation regarding one or more aspects of artificial insemination; many of the statutes include a requirement for prior written consent by both husband and wife.[8] However, in the remaining states, the legal status of children conceived following AID is left in doubt.

A second area of state legislative interest—research with live human fetuses—is also at least partially analogous to research involving human *in vitro* fertilization. Approximately sixteen states have enacted statutes governing fetal research. The primary focus of all such statutes is the permissibility of research on the fetus (1) following implantation and (2) before, during, or after induced abortion. however, the language of at least one state statute on fetal research may be sufficiently broad to encompass, as well, research involving unimplanted early human embryos.[9]

B. Constitutional Issues

1. *Preliminary Distinctions.* Federal or state action may be found unconstitutional if it infringes upon a fundamental right of United States citizens and the government cannot demonstrate (1) that the law is necessary to protect a "compelling state interest" and (2) that it does not go beyond what is necessary to protect those interests.[10] If, on the other hand, a governmental action restricts individual activities in ways that do not infringe a fundamental right, then the government need only show that its action is rationally related to a constitutionally permissible purpose.[11] Thus, a critical question regarding human *in vitro* fertilization—whether in the laboratory or the clinical context—will be whether individuals proposing to employ, or seeking access to, the technique can be said to be asserting a fundamental legal right. This, in turn, determines whether the government will be required to justify its regulation of human *in vitro* fertilization by demonstrating a compelling state interest that it seeks to protect or only by demonstrating a rational basis for its action.

A second distinction is also important: the distinction between a governmental restriction of an activity, on the one hand, and a governmental decision not to fund the activity, on the other. In 1977, in a case challenging the constitutionality of restrictions on the use of Medicaid funds for abortions, the United States Supreme Court held that a governmental restriction of the use of public funds to support the exercise of a fundamental right does not, by itself, constitute impermissible interference with the exercise of that right.[12] The Court concluded that the existence of a fundamental right "implies no limitation on the authority of a state to make a value judgment [to discourage the exercise of that right] and to implement that judgment by the allocation of public funds." [13] As applied to the question of *in vitro* fertilization, that language suggests that a governmental decision to restrict either laboratory research or clinical applications of the technique would need stronger justification than would a decision not to provide funds for such activities.

2. *Clinical Applications of In Vitro Fertilization and Embryo Transfer.* Constitutional principles affecting reproductive activity are more fully articulated than those relating to basic laboratory research. Therefore, it is useful to examine the rights pertaining to reproductive choices before attempting to analyze what rights might be implicated in government regulation of basic laboratory research.

The argument for a constitutional right to reproduce by means of *in vitro* fertilization would rest on the right to privacy as related to procreation, the marital relationship, and contraception. In 1942, in a decision striking down Oklahoma's compulsory sterilization law, the Supreme Court held that individuals have a right to be free from unwarranted governmental interference with procreative capabilities. (*Skinner* v. *Oklahoma*) [14] This might be termed "the right to procreation." [15] A second constitutionally protected area is the privacy of the marital relationship. This was recognized in a 1965 decision (*Griswold* v. *Connecticut*) invalidating a Connecticut statute forbidding the use of contraceptives by married couples. There, the Court said:

> The entire fabric of the Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected . . . . The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so.[16]

The privacy interests recognized in Griswold were expanded in later cases to include "the right of the individual, married or single, to be free from governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget children." [17]

The extent to which any individual's access to *in vitro* fertilization will be viewed as involving a fundametal right will depend upon how closely analogous it is to the rights recognized by the Supreme Court. Thus, for example, a married couple with no alternative means for having a child of their own could claim that restriction of access to *in vitro* fertilization is interference with the fundamental right of marital privacy and with their right to choose whether, and in what manner, to achieve procreation. Since these rights are reasonably analogous to those recognized by the Court in *Skinner*, *Griswold*, and *Eisenstadt*, the argument might well be persuasive. If the Court agreed with the view that the rights in this instance are fundamental, the government would have to demonstrate a compelling state interest to justify interfering with the exercise of those rights.

On the other hand, an unmarried woman who wished to utilize *in vitro* fertilization followed by embryo transfer to another (sorrogate) mother, in order to have a genetic child of her own without the expense and inconvenience of pregnancy, would have a much weaker case. There would be neither marital privacy nor a procreative capacity, in the normal sense, to protect. Thus, courts might well find the right asserted to be less than fundamental, and the government would have to show only a rational basis for restricting the exercise of that "right".

Several grounds for prohibiting or limiting access to clinical applications of *in vitro* fertilization could be advanced. First, a state or the federal government might argue that this reproductive technique inevitably involves the loss of human embryos. Accordingly, a government might enact legislation to protect early human embryos. Such a law might pass the rational basis test but might not withstand constitutional challenge by individuals who could assert a fundamental right to access to *in vitro* fertilization.[18]

A second possible basis for state intervention in the clinical applications of *in vitro* fertilization would be the government's interest in fostering marriage and discouraging illegitimacy. This rationale might be proffered, for example, in support of a law restricting publicly funded *in vitro* fertilization and emryo transfer to married couples.[19] This is little room for doubt that such a funding limitation would be found constitutionaly permissable; it is not clear, however, whether courts would uphold an outright prohibition on the access of single persons to *in vitro* fertilization and embryo transfer.[20]

Third, a government might prohibit or limit access to clinical applications of *in vitro* fertilization in order to preclude institutional or individual genetic planning or manipulation. It is been suggested that the potential social impact of a large-scale genetic program might justify governmental regulation, but that interference with the genetic planning of individual families would have to be justified by a compelling state interest.[21]

Fourth, a state or the federal government might conclude that the use of surrogate or host mothers in connection with clinical *in vitro* fertilization would create insuperable legal problems that would justify a prohibition of such activities—perhaps on the ground that service as a surrogate mother is an unacceptable form of employment.[22] In the opinion of Flannery and associates such a prohibition would probably withstand legal challenge on both "rational basis" and "compelling state interest" grounds.[23]

Finally, if clinical applications of *in vitro* fertilization should appear to present health risks to mother or offspring which are substantially greater than those usually associated with conception and childbirth, then a state or the federal government might well decide to prohibit or limit access to this reproductive technique. Whether such a state intervention would withstand constitutional challenge would depend in part on the probability and magnitude of the risks involved.[24]

In addition to making basic decisions regarding the regulation of access to clinical applications of *in vitro* fertilization, the states and the federal government may wish to establish policies on such related matters as the legal status of children who are produced by means of *in vitro* fertilization and embyro transfer, the role of attending physicians in decisions regarding implantation and abortion, and record-keeping requirements.[25]

3. *Laboratory Research Involving In Vitro Fertilization and/or Embryo Culture*—a. *Constitutional bases for asserting a right to perform or participate in laboratory research involving in vitro fertilization and/or embyro culture.* Two major constitutional arguments could be advanced in support of basic laboratory research involving human *in vitro* fertilization. The first is freedom of inquiry, or the right of scientists to perform their research without governmental interference. This argument can be asserted most vigorously in defense of research conducted without the assistance of government funding. The second is the right of individual's to dispose of their genetic material as they see fit.

In a recent report, the National Commission for the Protection of Human Subjects of Biomedical and Behavorial Research expressed the view that although the Supreme Court might recognize a First Amendment right to seek new ideas or knowledge (i.e., a "right to research")[26], that must be distinguished from a right to be free from regulations governing the manner in which research may be conducted.[27]

> • • • [T]he state may not interfere with the researcher's choice of the end or topic of research, but it may regulate only the methods used in the research, in order to protect interests in health, order and safety with which unrestricted research might conflict. Such restrictions are valid if they are reasonably related to protection of non-speech interests and are not so vague and over broad that they chill the exercise of protected speech.[28]

Accepting the National Commission's distinction between the goal and the manner of research as valid, then the applicability of this putative right to basic research involving human *in vitro* fertilization is problematic, since it is the manner of achieving the knowledge—that is, through the creation and study of human embryos—that is most likely to be the target of governmental regulation.[29]

A second constitutional argument in support of laboratory research involving human *in vitro* fertilization focuses attention on the rights of potential gamete donors to dispose of their reproductive cells in whatever manner they see fit. According to this view, donors have a "constitutionally protected fundamental privacy right to control the use and manipulation of their own genetic materials.[30] Such a privacy right is clearer, however, in cases involving contraception or abortion than in the case of genetic materials donated for basic laboratory research. Once the materials are outside the body of the donor, any personal rights of privacy regarding their use become attenuated.[31]

b. *Constitutional bases for governments' prohibiting or refusing to fund laboratory research involving human in vitro fertilization.* If the analysis of the preceding section is accepted, than it would appear that no fundamental constitutional right to perform or participate in basic research involving *in vitro* fertilization is likely to be found. In the absence of such a right, the government could, if it wished, prohibit *in vitro* fertilization research if it had a rational basis for doing so. A prohibition would most probably be based on the view that the creation, study, and destruction of early human embryos is inconsistent with the dignity which should be accorded to forms of potential human life. Even if a fundamental right to conduct or participate in such research did exist, the government could still decline to support it with public funds. Such a refusal could be based on an administrative determination that other areas of research would be more useful to the government.[32]

If research with early human embryos were to involve embryo transfer and subsequent implantation, the current HEW regulations governing fetal research would apply, since the "fetus" is defined as the embryo "from the time of implantation."[33] State statutes regarding fetal research might or might not apply, depending on their formulation.

In addition to deciding whether to prohibit or to support laboratory research involving human *in vitro* fertilization, states or the federal government might wish to formulate standards governing the conduct of such research, if the research is permitted. For example, regulations to protect the health of ovum donors or to set standards for protecting the dignity of potential human life might be adopted. Moreover, a government might require that gamete donors consent in advance to the use of their reproductive cells in research involving *in vitro* fertilization. These procedural regulations, designed to achieve a rational governmental purpose, should be constitutionally permissible.[34]

C. Liability for Injuries

The federal government might be liable for injuries arising from *in vitro* fertilization in research programs conducted or supported by HEW. This section explores three questions: (1) Whether such suits would be barred by the doctrine of sovereign immunity; (2)

what causes of action might be considered valid; and (3) whether a program could be established to provide compensation for such injuries.

1. *Sovereign immunity.* Under the Federal Tort Claims Act, the United States is liable for the "negligent or wrongful" acts or omissions of its employees while they are acting within the scope of their employment.[35] Exceptions to such liability include acts or omissions that are within an agency or officer's "discretionary duty" (as, for example, a decision to initiate a particular research program).[36] Whether the doctrine of sovereign immunity would bar a suit for damages arising within an HEW-conducted or supported research program involving *in vitro* fertilization would depend upon:

1. Whether the investigator is considered a federal "employee." [Does this category include, for example, grantees or contractors in HEW-funded research programs?]
2. Whether the alleged wrong occurred because of the employee's exercise of protected "discretionary functions" at the policy level or through a failure to exercise due care in a particular program at the operational level.
3. Whether the employee's act fell within an exception to liability under the Federal Tort Claims Act.

The Board's legal consultants suggest that the United States, but not individual investigators, would probably be liable for any negligence of subordinate HEW officers or employees who design or conduct a particular research program involving in vitro fertilization. If the conduct violated existing HEW regulations, even the discretionary exception would not prevent liability.[37]

2. *Possible causes of action*—a. *Actions on behalf of the child.* Two kinds of suits might be brought on behalf of a child born alive with handicaps following *in vitro* fertilization and embryo transfer. First, a suit might be brought on the basis of prenatal or even preconception injuries sustained by the child. (Preconception injuries might be claimed if, for example, laboratory procedures involving the gametes were thought to have given rise to the damage.) The plaintiff in such a suit would face the difficult task of demonstrating a causal connection between the procedures of *in vitro* fertilization or embryo transfer and the child's injuries.[38]

Alternatively, a "wrongful life" suit might be brought on behalf of a child born alive but handicapped following *in vitro* fertilization and embryo transfer. Such a suit would claim that it would be better for a child not to be born at all than to be born in a damaged condition. With one exception,[39] the courts have refused to recognize "wrongful life" as a valid ground for recovery of damages. This refusal appears to stem from a reluctance or inability to assign a monetary value to either impaired existence or nonexistence as a basis for recovery.[40] Even if "wrongful life" were accepted as a valid cause of action in principle, the plaintiff would still face the challenge of showing a causal connection between the procedures employed and the child's injuries.[41]

b. *Actions to compensate the parents.* Two distinct types of suit might be brought under this general heading. First, it might be claimed that negligently-caused damage to a child conceived by means of *in vitro* fertilization had caused the parents economic loss and/or emotional distress. Courts have held that the following "wrongful birth" suits stated a valid cause of action:

1. The mother of a severely deformed child brought suit against her physician for his failure to diagnose rubella during pregnancy.[42]
2. Parents brought suit against a physician for failing to diagnose a pregnancy in time to allow the woman to secure an abortion.[43]
3. A pharmacist was sued for mistakenly filling a prescription for the contraceptive Norinyl with a different drug, Nardil, when the woman subsequently became pregnant.[44]
4. A couple brought suit against a physician whose sterilization of the husband failed to prevent the wife's conception of a subsequent child.[45]

If a "wrongful birth" suit were brought because of the birth of a handicapped child following *in vitro* fertilization, the plaintiff would face the difficulties of demonstrating causation which have been alluded to in the preceding paragraphs.[46]

A second possible cause of action which might be brought by would-be parents on their own behalf is an action for the "wrongful death" of a hoped-for child. All states currently allow actions for wrongful death caused by prenatal injuries if the death occurs following live birth. In addition, many states allow recovery for the prenatal death of a viable fetus.[47] The question raised by *in vitro* fertilization and embryo transfer is whether the theory of "wrongful death" would be extended by the courts to cover preimplantation human embryos.

Under a somewhat different legal theory—one which focused on the destruction of the would-be parents' property rather than on the "wrongful death" of an early embryo—a New York jury recently awarded $50,000 for emotional distress following the intentional destruction of a culture containing gametes from the husband and wife.[48] In the opinion of Flannery and associates, it is unlikely that the courts will ultimately extend the concept of "wrongful death" to include the intentional destruction of a preimplantation embryo.[49] According to Katz, suits charging physician negligence in the unintentional death of an embryo or fetus conceived with the aid of *in vitro* fertilization are also unlikely to succeed because of the experimental character of the procedure and because of the absence of a clear standard of due care.[50]

3. *Compensation for injury.* In part because traditional tort concepts seem inapplicable to research involving *in vitro* fertilization and/or embryo transfer, Katz proposes the establishment of a federal compensation fund to provide monetary redress in the event of injury associated with such research.[51] In her view, the rationale for creation of such a fund is that society has a substantial interest in establishing a program of human *in vitro* fertilization research and therefore has an obligation to the human subjects who may be injured as a result of their participation in such a program. Any injury which is not clearly unrelated to participation in the *in vitro* fertilization program would be compensable. The amount of compensation would be determined by calculating the monetary requirements for making the situation of a damaged child or mother equal to that of a normal person, insofar as such calculation is possible. The compensation fund would be financed through premiums paid by researchers or their institutions, by adding a surcharge to hospital bills, or by allocating general revenues to this purpose. The plan would include financial incentives to encourage the exercise of due care by investigators and institutions.

D. Criminal Law

The primary question of criminal law that might arise is whether the act of allowing preimplantation human embryos to die or killing them would constitute the crime of feticide, a species of homicide. After surveying developments in English and American jurisprudence, Katz concludes that the destruction of preimplantation human embryos is not likely to fall within either homicide or feticide statutes.[52]

As noted above, however, state statutes enacted to regulate research involving human fetuses may be broad enough to include research involving preimplantation human embryos. For example, one state statute defines the "human conceptus" as "any human organism, conceived either in the human

body, or produced in an artificial environment other than the human body, from fertilization through the first 265 days thereafter." [53]

The statute continues:

> Whoever uses or permits the use of a living human conceptus for any type of scientific, laboratory research or other experimentation except to protect the life or health of the conceptus, or except as herein provided, shall be guilty of a gross misdemeanor.[54]

In summary, aside from HEW regulations governing research supported by the Department, and a very few broadly written state statutes prohibiting research on the human fetus, no state or federal laws apply to human *in vitro* fertilization. However, Supreme Court decisions recognizing a fundamental right to privacy in marital relations and reproductive activity suggest that married couples might successfully assert a right of access to *in vitro* fertilization and embryo transfer as a means of bearing their own children. The government would have to demonstrate a compelling state interest (*e.g.*, protecting the health and safety of mothers and offspring) to justify restricting such access. The government need not, however, provide federal support for such procedures. In the research context, the government may regulate the manner in which research is conducted, especially if the research is supported by funds and it involves human subjects. Questions about legal responsibility for the care of the offspring cannot be answered with clarity. Analogous statutory and case law in the field of artificial insemination suggests that the law in this area is confused, at best. Similarly, questions about liability and compensation for injuries to the mothers and offspring need to be addressed.

Footnotes

Note.—The two papers prepared for the Board and cited often throughout are: Dennis M. Flannery, *et al.*, "Legal Issues Concerning *In Vitro* Fertilization" (hereinafter cited as, Flannery *et al.*) and Barbara F. Katz, "Legal Implications of *In Vitro* Fertilization and Its Regulation" (hereinafter cited as Katz).

1. 45 CFR § 46.204(d).
2. 39 Federal Register 30650, August 23, 1974.
3. 45 CFR § 46.205.
4. 45 CFR § 46.202(a)(1).
5. Public Law 93-348, 88 Stat. 348, July 12, 1974.
6. 45 CFR § 46.201(b).
7. Katz, pp. 6-10; cf. Flannery *et al.*, pp. 48-49.
8. Katz, pp. 8-10; cf. Flannery *et al.*, pp. 48-49.
9. Flannery *et al.*, pp. 5-6; Katz, pp. 42-44.
10. Flannery *et al.*, p. 35.
11. Maher v. Roe, 432 U.S. 464, 478 (1977).
12. Flannery *et al.*, p. 35.
13. Maher v. Roe, 432 U.S. 464, 474 (1977).
14. Skinner v. Oklahoma, 316 U.S. 535 (1942).
15. Flannery *et al.*, p. 10.
16. Griswold v. Connecticut, 381 U.S. 479 (1965).
17. Eisenstadt v. Baird, 405 U.S. 438, 453 (1972); *see also*, Carey v. Population Services International 431 U.S. 678 (1977).
18. Flannery *et al.*, pp. 38-40; Katz, p. 49.
19. Flannery *et al.*, p. 40.
20. *Id.* at 41-42.
21. *Id.* at 42-44.
22. *Id.* at 45, n. 66.
23. *Id.* at 45-46.
24. *Id.* at 46-47; Katz, p. 49.
25. Flannery *et al.*, pp. 47-54.
26. National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. *Institutional Review Boards: Report and Recommendations*, DHEW Publication No. (OS) 78-0008, U.S. Government Printing Office, Washington, D.C., 1978, p. 78. (Discussed in Flannery *et al.*, p. 58 *et seq.*)
27. *Id.* at 79.
28. *Id.*
29. Flannery *et al.*, p. 60; Katz, pp. 45-46.
30. Flannery *et al.*, p. 61.
31. *Id.* pp. 61-63; Katz, p. 49.
32. Flannery *et al.*, pp. 63-65.
33. 45 CFR § 46.203(d).
34. Flannery *et al.*, pp. 70-72.
35. 28 U.S.C. § 1346(b); Flannery *et al.*, pp. 73-74.
36. 28 U.S.C. § 2680(a).
37. Flannery *et al.*, pp. 76-82.
38. Katz, p. 15; Flannery *et al.*, pp. 85-86.
39. Park v. Chessin, 60 App. Div.2d 80, 400 N.Y.S.2d 110 (1978).
40. Katz, p. 18; Flannery *et al.*, p. 87.
41. Katz, p. 18.
42. Jacobs v. Theimer, 519 S.W.2d 846 (Texas 1975); cited by Katz, pp. 18-19.
43. Ziemoa v. Sternberg, 400 N.Y.2d 110 (1977); cited by Katz, p. 19.
44. Troppi v. Scarf, 187 N.W.2d 511 (Mich. 1971); cited by Katz, p. 19 and Flannery *et al.*, p. 88.
45. Doerr v. Villate, 220 N.E.2d 767 (Ill. 1966); cited by Katz, p. 19.
46. Katz, pp. 19-20; Flannery *et al.*, pp. 88-89.
47. Flannery *et al.*, p. 88; Katz, pp. 29-30.
48. Del Zio v. Presbyterian Hospital, 1974 Civ. 3588 (S.D.N.Y. 1978).
49. Flannery *et al.*, p. 88.
50. Katz, p. 27.
51. Katz, pp. 32-37.
52. Katz, pp. 21-25.
53. Minn. Stat. Ann. § 145.521, section 2 (West 1977); cited by Flannery *et al.*, n. 19.
54. Minn. Stat. Ann. § 145.522, (West 1977); cited by Flannery *et al.*, n. 19.

Chapter V.—Review of Public Attitudes

A. Responses Received by the EAB

Between September 15 and December 15, 1978, the Ethics Advisory Board held eleven public hearings on the question of federal support of research involving human *in vitro* fertilization (IVF) in order to afford an opportunity for members of the public to present their views. In all, several thousand hearing notices were sent to professional organizations, public interest groups, universities, clergy, and individuals. Everyone who requested to appear was heard; 179 individuals presented testimony in hearings in Bethesda (Maryland), Boston, Seattle, San Francisco, Atlanta, Kansas City, Detroit, Philadelphia, Denver, Dallas and New York City. Eighteen people preferred to submit formal written testimony in lieu of oral presentation. In addition, the Board received over 2000 letters and postcards, some of which were forwarded from President Carter and Secretary Califano.

Transcripts of all formal presentations (both oral and written) have been distributed to members of the Board and are available to the general public from the National Technical Information Service (NTIS). All of the correspondence received by the Board has been duplicated and distributed to members; copies are on file at the office of the EAB and are available for public inspection.

In the arguments and presentations made to the Board, it was evident that many people did not distinguish between basic research involving laboratory fertilization of human ova (IVF) on the one hand, and the subsequent transfer of the resulting embryos to establish a pregnancy, on the other. Thus, some of the arguments both for an against "*in vitro* fertilization" referred only to one or another of the procedures under consideration by the Board. At the public hearings, it was often possible to elicit clarification by asking whether a person's statement was intended to apply to both the basic research and the clinical application; this was not the case with respect to written communications. Summaries of the arguments are presented below.

1. *Arguments in favor of Federal Funding.* Although there were, of course, many variations on the theme, most of the arguments in favor of federal support of IVF focused on either the risks and benefits of IVF or the rights of investigators and infertile couples: (a) The scientific benefits to be gained; (b) the need for federal regulation; (c) the necessity to evaluate and to reduce the risks inherent in the procedure and the reliance of such research on federal suppport; (d) freedom of inquiry for scientists; (e) freedom of reproductive choice for infertile couples; and (f) the rights of infertile couples to some return on their taxes paid for general health and welfare.

The majority of individuals who favor federal funding for research involving human IVF stressed the benefits it would produce for the general welfare (*e.g.*, understanding and correcting infertility, preventing birth defects, understanding certain hereditary diseases, furthering the search for a cure for cancer, improving our knowledge of early fetal development, and developing better methods of contraception). A number of witnesses stated that there are many scientific procedures that can be used for either the benefit or the detriment of mankind; but the possibility for abuse does not in and of itself make their development morally wrong. Many responded to the concern regarding "discards" by noting that fertilized eggs are often lost in the natural process of reproduction. Some stated that it is morally irrelevant whether embryo loss occurs naturally or in a laboratory. Other individuals pointed out that zygote wastage may eventually be eliminated. For example, it may be possible to extract only one ovum at a time, as suggested by Dr. Steptoe (on Meet the Press), once the techniques of fertilization and embryo transfer are improved. Moreover, some public witnesses stated that once the technique of freezing the embryos is perfected, fertilized eggs that are not transferred immediately may be preserved for later attempts at implantation.

Numerous witnesses expressed concern about the possible risks of embryo transfer procedures already being performed in the private sector. A few stressed the need to hold investigators accountable for their actions; others urged federal support of the activities in order to apply regulations to assure that they will be conducted in a responsible manner. They thought that if the government were to fund research and adopt regulations governing the experimentation, investigators receiving non-government money would follow the government regulations.

Some stressed the need for government support to assure greater exploration of animal models and to encourage basic research in human IVF so that the safety and efficacy of the procedure can be evaluated before clinical application of embryo transfer is permitted. A related argument was that if research is permitted, scientists may be expected to improve the technique of *in vitro* fertilization and embryo transfer so that risks to mother and offspring will be substantially reduced.

Several individuals stressed the responsibility of the government to assure freedom of inquiry. Others urged the government to educate the public about the significance of new scientific discoveries to the public. They were concerned that the development of federal policy with such profound implications might be influenced by a public unnecessarily alarmed by inaccuracies and misinterpretations.

The last set of arguments in favor of federal funding related to the rights of infertile couples as taxpayers and the corresponding duties of the government. A number of individuals felt that since childless couples have paid taxes that subsidize the costs of contraception and childbearing, as well as education and welfare, for other people's children, the government has an obligation to assist them by supporting research and services relevant to their reproductive needs. Some argued that it is the government's responsibility to ensure freedom of choice for women by making both alternatives—raising a family or remaining childless—available to all couples.

It was stated that at the present time, adoption is not a viable alternative for childless couples. The waiting list for infants is very long and the cost for international adoption is exhorbitant and limited. There was additional testimony, however, that even if adoption procedures could be improved, problems would remain; adoption does not satisfy the very strong desire to bear one's own child. Some even suggested that the unfulfilled desire to bear children threatens the mental health of women and the stability of marriages. They argued that infertility is a disorder requiring medical intervention, and that the government has a responsibility to make such health care available to all citizens. Since the government funds therapeutic abortions when bearing a child would threaten the life or health of the mother, they noted, the government ought to fund "therapeutic conception" as well. Some elaborated on this argument, stating that government funding is necessary to assure that the option of having a child through *in vitro* fertilization is available to poor women as well as to those who are able to purchase the option in the private sector.

2. *Arguments Opposed to Federal Funding.* In general, the arguments against federal support of IVF and embryo transfer stemmed from five major concerns: (a) The moral status of the embryo; (b) questions of safety; (c) funding priorities; (d) decreasing ability to limit more objectionable procedures; and (e) detrimental social and psychological effects on offspring, family and physicians.

The most frequently articulated argument against federal funding of IVF was based on the moral status of the fertilized egg and embryo. Proponents of this argument believed that human life should be respected from the moment of fertilization. They argued that deliberately to create human life merely for experimental purposes with no intent or expectation of sustaining such life is immoral.

Since many fertilized eggs are discarded in the normal process of procreation some proponents of this position said that they might not oppose *in vitro* fertilization research if a technique could be perfected that would allow the investigators to extract and fertilize only one egg, or freeze for later transfer the embryos which could not be implanted immediately. Others stated that even if such a technique were perfected, it would still be unethical to fund *in vitro* fertilization research because of the immorality of interfering with the natural process of human reproduction.

Many individuals expressed concern about proceeding with embryo transfer in humans without further data concerning its safety. They believed that more should be known about the probability of producing defective embryos. They also thought it important to gain more information concerning level of risk to the women undergoing the procedures. Among opponents of federal funding on the grounds of safety were those who thought that people have a right to take risks by volunteering for research conducted in the private sector, but that it is unethical for the government to approve and support IVF and embryo transfer in humans before the risks and benefits have been more fully evaluated.

A large number of persons opposed government funding of IVF and embryo transfer because they believe it is not an important national priority. Various other needs were suggested as having greater claims upon government funds. A favorite alternative was research to develop methods of preventing and treating disorders (such as pelvic infectious diseases) that result in the tubal occlusion giving rise to demands for IVF. Others indicated that funds would be better spent in improving fertility control and in learning to prevent or treat birth defects and genetic abnormalities. Still others stressed society's responsibility toward those children already in existence who have been abused or abandoned. Programs encouraging adoption should have higher priority than IVF. There were also those who believed it

inappropriate to fund IVF when the majority, they were certain, opposed such research on deeply-felt ethical or religious grounds. The government should not spend public money for experiments so clearly in conflict with the basic commitments of many of the citizens.

Some expressed a fear that approving policies that permit researchers consciously to intend human life to die *in vitro* could lead to an inability to draw barriers to policies that allowed more obviously objectionable occasions for humans to end the life of other humans. Some proponents of this argument believed that the selective destruction of undesirable fertilized eggs might contribute to the creation of a eugenic program controlled by some officially condoned elite. There was even the fear that barriers would fall to the creation of half-animal, half-human hybrids or chimeras.

A variety of harmful consequences to the psychological and social well-being of those involved in IVF were cited as reasons for not funding such research. Fears were expressed that children born through *in vitro* fertilization would initially be subject to considerable notoriety and be unable to escape a continuing stigma. There was concern that IVF might endanger the family by reducing the human act of reproduction to an artificial or mechanical laboratory procedure. An even greater threat to the family would be the possible use of surrogate mothers and extra-marital donors of genetic material. This set of reasons for opposing government funding of IVF included the dehumanizing of scientists and doctors involved in the research who must dispose of the human embryos. Another possible consequence cited as a reason for opposing funding was the possible exploitation of uneducated, poor and minority women.

B. *Public Opinion Surveys*

Since the birth of Louise Brown on July 25, 1978, both the Gallup and Harris survey organizations have conducted polls providing the clearest indication available of United States public opinion concerning IVF. The Gallup survey included reactions of both men and women. The Harris survey, conducted August, 1978 for *Parents* magazine, polled 1,501 representatively selected American women. Both polls revealed that majority opinion favors IVF. However, most women in the Harris survey wanted IVF prohibited until further testing had established its safety, and they opposed federal funding of research on IVF.

Gallup reported that 60% of both men and women "favored" the operation. Of persons who could fully explain the procedure, 75% approved, indicating that more knowledge of IVF led to greater acceptance. Approval was even higher among the women in the Harris poll. Eighty-five percent said that the procedure should be an option for couples otherwise unable to have children.

As to whether Americans would be willing to avail themselves of the operation, the two polls reported that a majority would do so. Gallup found 53% of Americans generally would undergo the procedure. Harris reported that 58% of women of childbearing age would consider using IVF. More specifically defined groups among childbearing women produced even more favorable attitudes: 61% of younger women, age 18–39, approved of IVF, as did 66% of the women actually planning to have children.

While most women in the Harris survey approved of IVF as a legitimate option, when they were asked if they couldn't have children would they prefer adoption or IVF, more than twice as many chose adoption (57%) as IVF (21%). Furthermore, a healthy majority (63%) wanted IVF to be banned as standard medical practice until further research had determined whether the operation increased the likelihood of birth defects. (Only 24% wanted IVF available immediately.) Interestingly, although most women wanted further testing of IVF, half (50%) opposed federal funding of such research.

Public Witnesses

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Chapter VI—Summary and Conclusions

It is now technically possible to fertilize a human egg outside the body of a woman and then transfer the fertilized egg (sometimes called a blastocyst or preimplantation embryo) back into the woman to establish a pregnancy. For some women, *in vitro* fertilization may be the only way to bear children of their own. It does not appear, however, that the procedure for achieving pregnancy by this means is yet very effective; the best available data indicate that a number of attempts have been necessary before a pregnancy in a particular woman can be established, if at all. In addition, many questions remain as to the safety of the procedure for the offspring. Nevertheless, there is reason to believe that clinics may soon be established, both in this country and abroad, where *in vitro* fertilization and embryo transfer will be offered as "therapy" for infertile couples.

The Board is required by HEW regulations to review research proposals involving human *in vitro* fertilization and advise the Secretary as to their "acceptability from an ethical standpoint." [1] This phrase is broad enough to include at least two interpretations: (1) "Clearly ethically right" or (2) "ethically defensible but still legitimately controverted." In finding that research involving human *in vitro* fertilization is "acceptable from an ethical standpoint" the Board is using the phrase in the second sense; the Board wishes to emphasize that it is *not* finding that the ethical considerations against such research are insubstantial. Indeed, concerns regarding the moral status of the embryo and the potential long-range consequences of this research were among the most difficult that confronted the Board.

In its deliberations on human *in vitro* fertilization, the Board confronted many ethical, scientific and legal issues. Among the more difficult were the following: (A) The moral status of the embryo; (B) the safety and efficacy [2] of the procedure; (C) the potential long-range adverse effects of such research; and (D) the appropriateness of Departmental support.

[1] 45 CFR 46.204(d).
[2] By "efficacy" the Board means not only whether the procedure can be done but also how efficient it is, e.g., the number of procedures required to achieve the desired result.

A. After much analysis and discussion regarding both scientific data and the moral status of the embryo, the Board is in agreement that the human embryo is entitled to profound respect; but this respect does not necessarily encompass the full legal and moral rights attributed to persons. In addition, the board noted the high rate of embryo loss that occurs in the natural process of reproduction. It concluded that some embryo loss associated with attempts to assist otherwise infertile couples to bear children of their own through *in vitro* fertilization be regarded as acceptable from an ethical standpoint, under certain conditions, as more fully described below.

B. The Board is concerned about still unanswered questions of safety for both mother and offspring of *in vitro* fertilization and embryo transfer; it is concerned, as well, about the physical and mental health of the children born following such a procedure and about their legal status. Many women have told the Board that in order to bear a child of their own they will submit to whatever risks are involved. The Board believes that while the Department should not interfere with such reproductive decisions, it has a legitmate interest in developing and disseminating information regarding safety and health so that fully informed choices about reproduction can be made.

C. A number of fears have been expressed with regard to adverse effects of technological intervention in the reproductive process: fears that such intervention might lead to genetic manipulation or encourage casual experimentation with human embryos, or bring with it the use of surrogate mothers, cloning, or the creation of genetic hybrids. Some have suggested that such research might also have a dehumanizing effect on investigators, the families involved, and society generally. (See Chapter III of this report.)

Although the Board recognizes that there is an opportunity for abuse in the application of this technology as other technologies, it concluded that a broad prohibition of research involving human *in vitro* fertilization is neither justified nor wise. Among the developments warned against by some who testified before the Board, a few (*e.g.*, the cloning of human beings and the creation of animal/human hybrids) are of uncertain or remote risk. Other possible developments, such as the use of surrogate mothers, may be contained by regulation or legislation. Other abuses may be avoided by the use of good judgment based upon accurate information of the type collected by the Board and now being disseminated in this report. Finally, where reproductive decisions are concerned, it is important to guard against unwarranted governmental intrusion into personal and marital privacy.

D. The question of Federal support of research involving human *in vitro* fertilization and embryo transfer was troublesome for the Board in view of the uncertain risks, the dangers of abuse and because funding the procedure is morally objectionable to many. In weighing these considerations, the Board noted that the procedures may soon be in use in the private sector and that Departmental involvement might help to resolve questions of risk and avoid abuse by encouraging well-designed research by qualified scientists. Such involvement might also help to shape the use of the procedures through regulation and by example. The Board concluded that it should not advise the Department on the level of Federal support, if any, of such research; but it concluded that Federal support, if decided upon after due consideration of all that is at issue, would be acceptable from an ethical standpoint.

Evidence presented to the Board indicates that human *in vitro* fertilization and embryo transfer techniques may, in the near future, be employed throughout the world in both research and clinical practice settings. The Board believes that data from these activities as well as related types of animal research should be collected, analyzed and, when appropriate, given wide public dissemination. Accordingly, the Board recommends in conclusion #4 below, that the Department take the primary initiative in carrying out these functions.

Having carefully weighed diverse ethical points of view and a broad base of scientific considerations regarding human *in vitro* fertilization and embryo transfer, the Board has concluded that: (1) The Department should consider support of more animal research in order to assess the risks to both mother and offspring associated with the procedures; (2) the conduct of research involving human *in vitro* fertilization designed to establish the safety and effectiveness of the procedures is ethically acceptable under certain conditions; (3) Departmental support of such research would be acceptable from an ethical standpoint, although the Board did not address the question of the level of funding, if any, which such research might be given; (4) the Department should take the initiative in collecting, analzing and disseminating data from both research and clinical practice involving *in vitro* fertilization throughout the world; and (5) model or uniform laws should be developed to define the rights and responsibilities of all parties involved in such activities.

Finally, the Board is aware of the possibility of research that involves the collection and culture of early human embryos in the laboratory which have been fetilized naturally rather than *in vitro*. The ethical aspects of such research, which appears to bear a close resemblance to research involving *in vitro* fertilization, have not been examined by the Board. Therefore it has not reached a conclusion concerning the ethical acceptability of these procedures. However, the Board intends to consider in the near future the need for setting standards for such research.

Conclusion (1).—The department should consider support of carefully designed research involving *in vitro* fertilization and embryo transfer in animals, including nonhuman primates, in order to obtain a better understanding of the process of fertilization, implantation and embryo development, to assess the risks to both mother and offspring associated with such procedures, and to improve the efficacy of the procedure.

Discussion: As indicated in Chapter III of the Board's report, available scientific data do not indicate clearly either the relative safety or the efficacy of procedures of *in vitro* fertilization and embryo transfer. Some scientists have suggested that *in vitro* fertilization may result in a higher incidence of abnormal embryos than is associated with the normal reproductive process, although there are no animal data that clearly demonstrate such an effect. Neither are there data that demonstrate an absence of increased abnormality in embryos following *in vitro* fertilization. The Board feels that additional data should be gathered that might indicate whether abnormal embryos are more likely to result and, if so, whether there is a significant increase in the risk of abnormal offspring actually being born following such procedures.

Experts appearing before the Board agreed that there has been insufficient controlled animal research designed to determine the long-range effects of *in vitro* fertilization and embryo transfer. The lack of primate work is particularly noteworthy in view of the opportunity provided by primate models for assessing subtle neurological, cognitive and developmental effects of such procedures. The Board has been advised that controlled studies of embryo

transfer following *in vitro* fertilization in animals, designed to include developmental assessments, may be feasible and may permit more confident estimates of the risk to human offspring associated with such procedures.

Information regarding the effectiveness of the procedures for *in vitro* fertilization and embryo transfer is also lacking. It does not appear possible to predict with reliability the number of laparoscopies and embryo transfers that might be required, or the likelihood of success of the procedure for any couple, given the fact that, to date, only three successes have been reported in humans, and that very limited information is available concerning this work. Such data as are available suggest that any woman hoping to bear a child through *in vitro* fertilization is likely to face numerous unsuccessful procedures and delays with no assurance of achieving her goal.

Careful research with animal models might provide a more accurate estimate of the chances of achieving a successful pregnancy. It might also reduce the inconvenience and risk to women of undergoing multiple procedures to establish a pregnancy by improving techniques for recovering ova, identifying embryonic abnormalities and achieving implantation. It is often the case in medicine that, even after therapies are already being applied to humans, investigations continue in animals in order to test further or to improve their safety and effectiveness. The Board believes that the Department should consider support of well-designed animal studies whether or not human research or clinical trials are also in progress.

Conclusion (2)—The ethics advisory board finds that it is acceptable from an ethical standpoint to undertake research involving human *in vitro* fertilization and embryo transfer provided that:

A. If the research involves human *in vitro* fertilization without embryo transfer, the following conditions are satisfied:

1. The research complies with all appropriate provisions of the regulations governing research with human subjects (45 CFR 46);

2. The Research is designed primarily: (A) To establish the safety and efficacy of embryo transfer and (B) to obtain important scientific information toward that end not reasonably attainable by other means;

3. Human gametes used in such research will be obtained exclusively from persons who have been informed of the nature and purpose of the research in which such materials will be used and have specifically consented to such use;

4. No embryos will be sustained *in vitro* beyond the stage normally associated with the completion of implantation (14 days after fertilization); and

5. All interested parties and the general public will be advised if evidence begins to show that the procedure entails risks of abnormal offspring higher than those associated with natural human reproduction.

B. In addition, if the research involves embryo transfer following human *in vitro* fertilization, embryo transfer will be attempted only with gametes obtained from lawfully married couples.

Discussion: This conclusion relates to the ethics of conducting research involving *in vitro* fertilization in general; it does not address the question of Departmental support of such research. The purpose of this more general conclusion is to provide guidance to Institutional Review Boards and other groups who are asked to review research that will not be supported by HEW.[3] Whether or not the Department decides to provide funds for such research, the Board wishes to express its views regarding the conduct of human *in vitro* fertilization and embryo transfer, so that review groups may benefit from the deliberations of the Board as they conduct their own review of specific research proposals.

As emphasized above, the Board believes that much remains to be learned about the safety and effectiveness of these procedures before they can be considered standard, accepted medical practice. Research designed to provide reliable data regarding safety and efficacy is acceptable from an ethical standpoint if conducted within the constraints indicated above. In the case of research involving embryo transfer, the Board intends not only that the gametes be obtained from lawfully married couples but also that the embryo be transferred back to the wife whose ova were used for fertilization.

The Board also discussed research designed primarily to establish safety and efficacy but which may, in addition, obtain information of scientific importance unrelated to *in vitro* fertilization and embryo transfer. The Board believes that such research, if performed as a corollary to research designed primarily to establish safety and efficacy of *in vitro* fertilization and embryo transfer, would also be acceptable from an ethical standpoint.

Conclusion (3)—The Board finds it acceptable from an ethical standpoint for the department to support or conduct research involving human *in vitro* fertilization and embryo transfer, provided that the applicable conditions set forth in conclusion (2) are met. However, the Board has decided not to address the question of the level of funding, if any, which such research might be given.

Discussion: 1. *Departmental support.* The Board consciously adopted the language "acceptable from an ethical standpoint" to indicate the limits of its inquiry. Even though the members are aware that ethical considerations pervade decisions regarding the level, if any, of Departmental support of human *in vitro* fertilization, the Board has concluded that it lacks the resources needed to render meaningful advice with respect to such decisions. The Board, therefore, defers to established political, scientific and administrative procedures for allocating public research funds.

The Board wishes to note that such decisions have significant ethical dimensions. For example, some believe that research involving human *in vitro* fertilization should have a relatively low priority at a time when other health needs, arguably more basic in character and long-term in nature, are unmet. Others find such research objectionable either on grounds related to the moral status of the embryo or because it may lead to undesirable genetic interventions or have a long-range adverse effect. (See Chapter III of this report.) Still others believe that research on human *in vitro* fertilization and embryo transfer should have a high priority because it might help parents overcome physical obstacles to having their own children and ensure the mothers' safety and the normality of offspring.

The Board has found that these and other ethical arguments for and against public funding of research involving human *in vitro* fertilization, by themselves, are not conclusive. Instead, the Board believes that the questions of whether to fund and at what level should be made in the larger context where all relevant data and arguments—scientific, political, economic, legal and ethical—can be considered. In that context questions such as health and safety, availability of funds, and alternative research

[3] Federal law requires all institutions receiving research funds from HEW to establish an Institutional Review Board (IRB) to review biomedical and behavioral research involving human subjects. (Pub. L. 93-348). The Department, in implementing that law, requires all such research conducted at an institution to be reviewed by the IRB, whether or not the research is supported by HEW.

proposals, must be considered along with the very difficult type of ethical issues described above which arise in allocation of resources.

2. *Research without embryo transfer.* As previously noted the risks of producing abnoraml offspring are still undertermined; therefore, an important goal would be to gain as much information as possible from well-designed research on *in vitro* fertilization not involving embryo transfer in humans. The Department should conduct a careful scientific evaluation of the possibility, supported by some expert testimony before the Board, that animal research and studies involving human *in vitro* fertilization without embryo transfer, over a relatively short period, might substantially increase our knowledge concerning the possible risk of abnormal offspring as well as lead to the development of safe and more effective techniques.

3. *Research involving embryo transfer.* While initial research efforts designed to gain as much information as possible form animal studies and human research not involving embryo transfer may be desirable, the Board does not wish to discourage planning and preparation that may lead to clinical trials or other forms of research involving embryo transfer. The Department's participation in, or support of, clinical trials is often an effective method to evaluate the safety and efficacy of innovative medical procedures, particularly as the use of the procedures increases.

4. *Research for other purposes.* Potentially valuable information about reproductive biology, the etiology of birth defects, and other subjects may be revealed through research involving human *in vitro* fertilization without embryo transfer, and unrelated to the safety and efficacy of procedures for overcoming infertility. The Board makes no judgment at this time regarding the ethical acceptability of such research nor does it speculate about what research might be sufficiently compelling to justify the use of human embryos. Instead, it notes that applications for support of such research should be submitted to the Board for ethical review in accordance with 45 CFR 46.204(d).

5. *Pending Research Application.* Given the criteria specified in Conclusion (2) and incorporated in Conclusion (3) for evaluating research involving human *in vitro* fertilization, and the Board's views about Departmental support of such research, the Board recommends that the Secretary refer the pending application of Vanderbilt University back to the National Institutes of Health for a determination as to whether the proposal meets those criteria and for further review in light of the considerations set forth in this report.

Conclusion (4)—The national institute of child health and human development (NICHD) and other appropriate agencies should work with professional societies, foreign governments and international organizations to collect, analyze and disseminate information derived from research (in both animals and humans) and clinical experience throughout the world involving *in vitro* fertilization and embryo transfer.

Discussion: The Board is aware that the most valuable information regarding *in vitro* fertilization and embryo transfer is likely to come from well-controlled clincial trials. But it is expected that *in vitro* fertilization and embryo transfer will soon be performed in clinics throughout the world, sometimes without benefit of research design or experimental controls. It would be unfortunate not to have access to the information that might be gained from such clinical experience, notwithstanding the fact that well-designed investigations would be preferable. With that in mind, the Board recommends that every effort be made to collect whatever information may be elicited from practitioners in this country and abroad. NICHD should also consider suggesting to practitioners a basic protocol for collecting vital information, to which each would be encouraged to add their own observations.

The data from such clinical experience and from research conducted throughout the world should be analyzed along with that derived from animal studies so that individuals contemplating *in vitro* fertilization and embryo transfer will have access to the best information available regarding risks to both mother and offspring. Timely dissemination of the information would increase the opportunity for investigators, clinicians and prospective patients to be fully informed.

Conclusion (5)—The secretary should encourage the development of a uniform or model law to clarify the legal status of children born as a result of *in vitro* fertilization and embryo transfer. To the extent that funds may be necessary to develop such legislation, the department should consider providing appropriate support.

Discussion: The Board is concerned about the ambiguity regarding the legal status of children born following artificial insemination and a similar ambiguity that may surround the legal status of children born following *in vitro* fertilization and embryo transfer. The Board is also concerned about lack of clarity regarding the legal responsibilities of those who utilize, support, or permit use of such procedures. Because of the complexity of the legal problems involved in new techniques for human reproduction, the Board recommends that a model or uniform law be drafted that would establish with clarity the rights and responsibilities of donor and recipient "parents", of offspring and of those who participate in the process of reproduction through new technologies.

The Board urges that such a uniform or model law be drafted by the National Conference of Commissioners on Uniform State Laws, the American Law Institute, or some other qualified body. Because of the complex nature of the subject matter, however, the Board is aware that the task may be a major undertaking and suggests that the Department consider providing funds for drafting the legislation. Since the purpose is to safeguard the health and welfare of children and their families, it appears to be an appropriate project for Departmental support.

[FR Doc. 79-18925 Filed 6-15-79; 8:45 am]
BILLING CODE 4110-12-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Policy Research on Work and the Aged; Solicitation

Pursuant to Title 45, Part 63 of the Code of Federal Regulations, the Assistant Secretary for Planning and Evaluation (hereafter ASPE) is seeking applications from public and private non-profit agencies, organizations, and institutions for policy-related research projects on the work and income of the elderly and other areas relating to the economics of income transfer programs for the elderly. In particular, we are most interested in projects which relate to the following areas:

1. The labor supply of the elderly.
2. The demand for the labor of the elderly.
3. Unemployment of the elderly.
4. Effects of income transfer programs for the elderly on the savings and work behavior of the non-elderly.
5. Private programs for disability and retirement, and their interaction with public programs.
6. Macro-economic effects on income transfer programs for the elderly.

7. The income distribution of the elderly.

This list is intended to be suggestive, and applications which combine several areas or depart from all of them, are acceptable as long as they relate to the general concerns of work and income of the elderly and the economics of income transfer programs for the elderly.

A. Criteria for Evaluation

Evaluation of applications will employ the following criteria:

1. The potential usefulness of the anticipated results of the proposed project for informing the development of policy relating to the general concerns discussed above.

2. Potential usefulness of the proposed project for the advancement of scientific knowledge.

3. Clarity of statement of the objectives, methods, and anticipated results of the proposed project.

4. Appropriateness and soundness of methodology, including research design statistical techniques, choice of data, and other procedures.

5. Feasibility of the project and adequacy of the proposed resources for achievement of the objectives.

6. Qualifications and experience of personnel.

7. The record of the agency, institution, or organization, or, where appropriate, the personnel proposed for the project, in successful and timeful completion of comparable projects.

B. Applicable Regulations

The applicable regulations are:

1. "Grant Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), which was published in the Code of Federal Regulations on October 1, 1976.

2. "Administration of Grants" (45 CFR Part 74), which was published in the Code of Federal Regulations on August 2, 1978.

C. Effective Date and Duration

1. Grant awards pursuant to this solicitation will be made on or about September 15, 1979.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. Applications will be accepted no later than 45 days from issuance.

D. Statement of Funds Availability

1. ASPE has available about $165,000 for the Fiscal Year ending September 30, 1979, for the award of grants pursuant to this solicitation.

2. It is expected that between three and eight grants will be made, although the proposal review panel will retain flexibility on the size and number of grants based on the proposals received. Proposals for amounts between $5,000 and $165,000 will be acceptable.

3. Applications may be submitted for projects of several years duration, but funds awarded under this solicitation will be awarded for only one year of any project. However, proposals for multi-year projects which are accepted for first year awards will be eligible for further funding on a non-competitive basis, providing funds are available in succeeding years and projects are performing acceptably. Since there can be no guarantee of continuous funding, projects should be designed to produce significant results during the first year of performance.

E. Applications Processing

1. Grant applications will be reviewed and awards made by an interagency panel of HEW staff, possibly augmented, if appropriate, by outside experts.

2. Applicants will be judged as to eligibility and, if eligible, as to priority of awards, *strictly according to the criteria for evaluation* set forth in paragraph A of this Solicitation. Priority will be given to applicants who, in the judgement of the panel, best meet these criteria. The relative weighting of the criteria are as follows:

Criterion	Weight (points)
1	15
2	15
3	5
4	25
5	10
6	25
7	5
Total	100

3. Applications judged to be below an acceptable level of any criterion will be classified as conditionally unacceptable, regardless of overall point standing.

4. Applications should be as brief and concise as is consistent with communication to the reviewers.

5. The first chapter of each proposal should be a brief (no more than five pages) overall summary description of the project. The summary description should briefly address how the proposed project would be responsive to each of the seven criteria listed in paragraph A of this Solicitation.

Applicants should make certain that the seven criteria are fully addressed in the proposal since failure to satisfy even one criterion could seriously weaken or even invalidate a proposal.

6. Nothing in this Solicitation should be construed as committing ASPE to dividing available funds among all qualified applicants.

F. Applications Sent by Mail

An application sent by mail will be considered to be received on time by the Grants Officer if the application was sent by registered or certified mail and and mailed not later than August 2, 1979 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this Solicitation. Hand-delivered applications will be accepted daily between the hours of 9:00 a.m. and 5:30 p.m. (Washington, D.C., time), except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after 5:30 on the closing date.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of an application, ASPE will either (a) approve the application in whole or in part, for such amount of funds and subject to such conditions as he deems necessary or desirable for the completion of the approved project, (b) disapprove the application, or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* ASPE will notify the applicants in writing of the disposition of their applications. A signed notification of grant ward will be issued to notify the applicant of an approved project application.

I. Application Instructions and Forms

Questions concerning the preceding information, coppies of application forms, and applicable regulations shall be obtained from, or submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health, Education, and welfare, Room 457F, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

Dated: June 12, 1979.

Benjamin W. Heineman, Jr.,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-18662 Filed 6-15-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

June 8, 1979.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the

Tchinouk Indians, c/o Mrs. Karleen F. McKenzie, 5621 Altamont Drive, Klamath Falls, Oregon 97601.

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on May 16, 1979. The petition was forwarded and signed by Karleen F. McKenzie.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under Section 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79-18613 Filed 6-15-79; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Qualified Joint Bidders; Outer Continental Shelf; Correction

A notice was published on June 1, 1979, in the **Federal Register** Vol. 44, No. 107 (79-16988), beginning on page 31721. The heading of the notice was *Qualified Joint Bidders: Outer Continental Shelf (OCS).* Attention is called to column 3 on page 31722:

"Union Oil Company" should be changed to read "Union Oil Company of California."

The last word of the second line of the paragraph following the list of names, "nine," should be changed to "eleven".

Dated: June 12, 1979.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

[FR Doc. 79-18606 Filed 6-15-79; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Ozark National Scenic Riverways Advisory Commission; Meeting

Notice is hereby given in accordance with Pub. L. 99-463 that a meeting of the Ozark National Scenic Riverways' Advisory Commission will be held on Friday, July 13, 1979, at 10:00 a.m. (CDT) at the Riverways' Headquarters on U.S. Highway 60 in Van Buren, Missouri.

The Commission was established by Public Law 88-492 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Ozark National Scenic Riverways.

The members of the Commission are:

Dr. Oscar Hawksley, Warrensburg, Missouri (Chairman).
Mr. David Rust, Cabool, Missouri.
Mr. H. C. Daniel, Van Buren, Missouri.
Mr. Carlton E. Bay, Salem, Missouri.
Mr. William Hall, Kansas City, Missouri.
Mr. Henry F. Leupke, Jr., St. Louis, Missouri.
Mr. Edward Hodge, Eminence, Missouri.

The purpose of this meeting is to discuss with the Commission and to receive its input regarding the public involvement phase of the General Management Plan for the Riverways.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting or who wish to submit written statements, may contact Arthur L. Sullivan, Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965, telephone area code 314-323-4236. Minutes of the meeting will be available for public inspection four weeks after the meeting at Ozark National Scenic Riverways headquarters in Van Buren, Missouri.

Dated: June 7, 1979.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 79-18809 Filed 6-15-79; 8:45 am]

BILLING CODE 4310-70-M

MINIMUM WAGE STUDY COMMISSION

Commission Meeting

June 13, 1979.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the cancellation of the following Commission meeting:

Name: Minimum Wage Study Commission.
Date: July 10, 1979.

Original notification of this meeting appeared in the May 30 **Federal Register.**

Next meeting of the Commission will be held Tuesday, August 14, 1979.

All communications regarding this Commission should be addressed to: Mr. Louis E. McConnell, Executive Director, 1430 K St. St. NW, Suite 500, Washington, D.C. 20005, (202) 376-2450.

Louis E. McConnell,

Executive Director.

[FR Doc. 79-18668 Filed 6-15-79; 8:45 am]

BILLING CODE 4510-23-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-131]

Veterans Administration Medical Center; Proposed Renewal of Amended Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Amended Facility License No. R-57, issued to the Veterans Administration Medical Center (the licensee), for operation of the TRIGA type nuclear reactor located in Omaha, Nebraska.

The renewal would extend the expiration date of Amended Facility License No. R-57 to June 24, 1989, in accordance with the licensee's timely application for renewal dated May 10, 1979.

Prior to renewal of the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 18, 1979, the licensee may file a request for a hearing with respect to renewal of the subject facility operating license and any person whose interest may be affected by this proceeding and

who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated May 10, 1979, as may be supplemented by further submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland this 8th day of June 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79-18985 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329, 50-330]

Consumers Power Co. (Midland Plant, Units 1 and 2); Evidentiary Hearing (Remand Proceeding)

June 12, 1979.

Please take notice that pursuant to the provisions of the Prehearing Conference Order entered in this proceeding on May 3, 1979, an evidentiary hearing will be held on July 2–27, 1979 at the U.S. Nuclear Regulatory Commission Hearing Room; located at 4350 East/West Highway, Bethesda, Maryland 20014, 5th Floor; commencing at 9 a.m., local time.

As set forth in our Prehearing Conference Order of May 3, 1979, the following issues will be the subject of the evidentiary hearing:

Issue No. 1

Whether there was an attempt by parties or attorneys to prevent full disclosure of, or to withhold relevant factual information from the Licensing Board in the suspension hearings (ALAB–458, 7 NRC 155, 172 fn. 64 177, fn. 87).

Issue No. 2

Whether there was a failure to make affirmative full disclosure on the record of the material facts relating to Dow's intentions concerning performance of its contract with Consumers.

Issue No. 3

Whether there was an attempt to present misleading testimony to the Licensing Board concerning Dow's intentions.

Issue No. 4

Whether any of the parties or attorneys attempted to mislead the Licensing Board concerning the preparation or presentation of the Temple testimony.

Issue No. 5

What sanctions, if any, should be imposed as a result of affirmative finds on any of the above issues.

It is so ordered.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland this 12th day of June 1979.

Marshall E. Miller,

Chairman.

[FR Doc. 79-18926 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-31]

Georgia Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 66 to Facility Operating License No. DPR-57 issued to Georgia Power Company, Oglethorpe Electric Membership Corporation, Municipal Electric Association of Georgia, and City of Dalton, Georgia, which revised Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1 (the facility) located in Appling County, Georgia. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to allow the count rate on the Source Range Monitor channels to drop below 3 counts per second when the entire core is removed or reloaded.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 11, 1979, (2) Amendment No. 66 to License No. DPR-57, and (3) The Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Appling County Public Library, Parker Street, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 12th day of June 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-18827 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-466 CP]

Houston Lighting & Power Co.; Supplementary Notice of Intervention Procedures

On December 28, 1973, there was published at 38 **Federal Register** 35521 a notice that Houston Lighting & Power Co. had filed an application with the Atomic Energy Commission for a permit to construct Allens Creek Nuclear Generating Station, Units 1 and 2 (station) at a site in southern Austin County, Tex., west of the Brazos River and about 45 miles west of the center of Houston. The notice provided that petitions for leave to intervene in the proceeding could be filed by January 24, 1974. The only petition filed was by the attorney general of the State of Texas.

A hearing was held on the application by an Atomic Safety and Licensing Board (Licensing Board) on March 11 and 12, 1975. Following that hearing the applicant notified the Licensing Board that its plans for the construction of the station were indefinitely deferred. The Licensing Board, notwithstanding, issued a partial initial decision (LBP-75-66, 2 NRC 776, 1975) in which certain findings of fact were made, and in which it was concluded at page 812 that the findings "have demonstrated no reason why the (station) site is not a suitable location for nuclear reactors of the general size and type proposed * * *". The Appeal Board's memorandum and order of December 9, 1975, ALAB-301, 2 NRC 353, in affirming the Licensing Board's partial initial decision, stated that those findings by the Licensing Board in its partial initial decision are subject to later revision should further developments or new information so warrant.

On August 19, 1977, the applicant advised the Board that it wished to resume licensing of only one of the two units previously planned and that it had amended its preliminary safety analysis report to show only one unit at the same site. The amendments also included (among others) changes in plant layout and orientation, changes in the circulating water intake and discharge structures, and a reduction in the size of the cooling lake from 8,250 to 5,120 acres. These new plans for the proposed station may raise concerns that did not exist with respect to the former ones.

This Atomic Safety and Licensing Board (Board) issued on May 31, 1978, a "Notice of Intervention Procedures".[1] As thereafter amended on September 11, 1978,[2] the notice invited the filing of new petitions to intervene but indicated that they had to be limited in scope to contentions which either (1) arose from proposed changes in plant design; or (2) were based upon evidence or information not available prior to the issuance of ALAB-301 in December 1975.

Some thirty-three petitions for leave to intervene were filed in response to the notices of May 31 and September 11, 1978, of which three were granted by the Board; the balance were denied either because the contentions therein did not fall within the permissible scope of contentions or for other reasons.[3] On consideration of appeals from the Board's determination on these petitions, the Appeal Board reversed and remanded as to petitioners who were denied intervenor status on grounds that their contentions fell outside the permissible scope of issues.[4] The Appeal Board found that the notices of May 31, and September 11, 1978, were "too restrictive."

In denying Applicant's "Motion for Reconsideration of ALAB-535" and the "NRC Staff's Motion for Clarification of ALAB-535" the Appeal Board left unanswered the question whether a new notice of hearing was required.[5]

In a subsequent Memorandum and Order, however, the Appeal Board noted the risk inherent in proceeding under the corrected notices and instead "left [it] to the Board below and to the Applicant and Staff to determine for themselves whether, in the totality of circumstances, it is worthwhile for them to assume any risks which may inhere in continuing to proceed under the [corrected notice]."[6]

For the reasons set forth above, the Board believes that it is in the public interest to issue this supplemental notice of intervention procedures for those members of the public who may have forborne filing of petitions for leave to intervene because of the limitations on the scope of contentions found by the Appeal Board to be "too restrictive".

Accordingly, any person (other than those persons and organizations which filed petitions for leave to intervene pursuant to the above notices of May 31 and September 11, 1978), who did not file a petition pursuant to those notices because of the restrictions on permissible contentions contained therein, and who wishes to intervene as a party to this proceeding must file a written petition for leave to intervene in accordance with the provisions of 10 C.F.R. 2.714. Such person shall state that he failed to file a petition for leave to intervene pursuant to the Board's notices of May 31 and September 11, 1978, because of the restrictions on permissible contentions contained in those notices. A petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceedings, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1)

[1] 43 FR 23666 (May 31, 1978).

[2] 43 FR 40328 (September 11, 1978).

[3] ASLB Memorandum and Order, February 9, 1979.

[4] ALAB-535, April 4, 1979.

[5] ALAB-539, April 23, 1979.

[6] ALAB-544, May 3, 1979.

The nature of the petitioner's right under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011–2281 (1970) to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition must be supplemented (by the time set forth in 10 CFR § 2.714(b), as amended) by a list of the contentions, which the petitioner seeks to have litigated, with the bases for each contention set forth with reasonable specificity.

The issues in this proceeding are as set forth in the Notice of Hearing as published in the Federal Register of December 28, 1973, provided, however, absent a showing of newly discovered evidence or a material change in circumstances, the Board will not entertain issues fully considered and settled in the above mentioned hearings in this matter on March 11–12, 1975, and as to which findings were made by this Board (See LBP–75–66, 2 NRC 776 (1975), and affirmed by the Appeal Board (ALAB–301, 2 NRC 353).

A petition for leave to intervene must be filed with the Secretary of the Commission and others as specified below by July 18, 1979. A petition for leave to intervene which is filed thereafter must be justified under the factors specified in 10 CFR § 2.714(a)(1)(i)–(v).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Any petitions shall be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. Thereafter, anyone admitted as a party is required to file, pursuant to the provisions of 10 CFR § 2.708, an original and twenty (20) copies of each pleading or other document other than correspondence with the Commission, and, pursuant to 10 CFR 2.701 shall serve one copy of each such paper upon all other parties to the proceeding or upon their attorneys of record.

Papers detailing the application for a construction permit may be examined by the public at the Commission's Public Document Room, 1717 H Street, N.W., Wshington, D.C. Copies of those same documents are also available at the Sealy Public Library, Sealy, Texas 77474.

It is so ordered.

Dated at Bethesda, Maryland this 12th day of June, 1979.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman.

[FR Doc. 79-18872 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–416A and 50–417A]

Mississippi Power & Light Co. (Grand Gulf Nuclear Station); Request for Action

Notice is hereby given that by petition dated May 29, 1979, the Municipal Energy Agency of Mississippi requested that proceedings be commenced to enforce the antitrust conditions of the license for the Grand Gulf Nuclear Station. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at the Clairbourne County Courthouse, Port Gibson, Mississippi 39150.

Dated at Bethesda, Maryland, this eleventh day of June, 1979.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-18928 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–220]

Niagara Mohawk Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 32 to Facility Operating License No. DPR–63 to Niagara Mohawk Power Corporation (the licensee) which revised the Technical Specifications for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

The amendment (1) extends the applicability of the safety limit on minimum reactor vessel water level by including all modes of operation and specifically including a low-low-low water level limit, (2) adds a Limiting Safety System Setting on low-low-low water level, and (3) adds a Safety Limit and Limiting Condition for Operation to require that at least two recirculation loops remain open during all modes of operation except when the reactor vessel is flooded to the level of the mainsteam line nozzle.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 29, 1979, (2) Amendment No. 32 to License No. DPR–63, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oswego County Office Building, 46 E. Bridge Street, Oswego, New York 13126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 11th day of June 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-18929 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co., et al.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company (the licensees), which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

This amendment authorizes revisions to Appendix A Technical Specifications to ensure compliance with the fracture toughness requirements of Appendix G to 10 CFR Part 50 during heatup and cooldown operations, system hydrostatic tests and reactor core criticality.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 8, 1976, and supplement thereto dated July 1, 1977, (2) Amendment No. 62 to License No. DPR-21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 1st day of June, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-18030 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 15 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

The amendment removes a satisfied condition of the license which required submission of operating reactor coolant system flow data.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's letter dated January 16, 1979, (2) Amendment No. 15 to License No. NPF-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 5th day of June 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-18031 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

Three Mile Island Inquiry; Statement of Policy

June 4, 1979.

The Nuclear Regulatory Commission has instituted a Special Inquiry to review and report on the accident which took place at the Three Mile Island Nuclear Station No. 2 beginning on March 28, 1979. The primary objective of the inquiry will be to prepare a report which makes factual determinations concerning the actual events which occurred and their causes, and the actions of utility and Commission personnel before and during the accident. The inquiry will also identify areas of deficiency revealed by the accident and areas in which further investigation is warranted.

The Commission will contract with the law firm of Rogovin, Stern and Huge, Washington, D.C., to conduct the Special Inquiry. The inquiry will be headed by a Director, Mitchell Rogovin. Mr. Rogovin will have the authority to designate a staff of his choosing, including both NRC personnel, and staff and consultants from outside the Commission. It is expected that in assembling a staff, the Director will draw substantially on senior Commission staff, including Commission personnel and consultants currently engaged in conducting an interim inquiry into the matter. The Director will possess full independence in carrying out the inquiry and will be removable only for malfeasance or neglect of duty. To further such independence the Director will maintain records of all discussions bearing on the inquiry between those conducting the inquiry and any member of the Commission or a Commissioner's personal staff. The Commission will designate a senior NRC official to whom it will delegate its statutory power to conduct investigations, issue subpoenas, and administer oaths in order that these powers will be available to further the Special Inquiry. The Commission will grant to the Director access to any and

Commission that he deems necessary to conduct a full and complete inquiry, and will provide appropriate administrative support for carrying out the inquiry. It is expected that reports issued and analyses performed by other persons and organizations will be utilized where useful. It is anticipated that the Special Inquiry will take approximately six months.

The Special Inquiry represents a major phase of the Commission's evaluation of the accident and its implications. It is not intended to duplicate the efforts of the President's Commission on the Accident at Three Mile Island. It is designed instead so that the Nuclear Regulatory Commission, in order to fulfill its own regulatory responsibilities, will have the fullest possible understanding of the events at Three Mile Island, both from the technical standpoint and from the standpoint of how its regulatory processes functioned. The purpose of that evaluation is to permit the Commission to take whatever further steps may be necessary to prevent any similar accident in the future, and to improve the NRC's ability to respond to accidents.

The specific areas which the Special Inquiry will examine include the following:

—the sequence of events during the accident, what was happening to the reactor and the plant, including, where feasible, an assessment of important alternative sequences; the response of the operating personnel; radioactive releases and exposures; events at the plant before the accident that might be related to the accident.

—the history of the NRC review of the utility's application for a license to operate Three Mile Island No. 2; NRC license conditions on TMI–2 operations, including technical specifications; the operating and inspection history at TMI–2; the operating and inspection histories of other Babcock & Wilcox plants, focused on any indications of the types of problems that arose in the TMI–2 accident; a summary of NRC past consideration of such problems; the extent to which financial or tax consideration influenced conditions in the plant in any way that might have contributed to the accident; any other precursor events or analyses relevant to the accident.

—the susceptibility of Babcock & Wilcox plants to accidents; unique features of TMI–2 that may have increased or decreased the severity of the accident; other design effects related to the TMI–2 accident.

—TMI–2 operations, including training and qualifications of personnel, operating procedures and management overview; technical support to operating personnel and management.

—emergency response to the TMI–2 accident by the utility, other utilities and utility groups, and industrial organizations, including coordination with NRC and other Federal, State, and local officials, and assessment and dissemination of information.

—emergency planning by, and emergency response plans approved by, the NRC; actual emergency response to the accident by NRC, including staff, ACRS and Commissioners, on site and at headquarters; NRC coordination with Federal, State, and local officials, the utility, industry sources, and the national laboratories; NRC assessment and dissemination of information; communications and chain of command within NRC.

The Special Inquiry will also assess the possible implications of the accident at TMI–2 (including design of the facility, operations, regulatory actions, emergency preparedness) for other nuclear power plants and identify areas where further study is recommended. Based on these assessments and recommendations, the Commission will undertake such additional investigations, analyses and actions as it considers appropriate in the discharge of its responsibilities.

The Director will keep the Commission informed on a periodic basis of the progress of the inquiry. Any information of immediate public health or safety significance will be reported promptly to the Commission. The Commission emphasizes that it will take whatever regulatory action it deems necessary at any time, based on information available to it at that time. By instituting the Special Inquiry, the Commission intends no suggestion that it will withhold regulatory action with respect to identified deficiencies until the inquiry is completed.

Dated at Washington, D.C. this 13th day of June, 1979.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-18968 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Fedral Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting reuirements before seeking OMB approval. OMB in carrying out its responsibility under the act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
An estimate of the number of forms that will be filled out;
An estimate of the total number of hours needed to fill out the form; and
The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will

prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley F. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503

DEPARTMENT OF AGRICULTURE

(Agency Clearance Officer—Donald W. Barrowman—447–6202)

New Forms

Farmer's Home Administration
National Rural Community Facilities Assessment Study
Single time
Facility administrators 1,330 responses, 887 hours
Off. of Federal Statistical Policy & Standard 673–7974

Revisions

Farm and Rural Development Administration
REA Bulletin 20–21:320–21, Environmental Policy on occasion
REA Electric & Telephone Borrowers 770 responses 107,800 hours
Charles A. Ellett 395–5080

Science and Education Administration
1979–80 Nationwide Food Consumption Survey and Food Intake of Individuals—Low Income Sample
Single time
Low-income households in U.S. 3,200 responses 8,000 hours
Off. of Federal Statistical Policy & Standard 673–7974

Extensions

Farmer's Home Administration
Applicant's Environmental Impact Evaluation—FHA Business and Industrial Loan Program
FMHA 449–10
On occasion
Business & Industry in towns less than 50,000 300 responses 300 hours
Charles A. Ellett 395–5080

Farmer's Home Administration
Request for Contract of Guarantee (Emergency Livestock Loan)
FMHA 1980–25 on occasion
Lenders in rural areas 10,000 responses 15,000 hours
Charles A. Ellett 395–5080

Food and Nutrition Service
Receipt and Distribution of Donated Commodities
FNS–155
Monthly
State Distributing Agencies 864 responses 1,728 hours
Charles A. Ellett 395–5080

DEPARTMENT OF COMMERCE

(Agency Clearance Officer—Edward Michaels—377–4217)

Revisions

Bureau of the Census
Annual Survey of Manufactures
MA–100
Annually
Sample of manufacturing establishments 60,000 responses 211,800 hours
Off. of Federal Statistical Policy & Standard 673–7974

DEPARTMENT OF DEFENSE

(Agency Clearance Officer—John V. Wenderoth—697–1195)

Extensions

Departmental and Other Request for Report From (Employer)—(School)—(Personal Reference)
DD 370
On occasion
Employers and schools, 907,000 responses 181,400 hours
David P. Caywood, 395–6140

DEPARTMENT OF ENERGY

(Agency Clearance Officer—John Gross—252–5214)

New Forms

Certification of Requirements for Use Under Special [1] Rule No. 9
ERA–100A
Annually
Wholesale purchasers reseller, 60,000 responses, 60,000 hours
Jefferson B. Hill, 395–5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

(Agency Clearance Officer—Peter Gness—245–7488)

New Forms

Office of the Secretary
* Notice to Patient—Third Party Case
OS–13–79
On occasion
Beneficiaries Injured by Negligent third parties, 1,000 responses, 100 hours
Richard Eisinger, 395–3214

[1] This report (or recordkeeping requirement as appropriate has already been approved for use by OMB because: Of urgent need as described by the agency to permit fuel users engaged in agricultural production and certain other activities to obtain current requirements for diesel fuel.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

(Agency Clearance Office—John T. Murphy—755–5190)

Revisions

Administration (Office of Assistant Secretary)
* Mortgagee's Certification and Application for Interest Reduction payments and substantial readiness for occupancy certification
HUD–3111 and HUD–3197
Monthly Mortgagees, 2 responses, 1 hour
Arnold Strasser, 395–5080

Housing Management
Operating Budget—HUD-Aided Mutual Help Projects
HUD–53046
On occasion
IHAS, 150 responses, 1,200 hours
Arnold Strasser, 395–5080

Extensions

Housing Management
Biennial Certification of Family Income and Commission Under the Section 236 Program
FHA 3132
Annually
Low and moderate income households, 400,000 responses, 200,000 hours
Arnold Strasser, 395–5080

DEPARTMENT OF LABOR

(Agency Clearance Officer—Philip M. Oliver—523–6341)

Revisions

Employment Standards Administration
Construction Labor Demand System
ESA–100A, B, C, and D
On occasion
Construction project owners, 370 responses, 574 hours
Arnold Strasser, 395–5080

ENVIRONMENTAL PROTECTION AGENCY

(Agency Clearance Officer—John J. Stanton—245–3064)

Extensions

Cost or Price Sumary Format for Subagreements Under U.S. EPA Grants
5700–41
On occasion
Contractors under EPA Grants, 10,000 responses 20,000 hours
Budget Review Division, 395–4775

NATIONAL SCIENCE FOUNDATION

(Agency Clearance Officer—Herman Fleming—634–4070)

Revisions

Fellowship Application and Grant Forms 289,281,306, 320,296,299, 316,179,349, 453,524,222, 310,961,929, 1080, and 220
Annually
Individual applicants reference, 7,000 responses 84,000 hours
Richard Sheppard, 395–3211

OFFICE OF PERSONNEL MANAGEMENT

(Agency Clearance Officer—John P. Weld—632–7737)

New Forms

Questionnaire for Former Federal Executives
Single Time
Federal Executives who have left Federal Service since October 1978, 300 responses, 150 hours
Marsha D. Traynham, 395–6140

Stanley E. Morris,

Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-18611 Filed 6-15-79; 8:45 am]

BILLING CODE 3110-01-M

Agency Forms Under Review

Background

June 13, 1979.

When executive departments and agencies proposes public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C., Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public or significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

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The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements on forms that require one half-hour or less to complete and a total of 20,000 hours or less annuallly will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predicable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C.20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Donald W. Barrowman—447–6202

New Forms

Economics, Statistics, and Cooperatives Service
Economic Information Needs of Farmers
Sample of Farmers, 1,800 Responses, 900 hours
Charles A. Ellett, 395–5080

Farmer's Home Administration
*Consolidated Farm and Rural Development Plan
FMHA 424–1
On occasion
Family-size farm, 1,200 responses, 600 hours
Charles A. Ellett, 395–5080

Revisions

Agricultural Stabilization and Conservation Service
*Agricultural Foreign Investment Disclosure Act—Report (AFIDA)
ASCS–153
On occasion
Foreign persons having investments in agri. land in U.S., 5,000 responses, 2,500 hours
Charles A. Ellett, 395–5080

Economics, Statistics, and Cooperatives Service
*Rice Stocks at Mills and Warehouses; Receipts at Mills
Other (see SF–83)
Rice Mills and warehouses, 1,780 responses, 403 hours
Charles A. Ellett, 395–5080

Economics, Statistics, and Cooperatives Service
*Rice Production and Farm Stocks
Other (see SF–83)
Rice farmers, 12,275 responses, 3,070 hours
Charles A. Ellett, 395–5080

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michaels—377–4217

New Forms

National Oceanic and Atmospheric Administration
Multi-Species Fishery Questionnaire
Single time
Commercial fishing vessel owners on west coast, 635 responses, 254 hours
Richard Sheppard, 395–3211

Revisions

Bureau of the Census
Annual Survey of Government Employment
E–1 through E– 4, 6, 7, and 9—LR–1 through LR–3
Annually
Government agencies, 26,715 responses, 19,134 hours
Off. of Federal Statistical Policy and Standard, 673–7974

Maritime Administration
*Container/Trailer Report—Foreign Trade
MA–578A
On occasion
Shipping companies, 7,980 responses, 3,990 hours
Richard Sheppard, 395–3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245–7488

New Forms

Health Care Financing Administration (Departmental)
Survey to Identify Medicare/Medicaid Nursing Home Chains
HCFA–136T
Single time
Chain organ. prov. serv. under tit. 18 and 19 of S.S. Act, 75 responses, 19 hours
Richard Eisinger, 395–3214

Health Care Financing Administration (Medicare) Study of Medicare Beneficiaries Particpating in Kaiser Foundation Health Plan
HCFA–130, HCFA–I–130
Single time
Medicare benes. covered by Kaiser Denver Plan, 300 responses, 150 hours
Richard Eisinger, 395–3214

Health Care Financing Administration (Medicare)
Survey of Municipal Hospital Services
HCFA–127, 127C
On occasion
Clinics participating in municipal health sur. program, 75,000 responses, 37,500 hours
Richard Eisinger, 395–3214

Health Resources Administration
Survey of Baccalaureate Schools of Nursing to Determine the Effect of Clinical Experiences on Graduates Choice of Employment Setting
Single time
Schools, deans, graduates of baccalaureate nursing prog., 4,400 responses, 2,301 hours
Off. of Federal Statistical Policy and Standard, 673–7974

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John T. Murphy—755–5190

New Forms

Housing Production and Mortgage Credit
Operating Subsidy Requisition for Partial Payments of PHUIP
HUD–53120
Quarterly
Public housing agencies, 240 responses, 240 hours
Arnold Strasser, 395–5080

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633–3526

New Forms

Offices, Boards, Division
Claim for Damage, Injury, or Death
SF–95
On occasion
People with grievances against the U.S. Government, 400,000 responses, 100,000 hours
Richard Sheppard, 395–3211

Extensions

Immigration and Naturalization Service
Interrogatories in Depositions of Witnesses
N–462A
On occasion
Witnesses in naturalization cases, 100,000 responses, 50,000 hours
Richard Sheppard, 395–3211

Immigration and Naturalization Service
* Request for Asylum in the U.S.
I–589
On occasion
Aliens seeking asylum in the U.S., 2,000 responses, 1,000 hours
Richard Sheppard, 395–3211

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523–6341

Revisions

Bureau of Labor Statistics
Manual for Developing Local Area Unemployment Statistics
BIS 3040
Monthly
State ES agencies, 72,000 responses, 144,000 hours
Off. of Federal Statistical Policy and Standard, 673–7974

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426–1887

Revisions

Federal Aviation Administration
*Dealer's Aircraft Registration Certificate Application
AC 8050–5
On occasion
Aircraft dealers, 866 responses, 433 hours
Susan B. Geiger, 395–5867

Extensions

Federal Aviation Administration
*Application for Export Certificate of Airworthiness
FAA 8130–1
On occasion
Aviation product manufacturers and exporters, 10,000 responses, 5,000 hours
Susan B. Geiger, 395–5867

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Floyd I. Sandlin—376–0436

Revisions

Bureau of Customs
*U.S. Customs In-Transit Manifest
Customs 7533–0
On occasion
Carriers (railroad), 75,000 responses, 313 hours
Susan B. Geiger, 395–5867

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—John Reidy—653–6081

Revisions

8(A) Eligibility and Business Plan
1010A–E
On occasion
8(A) applicants and participants, 3,500 responses, 28,000 hours
Richard Sheppard, 395–3211

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79–18945 Filed 6–15–79; 8:45 am]

BILLING CODE 3110–01–M

Office of Federal Procurement Policy

Subcontracting Under Federal Contracts

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Changes to notice appearing in Federal Register on April 20, 1979.

Changes to April 20, 1979, Federal Register Notice

By its notice in the April 20, 1979, Federal Register, the Office of Federal Procurement Policy set forth changes to be made in the Federal Procurement Regulation and the Defense Acquisition Regulation in partial implementation of Section 211 of Public Law 95–507. This is to inform you of the following changes in that notice:

1. Under the heading "Subcontracting: Utilization of Small Business and Small Disadvantaged Business concerns (over $10,000)" the notice set forth a clause to be used in all contracts over $10,000 with stated exceptions. Paragraph (d) of that clause read:

> Subcontractors shall provide a notarized statement to the contractor certifying their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

In order to conform with the precise language of the statute, paragraph (d) should be changed to read:

Contractors acting in good faith may rely on written representations by their subcontractors as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

2. Under the heading "Incentive Subcontracting Progam for Small Business and Small Disadvantaged Business (Negotiated)," the notice indicates that "determinations by the contracting officer under this paragraph may not be appealed under the Disputes Clause." This sentence is hereby deleted.

The prime contractor *may* appeal the contracting officer's determination of the dollars the prime contractor will receive under the terms of the incentive clause. However, he may *not* appeal the precise percentage inserted in the contract as the rate the Government agrees to pay with regard to "excess" subcontracting.

These changes are effective immediately.

James D. Currie,

Acting Administrator.

[FR Doc. 79-18916 Filed 6-15-79; 8:45]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34—15908; File No. SR-NYSE-79-27]

New York Stock Exchange, Inc.; Self Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 97-29, 16 (June 4, 1975), notice is hereby given that on June 7, 1979 the New York Stock Exchange, Inc. (the "NYSE") filed with the Securities and Exchange Commission a proposed change to Rule 107, as follows:

NYSE's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule amendment, if approved, would eliminate subparagraph .70 from Rule 107. Subparagraph .70 states:

Unless extended by a duly authorized rule of the Exchange or an amendment to this Rule approved by the Securities and Exchange Commission pursuant to Rule 19b of the Securities Exchange Act of 1934, this Rule shall expire on July 31, 1979.

No other amendment to Rule 107 is being proposed.

NYSE's Statement of the Purpose of Proposed Rule Change

The purpose of the proposed amendment is to delete the "Sunset" provision (subparagraph .70) from Rule 107 in order to make Rule 107 a permanent rule of the NYSE.

On May 1, 1978, the Exchange adopted Rule 107, thereby creating a new category of market maker known as the Registered Competitive Market Maker (RCMM). The Exchange indicated that RCMMs would be required under the Rule to engage in a course of dealings which would contribute in a positive and significant manner to the quality of the market provided on the Exchange; that RCMMs would be obligated to stand ready to compete with the registered specialist in cash and every equity security traded on the Exchange; that Floor brokers could request bids and offers from RCMMs when the market being quoted by the specialist could, in their opinion, be improved either from the standpoint of price or depth; and that Floor Officials could call on RCMMs to assist in the market making function whenever the Floor Offical, in his professional judgement, deemed it necessary.

The Exchange concluded that because the obligations and restrictions governing RCMMs required them to contribute to the market by increasing depth and liquidity and by enhancing competition within the market making function, the claim to the market maker exemption (A) of Section 11(a)(1) was justified.

In approving Rule 107 on a temporary basis, the Commission stated that it had no information which indicate that, in practice, the proposed obligations would assure a bona fide market making function; and that it's approval of the rule was based solely on its containing adequate safeguards.

It added that the Exchange would have to justify any proposal to adopt Rule 107 on a permanent basis with specific data and statistics demonstrating that RCMMs have acted in a manner which qualifies them as market makers.[1]

Section 3(a)(38) of the Securities Exchange Act of 1934 defines a market maker as, among other things,

. . . any dealer who, with respect to a security holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy an sell such security for his own account on regular or continuous basis.

In its approval order, the Commission discussed, at length, the relationship of the four elements of the market maker definition to the Exchange's proposed Rule 107.

The first element relates to the market making relationship between the dealer and a particular security.[2] The Commission noted that under Rule 107, the RCMM's obligation would extend to each NYSE listed stock. In order to learn the number of stocks which were subject to transactions by RCMMs, we conducted a spot check review. Included in this review were all the stocks subject to "calls" from May 1, 1978 to May 15, 1979. In addition, we calculated the number of different stocks in which RCMMs traded from May 1, 1978 to June 2, 1978 plus one week periods from July 1978 through April 1979. Based on this review, RCMMs traded in 664 different stocks.

The second element requires a dealer to "hold himself out (by entering quotations in an inter-dealer communications system or otherwise)". The Commission noted that this "would not seem to require more than an explicit agreement to take certain actions upon request, *e.g.*, to provide quotations, provided that agreement is comunicated to other persons." [3] It deemed this element to be satisfied for the temporary period by the Rule 107 "on call" requirement (i.e., RCMMs are subject to call by Floor brokers holding unexecuted customers' orders or by Floor Officials) and "competitive bid/offer" requirement (unless trading under a Rule 107 exemptive provision, an RCMM's bid or offer must "better" the market, either by narrowing the existing spread in the quotation or by adding depth).[4]

Exchange statistics show that between May 1, 1978, and April 27, 1979 RCMMs effected 87,801 trades totalling 53,541,642 shares. Of these trades, 88.58 were effected pursuant to bids or offers that "bettered" the market (28.6% in price and 59.9% in size). In response to calls by Floor brokers holding unexecuted customers' orders or by Floor Officials, RCMMs effected 811 transactions in 257 different stocks during the period.

The "holding out" standard was clearly demonstrated, for example, during the week of October 30-November 3, 1978, when the Dow Jones Industrial average fluctuated sharply (i.e. +6.15, −10.83, +35.34, −19.40 and

[1] Securities and Exchange Commission Release No. 14718/May 1, 1978 ("The Release") p. 12.

[2] The Commission explained that the market in a particular security in which the market maker was dealing would theoretically benefit by his participation because of the addition of greater depth, liquidity and continuity (See P. 8 of the Release).

[3] The Release p. 9.

[4] Ibid p. 10.

+5.80). During this period, RCMMs were called in to participate in difficult market situations by Floor brokers holding unexecuted customers' orders or by Floor Officials a total of 200 times.

A third element of the market maker definition requires the market maker to be willing to buy and sell the security in which he has assumed a market making role. The Commission noted that there was no explicit reference to what quantity or price must be provided; and that the RCMM's obligation to bid or offer for one round lot at a price equal to or better than the current bid or offer was sufficient for purposes of an initial experiment.[5]

Exchange statistics for the period May 1, 1978 to April 27, 1979 show that RCMMs' participation has greatly exceeded the minimal size requirement. The average size of an RCMM trade was 610 shares. The average size of a trade effected pursuant to a call was 1,005 shares. Only 2.5% of all RCMM trades effected pursuant to calls were for 100 shares.

The fourth and last element requires a market maker to be willing to buy and sell "on a regular or continuous basis." The Commission noted that this element "provides an indication of the frequency a market maker should be willing to perform in that capacity" and that "a regular market, while something less than 'continuous', should be characterized by a *bona fide* effort to provide bids or offers in a reliable manner, which could include upon request or at periodic intervals of time."[6]

Exchange statistics show that in the aggregate, RCMMs effected an average 1,886 trades per week, with an average weekly volume of 1,138,000 shares. During the week of October 30–November 3, 1978, they effected 3,342 trades with aggregate volume of 2,216,800 shares.

The availability of RCMMs to the market is illustrated by their responding to Floor Official and Floor broker calls over 800 times. In addition, the Exchange has taken steps to make RCMMs more aware of stocks that might benefit by their participation by installing blue flashing lights at all the trading posts and by maintaining a list, posted at the Information Desk, of stocks where the opening or reopening has been delayed.

As an additional means of ensuring that RCMMs' market making activities meet high standards of performance, the Exchange's Market Performance Committee has established an RCMM Subcommittee which reviews RCMM activity and makes appropriate recommendations on ways in which their performance might be improved.

Subparagraph .20 of Rule 107, permits an RCMM to liquidate at a loss anytime without regard to "tick"; and subparagraph .10 (ii) permits an RCMM, to "reach across" the market and trade on "zero plus" or "zero minus" ticks, with the trend of the market, when the spread in the quotation is only the minimum variation.

The Commission determined, when it approved Rule 107, that the exemptive provisions permitting such trades were, on balance, designed to facilitate the ability of RCMMs to engage in market making activities which could contribute to the maintenance of fair and orderly markets; and that such trades pose little threat of disrupting the market or being used for manipulative purposes.[7] It noted, however, that it would be quite concerned, if, as the NYSE gained experience, it became apparent that RCMMs were utilizing the exemptive provisions for a substantial percentage of their trading activity rather than trading in a manner calculated to improve the market.[8]

Experience during the period between May 1, 1978 and April 27, 1979 demonstrates that RCMM trades utilizing the exemptive provisions are minimal. Of the 11.5 percent of all RCMM trades which were not effected pursuant to bids or offers that "bettered" the market, 9.7 percent were trades in which the RCMM "reached across" the market (i.e. traded with the existing bid or offer). The remaining 1.8 percent include trades in which the RCMM participated at the opening, in block clean-ups, arbitrage, and to offset errors.

The Commission expressed one additional concern in approving Rule 107. While it noted that the implementation of recordkeeping procedures designed to monitor the performance of RCMMs constituted a necessary first step in determining whether they are complying with their obligations, the Commission expressed concern about the accuracy and reliability of the information the NYSE obtained from RCMMs.[9]

The performance of RCMMs has been monitored by the Exchange, to insure compliance with Section 3(a)(38) of the Act and NYSE Rule 107, from May 1, 1978 to the present, by requiring that each RCMM report all transactions effected in their role as a market maker. These trades have been reviewed against the information reported in our Transaction Journal (which shows the time, price and size of each transaction and quote in every NYSE listed stock) for compliance with the aforementioned provisions and to determine the extent to which RCMMs' bettered the existing markets at the time of their order execution.

The reliability and accuracy of the information reported has been checked by comparing it with other trade data submitted by RCMMs; and by Exchange examiners in their spot check reviews of RCMM trading records. During these reviews, examiners are able to verify the times and prices of RCMM trades by checking with the contra broker to a trade, and by using the clearance and settlement sheets to reconstruct the market in particular stocks.

In conclusion, the NYSE believes that RCMMs have met each of the four elements of the market maker definition cited by the Commission; and that RCMMs have made a positive contribution to the market. They have provided the NYSE with additional liquidity at times and in situations where it was needed by responding to calls by making bids and offers of considerable size (an average of 1,000 shares per call); they have significantly added to the depth and continuity of Exchange markets by making competitive bids and offers (nearly 90 percent of their trades were effected on bids or offers that improved the market); and RCMMs have only made minimal use of the exemptive provisions of the Rule. The NYSE believes that these statistics clearly demonstrate that RCMMs act as market makers on the Exchange in accordance with Section 3(a)(38) of the Act and that Rule 107 should be approved by the Commission as a permanent rule of the Exchange. By not taking such action, the Exchange market would be deprived of the benefits described above.

NYSE's Statement of the Basis Under the Act for Proposed Rule Change

The adoption of Rule 107 on a permanent basis relates to Section 6(b)(5) of the Securities Exchange Act of 1934 in that it will: (i) aid in the protection of investors and the public interest by providing a mechanism that can aid in reducing volatile price fluctuations; and (ii) act to reduce unfair

[5] The Release, pp. 10 and 11.
[6] Ibid, p. 11.
[7] Id, pp. 12 and 13.
[8] Id, p. 14.
[9] The Release, p. 14.

discrimination between brokers and dealers, and as such, act to reduce unfair discrimination between customers by permitting Exchange members to effect proprietary transactions on the Exchange of a type that other broker-dealers are free to effect in the over-the-counter market.

Comments Received from Members, Participants, or others on Proposed Rule Change

The Exchange has not solicited comments regarding the proposed amendment and has received none.

Burden on Competition

The Exchange does not believe that Rule 107 imposes any burden on competition. In fact, the Exchange believes it has furthered competition between brokers and dealers.

On or before July 23, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 9, 1979.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Shirely E. Hollis,

Assistant Secretary.

June 11, 1979.

[FR Doc. 79-18662 Filed 6-15-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 02/02-0370]

AMEV Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1978)), under the name of AMEV Capital Corporation (Applicant), for a license to operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended, and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the State of Delaware and it will commence operations with a capitalization of $2,500,000, which amount is to be raised through the sale of 100 percent of the Applicant's issued and outstanding shares of common stock to AMEV Holdings, Inc., which is wholly owned by N. V. AMEV, Utrecht, the Netherlands. N. V. AMEV (NVA), is an insurance and financial services company with assets of approximately $4 billion (U.S.). Its capital stock consists of 200,005,000 Dutch guilders, divided into five priority shares of 1,000 Dutch guilders. The priority shares are wholly owned and registered in the name of Stichting Belang AMEV, a Netherlands foundation managed by persons who together comprise NVA's Board of Management and Supervisory Board.

It is effectively controlled by its Board of Management consisting of the following five individuals:

Carel Constantijin Nengerman
P. J. van der Does de Willebois
* F. A. J. Smith
* J. B. J. Bollerman
* F. Roos

Mr. Nengerman and Mr. van der Does de Willebois are respectively chairman and director of the Applicant:

* N. V. AMEV, Postbus 2072, Archimedeslaan 10, Utrecht, Netherlands.

The Applicant will have its place of business at 5 World Trade Center, Suite 6281, New York, New York 10048, and it intends to conduct operations primarily in the State of New York and the Eastern and Southwestern Regions of the United States.

The Officers and Directors of the Applicant will be:

Name, Title, and Percent

AMEV Holdings Inc., sole stockholder, 5 World Trade Center, New York, New York 10048, 100 percent.
Allen R. Freedman, president, treasurer, and director, 35 Plymouth Road, Summit, New Jersey 07901.
Mary R. Broderick, secretary, 18 Clifford Avenue, Pelam, New York 10803.
Carel Constantijin Nengerman, chairman, Arnheuse Boveniveg 307, Driebergen—Rijsenburg, The Netherlands.
Pieter Joseph Fraus Maria, director, Theodoor Van Der Does de Willebois, Wilhemina Park 63, Utrecht, The Netherlands.
Joseph M. Wilker, director, 12520 Davan Drive, Silver Spring, Maryland 20904.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness in accordance with the Act and SBA Regulations.

Notice is hereby given that any person may not later than July 3, 1979, submit written comments on the Applicant to the Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice shall be published by the Applicant in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 12, 1979

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-18943 Filed 6-15-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09/0226]

West Coast Venture Capital; Filing of Application for Approval of Conflict of Interest Transaction Between Associates; Notice

Notice is hereby given that West Coast Venture Capital (West Coast) 10375 Bandley Drive, Cupertino, California 95014, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to Section 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1979)), for approval of a conflict of interest transaction.

West Coast desires to purchase 250,000 shares of Preferred Stock of Onyx Systems, Inc. (Onyx), 10375

Bandley Drive, Cupertino, California 95014, and International Memories Inc. (IMI), an Associate of West Coast will purchase 67,600 shares. West Coast's investment will be made on the same basis as IMI. Following the proposed investment, West Coast and IMI will own approximately 66 percent of Onyx's equity. This percentage will be reduced to less than 50 percent in accordance with the Small Business Administration's Rules and Regulations, and a plan to that effect will be filed within 90 days following the closing of such financing.

Prior to May 1, 1979, Mr. Gary W. Kalbach, President and General Manager of West Coast Venture Capital, Inc. (General Partner of West Coast), was Chairman of the Board of Onyx. Mr. Douglas Broyles, a 2.9 percent limited partner of West Coast and the owner of 28 percent of the Common Stock of Onyx was a member of the Board of Directors of Onyx. Mr. Dennis C. Sullivan, Counsel for West Coast was Secretary of Onyx. On May 1, 1979, Messrs. Kalbach and Broyles resigned as members of the Board of Directors of Onyx, and Mr. Sullivan resigned as Secretary of Onyx. As a result of the proposed financing, Mr. Broyles ownership of Onyx will be reduced to approximately 9 percent of Onyx's total equity. Pursuant to Section 107.3 subparagraph (g) of the Regulations, for the purpose of definition of an Associate, Messrs. Kalbach, Broyles and Sullivan within six months before or after the date on which West Coast provided assistance to Onyx, shall be deemed to have been in such relationship as of the date of West Coast's assistance. West Coast's financing of Onyx falls within the purview of Section 107.1004(b)(1) of the Regulations, and requires written approval of SBA.

Notice is further given that any person may, not later than July 3, 1979 submit written comments to SBA on the transaction. Any such comments should be addressed to: Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 12, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-18944 Filed 6-15-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 141—FM Broadcast Interference Related to Airborne ILS, VOR and VHF Communications Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Special Committee 141 on FM Broadcast Interference Related to Airborne ILS, VOR and VHF Communications Equipment to be held July 10 and 11, 1979, in RTCA Conference Room 261, 1717 H Street, NW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Review Committee Terms of Reference; (3) Outline Work Program and Schedule for Accomplishment; (4) Identification and Assignment of Task; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street, NW., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on June 11, 1979.

Karl F. Bierach,

Designated Officer.

[FR Doc. 79-18043 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

Closure of District Office and Establishment of Field Office

Notice is hereby given that on or about July 1, 1979, the Airports District Office (ADO) at 5885 W. Imperial Highway, Los Angeles, California, will close and the personnel reassigned to the Airports Field Office being established in the Federal Building, 15000 Aviation Boulevard, Hawthorne, California. Normal services to airports within the Airports Field Office's jurisdiction will continue unchanged. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a).

Issued in Los Angeles, California on May 25, 1979.

Leon C. Daugherty,

Director, Western Region.

[FR Doc. 79-18886 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

National Highway Safety Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of a planning group of the National Highway Safety Advisory Committee to be held July 26 and 27, 1979 at the Holiday Inn—Rivermont, 200 West Georgia Avenue, Memphis, Tennessee.

The planning group will meet on July 26 from 1:00 p.m. to 5:00 p.m. and on July 27 from 8:00 a.m. to 3:00 p.m. to plan future meeting schedules and agendas for the Advisory Committee for the next year.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Any member of the public may present a written statement to the Committee at any time.

This meeting is subject to the approval of appropriate DOT officials.

Additional information may be obtained from the NHTSA Executive Secretary, Room 5221, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202-426-2872.

Issued in Washington, D.C. on: June 12, 1979.

Wm. H. Marsh,

Executive Secretary.

[FR Doc. 79-18954 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES RAILWAY ASSOCIATION

[Docket No. STP-11]

Procedural Conference

The Regional Rail Reorganization Act of 1973 ("Rail Act"), Section 305, authorizes the Secretary of Transportation to propose transactions supplemental to the Final System Plan which the United States Railway Association ("Association") certified to the Special United States District Court in March, 1976. Section 305 requires the Association to analyze any such proposal, taking into account the

comments of interested persons and statements and exhibits submitted at any public hearings which may have been held, and determine whether the proposal is (1) in the public interest and consistent with the purpose of the Rail Act and the goals of the Final System Plan, and (2) fair and equitable. If the Association makes such a determination, and the transaction is accepted by the proposed transferee, it is reviewed by the ICC. The Association must then petition the Special Court to order the transaction. In any event, the Association must publish a report of its analysis in the **Federal Register** within 130 days of receipt of the proposal.

On April 11, 1979, the Association received a Supplemental Transaction Proposal ("STP") from the Administrator of the Federal Railroad Administration ("Administrator"). The Administrator proposes that Conrail transfer certain rail properties in eastern Connecticut to the Providence and Worcester Co. ("P&W"), and that Conrail also relinquish to P&W its exclusive freight train trackage rights over a section of track owned by Amtrak which connects with that line. Conrail and the P&W have been negotiating the purchase of the line for two years, without being able to agree on a purchase price. The Secretary of Transportation subsequently directed the Federal Railroad Administration ("FRA") to develop the STP.

On April 20, 1979, the Association published a summary of the STP in the **Federal Register** (44 FR 23624) and requested comments from all interested parties. Letters requesting comments were also sent to Conrail, the P&W, affected State and local governments, shippers, all rail labor organizations, and other interested parties. To date, responses have been received from Conrail, the P&W, the State of Connecticut, the Worcester (Conn.) Area Chamber of Commerce, the Worcester Business Development Corporation, the Town of Ledyard (Conn.), and the Department of the Army. The State of Connecticut, the Worcester Chamber of Commerce and the Worcester Business Development Corporation favor the proposal, while the Town of Ledyard and the Department of the Army apparently have no preference as to who owns the line in question.

The P&W has requested that the Association hold full evidentiary hearings on the transaction, allowing their attorneys to present evidence and cross-examine Conrail witnesses; Conrail suggests that such hearings are not necessary. Before deciding what further proceedings will be conducted to develop the record the Association may require, the Association will hold a procedural conference at its offices at 955 L'Enfant Plaza North, S.W., Washington, D.C., in Room 2–500, at 10 a.m., on Monday, June 25, 1979. At the conference the Association proposes to discuss with the interested parties whether there are issues requiring that the present record be supplemented, whether hearings would be useful, and, in general, how best to proceed. The conference will be presided over by Douglas L. Siegel, Esq., appointed by the President of the Association, for that purpose. Representatives of the P&W and Conrail are requested to attend, as well as a representative of the Administrator as developer of the STP. All other persons having an interest in this matter are invited to attend the procedural conference. Those planning to attend should notify the following not later than June 22, 1979:

John G. Arlington, Special Assistant to the General Counsel, United States Railway Association, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20595, Telephone (202) 755–4052.

Dated: June 13, 1979.

Peter J. Gallagher,

Secretary.

[FR Doc. 79-18816 Filed 6-15-79; 8:45 am]

BILLING CODE 8240-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Fair Housing Lending Enforcement; Public Meeting

AGENCY: Comptroller of the Currency.

ACTION: Notice of Public Meeting.

Settlement of *National Urban League, et al.*, v. *Office of the Comptroller of the Currency, et al.*, (Civil Action No. 76–0718) provides that a semi-annual meeting will be held to review the fair housing lending enforcement program of the Office of the Comptroller of the Currency. Members of the public are invited to attend this meeting.

DATE: June 26, 1979, 2:00 p.m.

ADDRESS: 490 L'Enfant Plaza, S.W., Washington, DC 20219. Individuals who plan to attend this meeting should report to the 6th floor reception desk prior to 2:00 p.m.

FOR FURTHER INFORMATION CONTACT: Zina G. Greene, Special Assistant for Civil Rights, Office of the Comptroller of the Currency, Washington, DC 20219, phone 202/447–0934.

SUPPLEMENTARY INFORMATION: Settlement of *National Urban League, et al.* v. *Office of the Comptroller of the Currency, et al.*, (Civil Action No. 76–0718) provides that a semi-annual meeting will be held to review the fair housing lending enforcement program of the Office of the Comptroller of the Currency. Representatives of the Comptroller of the Currency will discuss their fair housing program and any changes made or proposed therein and will receive and consider suggestions from the National Urban League.

Members of the public are invited to attend this meeting and will be given an opportunity to make comments and suggestions with respect to the enforcement program of the Comptroller of the Currency.

Dated: June 12, 1979.

Zina G. Greene,

Special Assistant for Civil Rights.

[FR Doc. 79-18837 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-33-M

Southern National Bank, Birmingham, Ala.; Suspension of Trading

On my opinion that the public interest and the protection of investors so require, trading in the common stock of Southern National Bank, Birmingham, Alabama, is hereby suspended pursuant to sections 12(i) and 12(k) of the Securities Exchange Act of 1934 for a ten-day period, commencing at 9:00 a.m., EDT on June 13, 1979.

Dated: June 13, 1979.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 79-18838 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-33-M

Customs Service

Viscose Rayon Staple Fiber From Austria; Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Initiation of Investigation.

SUMMARY: This notice is to advise the public that a satisfactory petition has been received and as a result an investigation is being initiated for the purpose of determining whether or not benefits which constitute a bounty or grant within the meaning of the countervailing duty law are granted by the Government of Austria to manufacturers or exporters of viscoserayon staple fiber. A preliminary determination will be made no later

than November 7, 1979, and a final determination no later than May 7, 1980.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5492).

SUPPLEMENTARY INFORMATION: A petition was received in proper form on May 7, 1979, alleging that payments or bestowals, conferred by the Government of Austria upon the manufacture, production, or exportation of viscose rayon staple fiber from Austria constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) ("the Act"). Imports covered by this investigation are classifiable under item numbers 309.4320 and 309.4325, Tariff Schedules of the United States, Annotated (TSUSA).

The petition alleges that the manufacturer of this product received preferential tax treatment based on the establishment of an export sales reserve, loans at rates lower than those otherwise commercially available, and preferential freight rates. As to a determination of whether low freight rates constitute a bounty or grant, it has been Treasury policy to consider whether this lower rate charged for export exceeds any cost differentials involved and/or whether such rates are below the cost of providing the service.

Pursuant to section 303(a)(4) of the Act (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of the statute within 6 months of the receipt, in satisfactory form, of a petition alleging the payment of a bounty or grant, and a final decision within 12 months of the receipt of such a petition.

Therefore, a preliminary determination on this petition will be made no later than November 7, 1979, as to whether or not alleged payments or bestowals conferred by the Government of Austria upon the manufacture, production, or exportation of the above described merchandise constitute a bounty or grant within the meaning of section 303 of the Act. A final determination will be issued no later than May 7, 1980.

An investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) involving the same product has recently resulted in a notice of "Final Discontinuance of Antidumping Investigation", which was published in the **Federal Register** of December 11, 1978 (43 FR 57999).

This notice is published pursuant to section 303(a)(3) of the Act, as amended (19 U.S.C. 1303(a)(3)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101–5, May 16, 1979, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and § 159.47(c) of the Customs regulations (19 CFR 159.47(c)), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,

General Counsel of the Treasury.

June 8, 1979.

[FR Doc. 79-18910 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-22-M

Fiscal Service

[Dept. Circ. 570, 1978 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to American Reserve Insurance Company, Providence, Rhode Island, under Sections 6 to 13 of Title 6 of the United States Code, to qualify as an acceptable surety on Federal bonds, is hereby terminated effective May 21, 1979. The company was last listed as an acceptable surety on Federal bonds at 43 FR 28693, June 30, 1978.

With respect to any bonds currently in force with American Reserve Insurance Company, bond-approving officers of the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. Information concerning asserting claims against the company will be published by the Treasury Department when it becomes available.

Questions concerning this notice may be directed to the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226. Telephone 202–634–5978.

D. A. Pagliai,

Commissioner, Bureau of Government Financial Operations.

Dated: June 8, 1979.

[FR Doc. 79-18877 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Cir. 570, 1978 Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds: Termination of Authority

On March 31, 1979, Gulf American Fire and Casualty Company, an Alabama corporation, merged into American States Insurance Company. The companies were last listed as acceptable sureties on Federal bonds at 43 FR 28697, 28694, respectively, June 30, 1978.

Confirmation of this action has been received and filed with the Treasury. Accordingly, the certificate of authority issued to Gulf American Fire and Casualty Company, is hereby terminated as of March 31, 1979, the effective date of the merger. The surviving corporation, American States Insurance Company, an Indiana corporation, has acquired the assests and assumed the liabilities of the merged corporation. American States Insurance Company retains its certificate of authority.

Federal bond-approving officers need take no action with respect to bonds accepted prior or subsquent to the merger. They may, however, annotate their reference copies of Treasury Circular 570, 1978 Revision at page 28697 to reflect the change.

Dated: June 8, 1979.

D. A. Pagliai,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 79-18878 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

[Delegation Order No. 156, Amdt. 9]

Delegation of Authority To Disclose Mailing Addresses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This Amendment authorizes certain officials of the Internal Revenue Service to disclose mailing addresses to the Commissioner of Education. The text of the delegation order appears below. 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).

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: Howard T. Martin, TX:D, 1111 Constitution Ave., N.W., Room 1603, Washington, D.C. 20224, Telephone number 202-566-3908. (Not a Toll-Free telephone number.)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978.

Howard T. Martin,

Director, Disclosure Operations Division.

Subject: Disclosure of Mailing Address to Commissioner of Education Under IRC 6103(m)(4).

Date of Issue: June 13, 1979.

Effective Date: June 13, 1979.

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150-37, dated March 17, 1955, authority is hereby delegated as follows:

The Deputy Commissioner; Assistant Commissioner (Taxpayer Service and Returns Processing); Deputy Assistant Commissioner (Taxpayer Service and Returns Processing); Director, Disclosure Operations Division; and, upon approval of a contractual agreement by the Director, Disclosure Operations Division or his/her delegate, the Assistant Commissioner (Data Services); Executive Assistant to the Assistant Commissioner (Data Services); Director, Service and Design Division; Director, National Computer Center; and Service Center Directors are authorized to discluse, or in specific instances, authorize the disclosure of the mailing address of any taxpayer who has defaulted on a loan made from the student loan fund established under part E of title IV of the Higher Education Act of 1965 to the Commissioner of Education, upon written request and subject to the conditions prescribed in IRC 6103(m)(4).

The authority delegated to the Deputy Commissioner, Assistant Commissioner (Taxpayer Service and Returns Processing), Deputy Assistant Commissioner (Taxpayer Service and Returns Processing); and Director, Disclosure Operations Division, may be redelegated only to the Assistant Director, Disclosure Operations Division; and Branch Chiefs and Section Chiefs, Disclosure Operations Division. The authority delegated to the Assistant Commissioner (Data Services); Executive Assistant to the Assistant Commissioner (Data Services); Director, Service and Design Division; Director, National Computer Center; and Service Center Directors may not be redelegated. The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

This Amendment Supplements paragraph 9(c) of Delegation Order No. 156. Delegation Order No. 156, issued May 19, 1978, is printed in the Federal Register dated May 21, 1978, Vol. 41, Number 100, Page 20898.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-18802 Filed 6-15-79; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

Portland Cement From Belgium; Antidumping: Tentative Determination to Modify or Revoke Dumping Finding

AGENCY: U.S. Treasury Department.

ACTION: Tentative Revocation of Finding of Dumping.

SUMMARY: This notice is to advise the public that it appears that portland cement, other than white, nonstaining portland cement, from Belgium, is no longer being sold to the United States at less than fair value under the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the price of the merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Notice is hereby given that the Department of the Treasury intends to revoke this finding. If this action is made final, the finding of dumping covering the subject merchandise from Belgium will be revoked. Interested persons invited to comment on this action.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Al Jemmott, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: A finding of dumping with respect to portland cement, other than white, nonstaining portland cement, from Belgium, except as to importations from the firm of Cimenteries Et Briqueteries Reunies, was published as Treasury Decision *55428* in the Federal Register on July 20, 1961 (26 FR 6511).

After due investigation, it has been determined tentatively that portland cement, other than white, nonstaining portland cement, from Belgium, is no longer being, nor likely to be, sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

Statement of Reasons on Which This Tentative Determination Is Based

The investigation indicated that there have been no shipments of portland cement, other than white, nonstaining portland cement, from Belgium, to the United States by the firms subject to the finding for more than four years and there is no likelihood of resumption of sales at less than fair value.

Accordingly, notice is hereby given that the Department of the Treasury intends to revoke the finding of dumping with respect to portland cement, other than white, nonstaining portland cement, from Belgium.

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than July 3, 1979. Requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than July 18, 1979. All persons submitting views or arguments should avoid repetitious and merely cumulative material, and they are reminded of the requirement to include nonconfidential summaries or approximated presentations of all confidential material.

This notice is published pursuant to § 153.44(c) of the Customs Regulations (19 CFR 153.44(c)).

Dated: June 8, 1979.

Robert H. Mundheim,

General Counsel of the Treasury.

[FR Doc. 79-18814 Filed 6-15-79; 8:45 am]

BILLING CODE 4820-27-M

[Department Circular, Public Debt Series—No. 12-79]

Treasury Notes of June 30, 1981; Series U-1981

June 14, 1979.

1. Invitation for Tenders

1. 1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,750,000,000 of United States securities, designated Treasury Notes of June 30, 1981, Series U-1981 (CUSIP No. 912827 JS 2). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent

of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2. 1. The securities will be dated July 2, 1979, and will bear interest from that date, payable on a semiannual basis on December 31, 1979, and each subsequent 6 months on June 30 and December 31, until the principal becomes payable. They will mature June 30, 1981, and will not be subject to call for redemption prior to maturity.

2. 2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, June 19, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, June 18, 1979.

3. 2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. no bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3. 3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3. 4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3. 5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government Accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made or completed on or before Monday, July 2, 1979, at the Federal

Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, June 28, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Tuesday, June 26, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the proceeding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented in the amount payable on the securities allotted.

5. 2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5. 4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer from and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5. 5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1 As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 79-19022 Filed 6-14-79; 3:02 pm]

BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 13-79]

Treasury Notes of June 30, 1983; Series E-1983

June 14, 1979.

1. Invitation for Tenders

1. 1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,750,000,000 of United States securities, designated Treasury Notes of June 30, 1983 Series E-1983 (CUSIP No. 912827 JT 0). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2. 1. The securities will be dated July 2, 1979, and will bear interest from that date, payable on a semiannual basis on December 31, 1979, and each subsequent 6 months on June 30 and December 31, until the principal becomes payable. They will mature June 30, 1983, and will not be subject to call for redemption prior to maturity.

2. 2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Thursday, June 21, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, June 20, 1979.

3. 2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3. 3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3. 4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3. 5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made or completed on or before Monday, July 2, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, June 28, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Tuesday, June 26, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities

surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5. 4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5. 5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 79-19023 Filed 6-14-79; 3:02 pm]

BILLING CODE 4810-40-M

INTERSTATE COMMERCE COMMISSION

Fourth Section Applications for Relief

June 13, 1979.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of this notice.

FSA No. 43703, Zim Israel Navigation Co., Ltd., No. 16, intermodal rates on general commodities in containers, from ports in the Far East to rail carriers terminals at Tampa, Fla., by way of Los Angeles, Calif., in its Tariffs ICC ZIMU 701 and 702, FMC Nos. 55 and 57, respectively, to become effective July 10, 1979. Grounds for relief—water competition.

FSA No. 43704, Southwestern Freight Bureau, Agent's No. B-4, carload rates on soapstone, in bulk, in covered hoppers, from stations in Southwestern Territory, to stations in Central-Eastern Territory, as published in Supplement 242 to its Tariff ICC SWFB 2005-J, to become effective July 10, 1979. Ground for relief—market competition; modified short-line distance formula and grouping.

FSA No. 43705, Southwestern Freight Bureau, Agent's No. B-1, carload rates on coke, from Toledo, Ohio, to stations in SWL Territory, as published in Supplement 56 to its Tariff ICC SWFB 4197, to become effective July 8, 1979. Grounds for relief—market competition.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18941 Filed 6-15-79; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 20]

Petitions for Modification, Interpretation or Reinstatement of Operating Rights Authority

June 7, 1979.

The following petitions seek modification or interpretation or existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) [1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 5296 (M1F) (notice of filing of petition to modify certificate), filed April 9, 1979. Petitioner: LACY'S EXPRESS, INC., P.O. Box 130, Pedricktown, NJ 08067. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Petitioner holds a motor *common carrier* certificate in MC-5296, issued October 28, 1975, authorizing transportation, over regular routes, of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Philadelphia, PA, and Salem, NJ, serving all intermediate points: from Philadelphia across the Delaware River to Camden, NJ, then over NJ Hwy 45 to junction U.S. Hwy 130, then over U.S. Hwy 130 to Pannsville, NJ, and then over NJ Hwy 49 to Salem, and return over the same route, (2) between Westville, NJ, and Bridgeport, NJ, serving all intermediate points: from Westville over NJ Hwy 44 to Bridgeport, and return over the same route, serving in connection with routes set forth in (1) and (2) above the off-route points in Woodbury, National Park, Pedricktown, NJ, and those in Alloway, Quinton, and Lower Alloways Creed Townships, NJ. By the instant petition, petitioner seeks to modify the above authority to serve points in NJ, in lieu of the present specified off-route points.

MC 44737 (Notice of filing of petition to modify certificate), filed March 28, 1979. Petitioner: THE ANDREWS MOVING AND STORAGE COMPANY, a corporation, 4811 Van Epps Road, Cleveland, OH 44131. Representative: David A. Turano, Columbus Center, Suite 1800, 100 East Broad Street, Columbus, OH 43215. Petitioner holds motor *common carrier* certificate in MC-44737 issued October 27, 1969. MC-44737 authorizes transportation over irregular routes of *household goods* as defined by the Commission, between points in OH, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, PA., RI, VA, and DC. By the instant petition,

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

petitioner seeks to modify the authority as follows: change the territorial description to be between points in CT, DE, IL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, PA, RI, VA, and DC.

MC 45544 (M1F), (Notice of filing of petition to modify the territorial description), filed January 5, 1979. Petitioner: SILVER LINE, INC., 171 Commerce Rd., Carlstadt, NJ 07072. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Petitioner holds motor *common carrier certificates* in MC–45544 dated April 20, 1943 and MC–45544 Sub 1, dated March 4, 1947. MC–45544 authorizes, as pertinent, transportation, over irregular routes, of *cleaning fluid, corrugated boxes, piece goods, cut materials and trimmings, thread, sewing machines and pads, and wearing apparel*, between New York, NY, on the one hand, and, on the other, points in Hudson, Essex, Union, Middlesex, Somerset, Hunterdon, Bergen, Passaic, Morris and Warren Counties, NJ, and points in Northumberland, Northampton, Lehigh, Bucks, Carbon, Luzerne, and Schuylkill Counties, PA. MC–45544 Sub 1 authorizes transportation, over irregular routes, *wearing apparel* (not including such articles which are transported crated or on hangers), from points in Lebanon and Monroe Counties, PA, to New York, NY; and *Materials and equipment* used in the manufacture of wearing apparel and paper and paper containers used in the packing thereof, over irregular routes, from New York, NY, to points in Lebanon and Monroe Counties, PA. By this instant petition, petitioner seeks to modify the the territorial description in MC–45544 to read: "(1) between New York, NY, and points in Bergen, Passaic, Hudson, Essex, Union, Morris, Hunterdon, Warren, Middlesex, and Somerset Counties, NJ, on the one hand, and, on the other, points in PA on the east of U.S. Hwy 15; and (2) between New York, NY, on the one hand, and, on the other, points in Hudson, Essex, Union, Middlesex, Somerset, Hunterdon, Bergen, Passaic, Morris, and Warren Counties, NJ."

MC 65106 (M1F) (notice of filing of petition to modify permit), filed February 2, 1979. Petitioner: FOGLIA BROS., INC., 75 Manchester Place, Newark, NJ 07104. Representative: Robert B. Petter, The Forest Park Building, 168 Woodbridge Avenue, Highland Park, NJ 08904. Petitioner holds a *contract carrier* permit in MC–65106, issued September 5, 1972, authorizing, over irregular routes, the transportation of (1) *corn products*, between New York, NY, on the one hand, and, on the other, points in Bergen, Essex, Hudson, Passaic, and Union Counties, NJ, (2) *textile chemicals*, from New York, NY, to Hawthorne, NJ, and points in NJ within 30 miles of city hall, New York, NY, (3) *empty textile chemical* containers, from the destination points specified immediately above, to New York, NY, (4) *caustic soda*, from Passaic, NJ, to New York, NY, (5) *empty caustic soda containers*, from New York, NY, to Passaic, NJ, and (6) *paint, varnish, painters' supplies, materials, supplies* and *equipment* used by paint manufacturers, and advertising displays and materials used in connection therewith, between New York, NY, and points in Nassau and Westchester Counties, NY, on the one hand, and, on the other, Carteret and Newark, NJ. By the instant petition, petitioner seeks to add Orange County in part (6) as a radial point to be included along with the other counties in NY.

MC 102616 (Sub-904) (M1F) (notice of filing of petition to modify certificate) filed December 28, 1978. Petitioner: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Road, Akron, OH 44313. Representative: Fred H. Daly, 1725 K Street NW., Suite 1009, Washington, DC 20006. Petitioner holds a motor *common carrier* certificate in MC–102616 Sub 904, issued October 9, 1975, authorizing transportation over irregular routes, of *chemicals* (except anhydrous ammonia, aqua ammonia, and liquid fertilizer), in bulk, from the facilities of Monsanto Company at or near Muscatine, IA, to points in the United States (except AK, HI, IA, and points in the St. Louis, MO, East St. Louis, IL commercial zone, as defined by the Commission). By the instant petition, petitioner seeks to delete the words the facilities of Monsanto Company at or near.

MC 109324 (Sub-18) (MI) (notice of filing of petition to delete restriction), filed January 9, 1979. Petitioner: GARRISON MOTOR FREIGHT, INC., P.O. Box 1278, Harrison, AR 72601. Representative: Jay C. Miner (same address as petitioner). Petitioner holds a motor *common carrier* certificate in MC 109324 (Sub–18) issued June 16, 1970, authorizing transportation, over regular routes, as pertinent, of: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), Between Springfield, Mo., and Kansas City, Kans., serving no intermediate points: From Springfield over Missouri Highway 13 to junction Missouri Highway 7 (near Clinton, Mo.), thence over Missouri Highway 7 to Harrisonville, Mo., thence over U.S. Highway 71 to junction U.S. Highway 40 (Interstate Highway 70), thence over U.S. Highway 40 (Interstate Highway 70) to Kansas City, Kans., and return over the same route. Between Springfield, Mo., and East St. Louis, Ill., serving no intermediate points: From Springfield over U.S. Highway 66 (Interstate Highway 44) to East St. Louis, and return over the same route. Between Mountain Home, Ark., and junction U.S. Highway 63 and U.S. Highway 66 (Interstate Highway 44) at Rolla, Mo., serving no intermediate points, and serving said junction as a point of joinder only: From Mountain Home over Arkansas Highway 5 to the Arkansas–Missouri State line, thence over Missouri Highway 5 to Gainesville, Mo., thence over U.S. Highway 160 to junction U.S. Highway 63, thence over U.S. Highway 63 to junction U.S. Highway 66 (Interstate Highway 44) at Rolla, and return over the same route. Restriction: The operations authorized herein are restricted against the transportation of shipments moving (1) between points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, Little Rock, Ark., Memphis, Tenn., and Springfield, Mo., and the commercial zones thereof, as defined by the Commission, (2) between points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, Little Rock, Ark., Memphis, Tenn., and Springfield, Mo., and the commercial zones thereof, as defined by the Commission, and (3) between points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone, as defined by the Commission. By the instant petition, petitioner seeks to modify the above authority by deleting the restriction contained in (1) above which reads "(1) between points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, Little Rock, Ark., Memphis, Tenn., and Springfield, Mo., and the commercial zones thereof, as defined by the Commission".

MC 119547 (Sub-33) (M1F) (notice of filing of petition to modify certificate), filed March 13, 1979. Petitioner: EDGAR W. LONG, INC., 3815 Old Wheeling

Road, Zanesville, OH 43701. Representative: Richard H. Brandon, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017. Petitioner holds a motor *common carrier* certificate in MC-119547 Sub 33 issued March 4, 1974, authorizing the transportation over irregular routes of *ceramic tile* and *brick facing*, (except in bulk), from Cambridge, OH, to points in the United States (except AK, HI, MD, MI, NY, PA, and WV). By the instant petition, petitioner seeks to modify the authority as follows: Substitute the words clay products for the words ceramic tile and brick facing.

MC 123233 (Sub-13) (M2F), filed March 15, 1979 (notice of filing of petition to modify certificate). Petitioner: PROVOST CARTAGE, INC., 7887 Rue Grenache, Ville D'Anjou, Quebec, Canada H1J 1C4. Representative: J. P. Vermette (same address as petitioner). Petitioner holds motor *common carrier* Certificate in MC-123233 Sub 13 issued December 13, 1977, which authorizes transportation, over irregular routes, of *chemicals, lactose, soybean oil, whiskey, explosives, tung oil, and castor oil*, in bulk, in tank or hopper-type vehicles, between ports of entry on the United States-Canada Boundary line at or near Trout River, Alexandria Bay, Rooseveltown, Ogdensburg, and Champlain, NY, Highgate Springs, Derby Line, and Norton, VT, Jackman, Van Buren, Houlton, Vanceboro, and Calais, ME, on the one hand, and, on the other, Livermore Falls, Rumford, Lincoln, Great Works, and Cumberland Mills, ME, and points in VT, NH, MA, CT, RI, NY, NJ, DE, MD, PA (except petrochemical products from points in PA), and OH (except liquid chemical wax from Cleveland, OH), restricted to the transportation of traffic originating at or destined to points in the Province of Quebec, Canada, and to the extent it authorizes the transportation of Classes A and B explosives, the certificate shall be limited in point of time to a period expiring August 9, 1982. By the instant petition, petitioner seeks to modify the authority as follows: deleting the words: "at or near Trout River, Alexandria Bay, Rooseveltown, Ogdensburg, and Champlain, NY, Highgate Springs, Derby Line, and Norton, VT, and Jackman, Van Buren, Houlton, Vanceboro, and Calais, ME".

Note.—MC-123233 (Sub-No. 13) (M1F), published November 25, 1977, is pending before the Commission.

MC 133867 (Sub-6) (M1F) (notice of filing of petition to modify permit), filed April 2, 1979. Petitioner: STARLING TRANSPORT LINES, INC., P.O. Box 1733, Fort Pierce, FL 33450. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, DC 20001. Petitioner holds *contract carrier* permit in MC 133867 (Sub-6), issued October 21, 1977, authorizing over irregular routes, the transportation of *frozen foods*, from Wethersfield, CT, to points in the United States (except AK, HI, and CT). Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Foodways New York, Inc. By the instant petition, petitioner seeks to broaden the commodity to foodstuffs, add an additional origin point of New Paltz, NY, and restrict the origin points from the facilities of Foodways National, Inc.

MC 134467 (Sub-24) (M1F) (notice of filing of petition to modify certificate), filed February 21, 1979. Petitioner: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles J. Kimball, Suite 350, Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Petitioner holds motor common carrier certificate in MC 134467 (Sub-24), issued December 28, 1978. MC 134467 (Sub-24) authorizes transportation over irregular routes of foodstuffs, from the facilities used by La Choy Food Products, a division of Beatrice Foods Co., at or near Archbold, OH, to points in AR, LA, OK, and TX, restricted to the transportation of traffic originating at the named facilities and destined to the indicated states. By the instant petition, petitioner seeks to modify the authority as follows: from the plantsites and/or storage facilities utilized by LaChoy Food Products and Beatrice Specialties Co., Divisions of Beatrice Foods Co., at or near Archbold, OH.

MC 138065 (Sub-2F) (M1F) (notice of filing of a petition to modify the territorial description), filed January 16, 1979. Applicant: LOU BOLE CARPET CARRIERS, INC., L. Davis Division, 325 Main Street, Belleville, NJ 07109. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Petitioner holds motor *common carrier* authority in MC 138065 (Sub-2) authorizing transportation over irregular routes of: *Floor covering*, and *materials, supplies, and equipment* used in the installation of floor covering (except commodities in bulk), between New York, NY, on the one hand, and, on the other, points in Rockland and Westchester Counties, NY, points in Fairfield County, CT, and those points in that part of New Jersey on and north of a line beginning at junction New Jersey-Pennsylvania State line and Interstate Highway 195 and extending along Interstate Highway 195 to junction New Jersey Highway 526, thence along New Jersey Highway 526 to junction New Jersey Highway 549, thence along New Jersey Highway 549 to the Atlantic Ocean. By the instant Petition, petitioner seeks to modify the territorial description to read: "between New York, NY, on the one hand, and, on the other, points in Rockland, Westchester, Orange and Putnam Counties, NY, New Milford, Ansonia, Derby, Orange and Milford, CT, points in Fairfield County, CT, and those points in that part of NJ on and north of a line beginning at junction NJ-PA line and Interstate Hwy 195 and extending along Interstate Hwy 195 to junction NJ Hwy 526, then along NJ Hwy 526 to junction NJ Hwy 549, then along NJ Hwy 549 to the Atlantic Ocean."

MC 138157 (Sub-44) (M1F) (Notice of filing of petition to modify certificate), filed January 26, 1979. Petitioner: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, TN 37412. Representative: Patrick E. Quinn (same address as applicant). Petitioner holds a *motor common carrier* certificate in MC 138157 (Sub-44), issued July 14, 1978, authorizing over irregular routes, the transportation of (1) *carpeting* and *yarn*, from the facilities of Berven Carpets Corp., at or near Fresno, CA, to Ridgefield Park, NJ, Franklin Park, IL, Roseville, MI, Houston, TX, Phoenix, AZ, and Cincinnati, OH, and (2) *equipment, materials*, and *supplies* used in the manufacture, production, and distribution of the commodities named in (1) above, (except in bulk, in tank vehicles) and *carpeting* and *yarn*, from points in AL, GA, PA, NC, SC, TN, and VA, to Los Angeles, CA, and the facilities of Berven Carpets Corp., at or near Fresno, CA. By the instant petition, petitioner seeks to modify in part (1) by substituting Detroit, MI, in lieu of Roseville, MI, and in part (2) by deleting the facilities of Berven Carpets Corp., at or near Fresno, CA, and substitute points in Fresno, Tulare, Merced, and Madera Counties, CA.

MC 140484 (Sub-291) (M1F) (Notice of filing of petition to modify the territorial description in a pending certificate), filed January 5, 1979. Petitioner: LESTER COGGINS TRUCKING, INC., 2671 E. Edison Ave., P.O. Box 69, Ft. Myer, FL 33901. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, DC 20005. Petitioner has applied for motor

common carrier authority in MC 140484 (Sub-29), and a decision was served on April 3, 1979 granting *electric motors, electric gear motors, power transmission equipment,* and *machinery, and controllers or controller parts* and *parts and accessories therefor, elevator and elevator parts and accessories, escalator and escalator parts and accessories, weighing machinery and parts and accessories* and *tele-communication equipment and parts and accessories,* between Cleveland, OH, Mishawaka, IN, Rogersville, TN, and Lawrenceburg, KY. The above-authority is conditioned to publication in the **Federal Register.** By the instant petition, petitioner seeks to modify the above territorial description by adding Athens, Gainesville and Atlanta, GA, Madison, IN, Weaverville, NC, Spartansburg, SC, and Chicago, IL as additional points.

MC 141717 (Notice of filing of petition to modify certificate), filed December 1, 1978. Petitioner: HOWARD MOUNTAIN TRANSPORTATION CORP., 89–50 56th Avenue, Elmhurst, NY 11373. Representative: Michael K. Benimowitz, 299 Broadway, New York, NY 10007. Petitioner holds motor *common carrier* certificate in MC 141717, issued June 4, 1976. MC 141717 authorizes transportation, over irregular routes of *passengers and their baggage,* in special operations, in non-scheduled, door-to-door service, limited to the transportation of not more than in part (1) 8 passengers and, in part, (2) 6 passengers, in any one vehicle, but not including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats, during in part (1) the season extending from the 15th day of May to the 30th day of September, inclusive, between New York, NY, on the one hand, and, on the other, points in Liberty, Thompson, and Fallsburg Townships, Sullivan County, and Wawarsing Township, Ulster County, NY, and in part (2) the season extending from November 1 to April 30, both inclusive of each year, between New York, NY, and Lakewood, NJ. By the instant petition, petitioner seeks to modify the authority as follows: Delete the seasonal restrictions in both parts (1) and (2).

Republications of Grants of Operating Rights; Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 19311 (Sub-43F) (republication), filed April 3, 1978, previously noticed in the **Federal Register** issue of June 29, 1978. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Elmer J. Maue, 34200 Mound Road, Sterling Heights MI 48077. A Decision of the Commission, Review Board number 1, decided March 30, 1979, and served April 6, 1979, finds that the present and future public convenience and necessity require operation by applicant, or foreign commerce, as a *common carrier* by motor vehicle, in foreign commerce only, over irregular routes, transporting *expanded plastic products* (except in bulk) from Detroit and Port Huron, MI, and Buffalo, NY, to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, West Virginia, and Wisconsin, those points in Pennsylvania on and west of U.S. Hwy 219, and those points in New York on and west of a line beginning at the New York–Pennsylvania State line and extending along U.S. Hwy 219 to its junction with NY Hwy 78, then along NY Hwy 78 to Lake Ontario. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 51146 (Sub-593F) (republication), filed April 10, 1978, published in the **Federal Register** issue of July 27, 1978, and republished this issue. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. A Decision of the Commission, Review Board No. 2, decided March 21, 1979, and served April 9, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier,* by motor vehicle, over irregular routes, transporting *such commodities* as are dealt in by distributors of games and toys (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of M.W. Kasch Co., that applicant is fit, willing, and able properly to perform such service to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the territorial description.

MC 89684 (Sub-100) (republication), filed October 17, 1977, published in the **Federal Register** issue of December 22, 1977 and April 27, 1978, and republished this issue. Applicant: WYCOFF COMPANY, INC., 560 South 300 West, Salt Lake City, UT 84110. Representative: Kent W. Capener, 560 South 300 West, Salt Lake City, UT 84110. A Decision of the Commission, Review Board Number 1, decided March 5, 1979, and served March 19, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, transporting *general commodities* (except classes A and B explosives, commodities in bulk, commodities which require special equipment, and household goods as defined by the Commission), between Elko and Wendover, NV, on the one hand, and, on the other, points in Washoe, Storey, Carson City, Humboldt, Pershing, Churchill, Lander, Eureka, and White Pine Counties, NV, restricted (1) to the transportation of packages or articles each not exceeding 100 pounds in weight, and (2) against the transportation of shipments of packages or articles weighing in the aggregate more than 200 pounds from one consignor to one consignee on any one day. The purpose of this publication is to show Wendover, NV as a service point.

Note.—Applicant may tack the above authority with its present authority.

MC 116073 (Sub-365) (republication), filed September 26, 1977, published in the **Federal Register** issue of November 25, 1977, and republished this issue. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Main Ave.,

P.O. Box 919, Moorhead, MN 56560. Representative: Donald E. Cross, 918 16th Street, N.W., Ste. 700, Washington, D.C. 20006. A Decision of the Commission, Division 1, decided May 11, 1979, and served May 24, 1979, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *travel and camper trailers, fifth wheel trailers, camper and camp coaches, and motor homes*, in truckaway service, and (2) *automobiles*, in secondary movements, in truckaway service, from points in Indiana (except Fort Wayne), Ohio (except Springfield), and Michigan to points in the United States (except Alaska and Hawaii); that applicant is fit, willing, and able properly to perform the service authorized and to conform to the requirements of Title 49, sub title IV, U.S. Code (formerly the Interstate Commerce Act), and the Commission's regulations. The purpose of this republication is to modify the commodity description and the territorial description.

MC 121664 (Sub-12) (republication), fild September 25, 1975, published in the **Federal Register** issue of October 31, 1975, and republished this issue. Applicant: G. A. HORNADY, CECIL M. HORNADY and B. C. HORNADY, d.b.a., HORNADY BROTHERS TRUCK LINE, Box 846, Monroeville, AL 36460. Representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. A Decision of the Commission, Division 2, decided March 1, 1979, and served March 14, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of lumber, lumber products, and particleboard, between points in AL, GA, FL, KY, MS, and TN, restricted to the transportation of traffic which either originates at or is destined to a facility of Moore-Handley, Inc., or from a supplier of Moore-Handley, Inc., to and from construction or building sites, located in the named states. The purpose of this republication is to add "* * * from a supplier of Moore-Handley, Inc., to and from construction or building sites * * *"

MC 124211 (Sub-322F) (republication), filed April 10, 1978, previously noticed in the **Federal Register** issue of July 27, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt, P.O. Box 988, D.T.S., Omaha, NE 68101. A Decision of the Commission, Review Board Number 2, decided April 5, 1979, and served May 3, 1979, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting *herbicides, insecticides, fertilizer, vermiculite*, and *ice-melting compounds* (except commodities in bulk, from Kenosha and Union Grove, WI, to points in the United States (except Wisconsin, Alaska, and Hawaii). Applicant is fit, willing, and able properly to perform such service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to add ice-melting compounds to the commodity description.

MC 134286 (Sub-52F) (republication), filed June 22, 1978, published in the **Federal Register** issue of August 10, 1978, and republished this issue. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. A Decision of the Commission, Review Board No. 4, decided March 30, 1979, and served April 6, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *meat, meat products, meat by-products*, and *articles* distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Sioux Preme Packing Co., located at or near Sioux Center and Sioux City, IA, to points in CT, DE, ME, MD, MA, MI, NH, NJ, NY, PA, RI, TX, VT, VA, WV and DC, restricted to traffic originating at the named origins, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the territorial description.

MC 134286 (Sub-54F) (republication), filed April 5, 1978, published in the **Federal Register** issue of July 13, 1978, and republished this issue. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. A Decision of the Commission, Review Board No. 3, decided March 16, 1979, and served April 18, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *chemicals, acids, solvents, and edible oils* (except in bulk), (A) from (1) Chicago, IL, (2) the facilities of Hawkins Chemical Co., and Exxon Chemical Corp., at or near Minneapolis, MN, (3) the facilities of F.M.C. Corp., at or near Lawrence, KS, and Green River, WY, (4) the facilities of Olin Chemical Co., at or near Joliet, IL, (5) the facilities of Sanford Chemical Co., at or near Elk Grove Village, IL, (6) the facilities of Velsicol Chemical Co., at or near St. Louis, MO, (7) the facilities of James Varley & Son Co., at or near St. Louis, MO, (8) the facilities of BASF Wyandotte Chemical Corp., and Penwalt Corp., at or near Wyandotte, MI, (9) the facilities of Ozark-Mahoning Co., at or near Tulsa, OK, (10) the facilities of Floridin Company at or near Berkeley Springs, WV, and Quincy, FL, (11) the facilities of Ash Grove Chemical Co., at or near Springfield, MO, (12) the facilities of Lien Chemical Co., at or near Rapid City, SD, (13) the facilities of Burris Chemical Co., at or near Charleston, SC, and East Point, GA, (14) the facilities of Barnebey Cheney, at or near Columbus, OH, (15) the facilities of Cities Service Co., at or near Copperhill, TN, (16) the facilities of Ft. Recovery Industries, at or near Ft. Recovery, on, (17) the facilities of Great Lakes Chemical Corp., at or near West Lafayette, IN, (18) the facilities of Marathon Morco Co., at or near Dickinson, TX, (20) the facilities of Mazer Chemical, at or near Gurnee, IL, (21) the facilities of Quality Chemical Co., at or near Baltimore, MD, (22) the facilities of Stauffer Chemical Co., at or near Green River, WY, (23) the facilities of Westvaco Chemical Division, at or near Covington, VA, (24) the facilities of Lowe's Inc., at or near Oran, MO, (25) the facilities of P.P.G. Industries, at or near Barberton, OH, and Natrium, WV, (26) the facilities of Diamond Shamrock Chemical Co., at or near Pinesville, OH, (27) the facilities of Allied Chemical Co., at or near Wilmington and North Claymont, DE, Richmond, VA, and Syracuse, NY, (28) the facilities of E.I. DuPont, at or near Memphis, TN, (29) the facilities of Dow Chemical Co., at or near Midland and Ludington, MI, (30) the facilities of North Star Chemical, at or near Pine Bend, MN, (31) the facilities of Penwalt Corp., at or near Delaware,

OH, and (32) the facilities of Standard Milling, at or near Meta, MO, to points in IA and NE, and (B) from the facilities of Warren-Douglas Chemical Co., at or near Omaha, NE, and Sioux City, IA, to Phoenix, AZ, and points in NM, OK, and TX, restricted, in (A) and (B), to the transportation of traffic originating at the named origins and destined to the indicated destinations, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the territorial description.

MC 138126 (Sub-24F) (republication), filed March 20, 1978, published in the **Federal Register** issue of June 8, 1978, and republished this issue. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., P.O. Box 47, Old Denton Road Federalsburg, MD 21632. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th Street N.W., Washington, DC 20005. A Decision of the Commission, Review Board No. 2, decided April 17, 1979, and served May 10, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *frozen foodstuffs*, from the facilities used by Campbell Soup Company, Inc., located in DE and MD and points in that part of PA on and east of U.S. Hwy 15, to points in CT, DE, KY, MD, MA, MI, NJ, NY, OH, PA, RI, VA, WV and DC, those in TN on and east on U.S. Hwy 127, and Atlanta, GA, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations, the purpose of this republication is amend the territorial description.

MC 139206 (Sub-35F) (republication), filed March 30, 1978, published in the **Federal Register** issue of July 7, 1978, and republished this issue. Applicant: F.M.S. TRANSPORTATION, INC., Box 1597, 2564 Harley Drive, Maryland Heights, MO 64043. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th St. N.W., Washington, DC 20001. A Decision of the Commission, Review Board No. 1, decided March 21, 1979, and served April 3, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Hatboro, PA, on the one hand, and, on the other, points in the United States (except AK, HI, and PA), under continuing contract(s) with Chromalloy American Corporation of Clayton, MO, will be consistent with the public interest and the national transportation policy. The purpose of this republication is to modify the comodity description.

MC 140484 (Sub-29F) (republication), filed February 28, 1978, published in the **Federal Register** issue of April 6, 1978, and republished this issue. Applicant: LESTER COGGINS TRUCKING, INC., 2671 East Edison Avenue, P.O. Box 69, Fort Myers, FL 33902. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, N.W., Washington, DC 20005. A Decision of the Commission, Review Board Number 1, decided March 2, 1979, and served April 3, 1979, finds that the present and future public convenience and necessity require operations by applicant in the interstate or foreign commerce as a *common carrier, by motor vehicle, over irregular routes, transporting electric motors, electric gear motors, power transmission equipment, and machinery and controllers or controller parts and parts and accessories therefor, elevator and elevator parts qnd accessories, escalator and escalator parts and accessories, weighing machinery and parts and accessories and tele-communication equipment and parts and accessories, between Cleveland, OH, Mishawaka, IN, Rogersville, TN, and Lawrenceburg, KY,* that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code and the Commission's regulations. The purpose of this republication is to show Lawrenceburg, KY, as a service point in lieu of Lexington, KY.

MC 143006 (republication), filed February 7, 1977, published in the **Federal Register** issue of April 14, 1977, and republished this issue. Applicant: DORWIN TRUCKING COMPANY, INC., 3420 52nd Street East, Tacoma, WA 98443. Representative: George Kargianis, 2120 Pacific Building, Seattle, WA 98104. A Decision of the Commission, Division 2, decided May 15, 1979, and served May 18, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *cranes, steel, rubber-covered rollers, commodities*, the transportation of which because of size or weight require the use of special equipment, and *contractors' equipment and supplies*, between points in WA, on the one hand, and, on the other, points in ID, MT, OR, and WA, that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description.

Motor Carrier, Broker, Water Carrier and Freight Forwarder Operating Rights Applications

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register**. Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected.

MC 29555 (Sub-96F), filed February 1, 1979. Applicant: BRIGGS TRANSPORTATION CO., a corporation, North 400 Griggs-Midway Bldg., St. Paul, MN 55104. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between St.

Louis, MO, and LaCrosse, WI, over U.S. Hwy 61, serving the intermediate points of Keokuk, Fort Madison, Burlington, Muscatine, and DeWitt, IA, and serving the junctions of U.S. Hwys 61 and 6, U.S. Hwys 61 and 30, and U.S. Hwys 61 and 218 for the purpose of joinder only, (2) between St. Louis, MO, and Keokuk, IA, (a) over U.S. Hwy 67 to junction U.S. Hwy 136, then over U.S. Hwy 136 to Keokuk, and return over the same route, serving the intermediate point of Macomb, IL, and (b) over MO Hwy 79 to junction Hwy 79, then over IL Hwy 79 to junction IL Hwy 57, then over IL Hwy 57 to junction IL Hwy 96, then over IL Hwy 96 to junction U.S. Hwy 136, and return over the same route, serving no intermediate points, (3) between St. Louis, MO, and Rockford, IL, from St. Louis over Interstate Hwy 55 to junction U.S. Hwy 51, then over U.S. Hwy 51 to Rockford, and return over the same route, serving no intermediate points, (4) between junction U.S. Hwys 67 and 136 and Rockford, IL, from junction U.S. Hwys 67 and 136, over U.S. Hwy 67 to junction IL Hwy 2, then over IL Hwy 2 to Rockford, and return over the same route, serving the intermediate points of Dixon, Sterling, and Rock Falls, IL, (5) between St. Louis, MO, and Omaha, NE, from St. Louis, over Interstate Hwy 70 to junction Interstate Hwy 29, then over Interstate Hwy 29 to Omaha, and return over the same route, serving no intermediate points, (6) between junction U.S. Hwys 61 and 218, and Cedar Rapids, IA, over U.S. Hwy 218, serving the intermediate point of Iowa City, IA, and serving the junction of U.S. Hwys 61 and 218 for the purpose of joinder only, (7) between junction IA Hwy 38 and U.S. Hwy 61, and Cedar Rapids, IA, from junction IA Hwy 38 and U.S. Hwy 61 over IA Hwy 38 to junction Interstate Hwy 80, then over Interstae Hwy 80 to junction Interstate Hwy 380, then over Interstate Hwy 380 to Cedar Rapids, and return over the same route, serving the intermediate point of Iowa City, IA, and serving the junction of IA Hwy 38 and U.S. Hwy 61 for the purpose of joinder only, (8) between junction U.S. Hwys 218 and 34, and Des Moines, IA, from junction U.S. Hwys 218 and 34 over U.S. Hwy 34 to junction U.S. Hwy 63, then over U.S. Hwy 63 to junction U.S. Hwy 163, then over U.S. Hwy 163 to Des Moines and return over the same route, serving the intermediate points of Oscaloosa, Ottumwa, Fairfield, and Mt. Pleasant, IA, and serving the junction of U.S. Hwys 218 and 34 for purpose of joinder only, (9) between junction Interstate Hwys 70 and 35 and Des Moines, IA, over Interstate Hwy 35, serving no intermediate points, for the purpose of joinder only, (10) between junction Interstate Hwy 70 and U.S. Hwy 65 and Des Moines, IA, over U.S. Hwy 65, serving no intermediate points, for the purpose of joinder only, and (11) between junction Interstate Hwy 70 and U.S. Hwy 63, and Ottumwa, IA, over U.S. Hwy 63, serving no intermediate points, for the purpose of joinder only. (Hearing site: St. Louis, MO, Minneapolis, MN, and Des Moines, IA.)

MC 134922 (Sub-288F), filed March 23, 1979. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *pipe fittings and pipe hangers*, from Columbia, PA, to points in AZ, CA, ID, NV, NM, OR, TX, UT, and WA. (Hearing site: Philadelphia, PA, or Washington, DC.)

Note.—Applicant states that its purpose is to replace interline service with single-line service.

Motor Carrier Transfer Proceedings

Application filed for temporary authority under Section 11349 in connection with transfer application under Section 10926 and Transfer Rules, 49 CFR Part 1132.

MC FC 78154. By application filed May 25, 1979, DARRELL MADDEN, an individual, d.b.a. DARRELL D. MADDEN TRUCKING, 2232 East Maime Eisenhower Avenue, Boone, IA 50036, seeks temporary authority to transfer a portion of the operating rights of Dakota Express, Inc., 550 East Fifth Street South, South St. Paul, MN 55075, under Section 210a(b). The transfer to Darrell Madden, an individual, d.b.a. Darrell D. Madden Trucking, of a portion of the operating rights of Dakota Express, Inc., is presently pending.

MC FC 78163. By application filed May 30, 1979, AUTOBUS VENISE (1978) LTEE, 50 McArthur Road, Valleyfield, Quebec J6S 4M5 CD, seeks temporary authority to transfer the operating rights of Venise Coach Line, Inc., 50 McArthur Road, Valleyfield, Quebec J6S 4M5, CD, under section 210a(b). The transfer to Autobus Venise (1978) LTEE, of the operating rights of Venise Coach Line, Inc., is presently pending.

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 request for oral hearing, must be filed with the Commission on or before July 18, 1979. 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 notice of the proposed transfer.

Finance Docket 29027F, filed April 12, 1979. Transferee: AURORA INTERNATIONAL FORWARDING, INC., 5060 Shawline Dr., San Diego, CA 92111. Transferor: COLUMBIA EXPORT PACKERS, INC., Joel Mithers, Trustee in Bankruptcy, Broadway Plaza, Suite 1702, 700 S. Flower St., Los Angeles, CA 90017. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006. Authority sought for purchase by transferee of the freight forwarder rights of transferor as set forth in permit No. FF-325 (Sub-No. 1), issued October 5, 1977, as follows: operations as a freight forwarder of (a) *used household goods* and *unaccompanied baggage* and (b) *used automobiles*, between points in the United states (including AK and HI), restricted in (b) above, to the transportation of export-import traffic. Transferee holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

Finance Docket 29041F filed May 1, 1979. Transferee: MS EXPRESS, Inc., 600 Grant St. Pittsburg, PA 15219.

Transferor: MASTER FORWARDING CORPORATION. (The Union National Bank of Pittsburgh, Successor-In-Interest), Fourth Ave. and Wood St., Pittsburgh, PA 15222. Applicants' representatives: William A. Chesnutt, 1776 F St., N.W., Washington, D.C. 20006. M. Bruce McCullough, 5700-600 Grant St., Pittsburgh, PA 15219. Authority sought for purchase by transferee of the permit held by transferor in No. FF-139, issued March 27, 1970, authorizing operations as a freight forwarder of general commodities, (1) from points in CT, MA, NJ, NY, KY, IL, and MO, to points in IN, TN, IL, WI, MN, IA, MO, AR, LA, TX, OK, KS, NE, SD, ND, and CO; (2) between points in MA, CT, PA (except Philadelphia), NJ (except Bergen, Essex, Hudson, Middlesex, Passaic, and Union Counties), and Rockland, Suffolk, Orange, Putnam, Ulster, Dutchess, and Sillivan Counties, NY, on the one hand, and, one the other, points in KY, MI, and OH; (3) between points in MI and OH, on the one hand, and, on the other, points in MD (except Baltimore), and Delware (except Wilmington), (4) from Indianapolis, IN, to points in MA, CT, DE (except Wilmington), (4) from Indianapolis, IN, to points in MA, CT, DE (except Wilmington), PA (except Philadelphia), NJ (except Bergen, Essex, Hudson, Middlesex, Passaic, Union Countries), and Suffolk County, NY; (5) from Cambridge, IN, to points in MA, CT, and Suffolk County, NY, and (6) from points in ME, MD, NH, PA, RI, and VT, to points in LA, TN, and TX. Transferee holds no authority from the Commission.

MC-FC 77575, filed March 23, 1979. Transferee: REMY MOVING & STORAGE CORP., Old Post Road, Walpole, MA 02081. Transferor: REMY MOVING & STORAGE OF MASSACHUSETTS, INC. (same as transferee). Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, D.C. 20036. Authority sought for purchase by transferee of the operating rights of transferor in Certificate MC 2677, issued January 31, 1968, acquired by transferor in MC-FC 78614 under its prior name of Remy Transportation Corp., as set froth below: Household goods as defined by the Commission, between points in Massachusetts, east of the Connecticut River, including those on the west bank of the Connecticut River, on the one hand, and, on the other, points in CT, IL, ME, MD, OH, NH, NJ, NY, PA, RI, VA, VT, and DC. Transferee holds no authority from the Commission. An application for temporary authority has not been filed.

MC-FC 77930, filed November 14, 1978. Transferee: T & E TRUCKING, INC., Box 342, Clarksville, VA 23927. Transferor: CLARENCE OVERTON THOMAS, d.b.a. C. O. THOMAS TRUCKING, Route 1 Box 153, New Canton, VA 23213. Applicants' representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC-114949, issued March 15, 1973, as follows: *Lumber and pallets*, from Drakes Branch, VA, to points in WV, OH, MD, DE, PA, NJ, NY, and DC. *Lumber*, from Drakes Branch, VA, to Bargersville, IN, and Louisville, KY. *Lumber*, (except plywood), from Drakes Branch, VA, to points in CT, KY (except Louisville), IL, IN (except Bargersville), MI, and TN. The two commodity descriptions next above, are limited to a transportation service to be performed under continuing contract(s) with Stanley Land and Lumber Corporation, of Drakes Branch, VA. Transferee presently holds no authority from this Commission. Application has been granted for temporary authority under 49 U.S.C. § 11349.

MC-FC 78046, filed February 26, 1979. Transferor: ROBCO TRANSPORTATION, INC., P.O. Box 510, West Des Moines, Iowa 50265. Transferee: CONTINENTAL EXPRESS, INC., 486 West Eagle Lake Drive, Osseo, Minnesota 55369. Applicant's Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, Minnesota 55402. Authority sought to transfer pursuant to Section 212(b) of the Interstate Commerce Act a portion of Transferor's Certificate MC 136786, (Sub-92), issued August 18, 1977, as follows: to transport over irregular routes frozen prepared foods from Duluth, Minnesota, to points in ND, SD, NB, IA, MO, WI, IL, IN, MI, OH, PA, WV, VA, MD, DE, NJ, NY, MA, CN, RI, VT, NH, MA, and DC. Restricted to the transportation of shipments originating at the plantsites or warehouse facilities of Jeno's, Inc. at Duluth, MN, and destined to points in the above-name destination States and DC. Transferee holds no authority from the Commission and no temporary authority application has been filed.

MC-FC 78050, filed February 15, 1979. Transferee: LEONARD EXPRESS, INC., P.O. Box 23, 13 Third Street, Charleroi, PA 15022. Transferor: C. E. LIZZA, INC., P.O. Box 308, Lignoier, PA 15658. Transferee's representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. Transferor's representative: David R. Gold, 200 Union Trust Building, Greensburg, PA 15601. Authority sought for the purchase of the operating rights set forth in Permit MC 48213 (Sub-18), MC 48213 (Sub-24), MC 48213 (Sub-27), MC 48213 (Sub-32), MC 48213 (Sub-33), MC 48213 (Sub-35), MC 48213 (Sub-37), MC 48213 (Sub-39), MC 48213 (Sub-41), and MC 48213 (Sub-42). Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b). The commodities authorized include explosives, wall covering, synthetic fiber yarn, and dry animal and poultry feeds, and the involved territory includes numerous named States.

MC FC-78058, filed March 5, 1979. Transferee: INTERNATIONAL STAGE LINES, INC., No. 6, 3150 E. 58th Ave., Vancouver, British Columbia, Canada, V5S 3S9. Transferor: VANCOUVER ISLAND COACH LINES LTD., 710 Douglas St., Victoria, British Columbia, Canada. Representative: Leslie R. Peterson, 600-890 W. Pender St., Vancouver, British Columbia, Canada, V6C 1K4. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificates MC 124233 (Sub-6 and 7), issued October 3, 1969 and August 12, 1971, respectively, as follows: *Passengers and their baggage*, in round-trip charter, and special operations in sightseeing and pleasure tours, beginning and ending at ports of entry on the United States-Canada boundary line in WA, and extending to points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, and WY. *Passengers and their baggage* in the same vehicle with passengers, in one-way charter operations, from ports of entry on the United States-Canada Boundary line in WA, to points in WA. Transferee holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. § 11349.

MC-FC 78059, filed March 8, 1979. Transferee: MOUNTAIN WEST TRANSPORTATION CO., a corporation, 346 W. South Temple, Salt Lake City, UT 84101. Transferor: SALT LAKE TRANSPORTATION CO., a corporation, 346 W. South Temple, Salt Lake City, UT 84101. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates MC-2239 and Subs 1, 2, and 3, issued July 1, 1942, October 9, 1962, May 26, 1967, and March 28, 1972 respectively, as follows: (A) *Passengers and their*

baggage, (1) in charter operations, from Salt Lake City, UT, to points in AZ, CO, ID, MT, NV, WY, and UT within 400 miles of Salt Lake City, UT, and return, restricted to the transportation of traffic originating at the point indicated, (2) in special operations, in round-trip sightseeing or pleasure tours, originating at Salt Lake City, UT, and extending to those points in AZ, CO, ID, MT, NV, NM, OR, and WY within 400 miles of Salt Lake City, and return, and (3) in special operations, in sightseeing or pleasure tours, from Salt Lake City, UT, to West Yellowstone, MT, and from West Yellowstone, MT, to Salt Lake City, UT. (B) *Passengers and their baggage* in the same vehicle with passengers, over a regular route between Salt Lake City and Brighton, UT, serving all intermediate points. Transferee holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC 78060, filed March 6, 1979. Transferee: VIKING INTERNATIONAL, INC., 1434 S.W. 137th, Seattle, WA 98166. Transferor: J & R TRUCKING, INC., 4104 83rd S.E., Mercer Island, WA 98040. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates No. MC 140313 Subs 4, 7, and 8, issued July 30, 1976, October 6, 1977, and January 10, 1978, as follows: Metal doors, metal fireplaces, from Fredericksburg, VA, to Sacramento, CA, and points in OR and WA; Metal doors, metal fireplaces and attachments and related parts of metal doors and metal fireplaces, from Fredericksburg, VA, to points in AZ and NV, and ports of entry on the U.S.-Canada Boundary in MN, MO, NY, and ND; Galvanized pipe, furnaces, furnace fittings and parts, air conditioners, and air conditioner parts, from Cincinnati, OH, to points in ID, OR, and WA. Transferee holds no ICC authority and a temporary authority application has been filed.

MC–FC 78061, filed February 8, 1979. Transferee: BLUE RIDGE LINES, LTD, 134–F LaMancha Drive, Asheville, NC 28805. Transferor: TRAILWAYS SOUTHEASTERN LINES INC., 200 Spring St., N.W., P.O. Box 56669, Atlanta, GA 30343. Representative: Edward S. Finley, Jr., P.O. Box 109, Raleigh, NC 27602. Authority sought for purchase by transferee of portions of the operating rights held by transferor in Certificate MC 61599 issued November 2, 1948, as follows: Passengers and their baggage, express, mail and newspapers in the same vehicle with passengers, between Bristol, VA–TN and Asheville, NC; between Mars Hill, NC and Marshall, NC; and between Greenville, TN and Asheville, NC, over specified regular routes, serving all intermediate points. Transferee holds no authority from the Commission. An application for temporary authority has not been filed.

MC–FC 78062, filed March 8, 1979. Transferee: CHARLES G. LAWSON TRUCKING INC., 608 Ann Drive, Brundidge, AL 36010. Transferor: LORENZ TRANSPORT AND SHIP LINES, INC., Mobile Highway, Montgomery, AL 36102. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Authority sought for purchase by transferee of the operating rights of transferor set forth in Permit MC 143185, issued June 13, 1978, as follows: Meats, meat products, meat by-products, and materials and supplies used in the manufacture of meats, meat products, meat by-products (except hides and skins and commodities in bulk, in tank vehicles), between the facilities of Frosty Land Foods International, Inc., d.b.a. Lorenz International, in Montgomery, AL, on the one hand, and, on the other, points in the United States, including Alaska, but excluding Hawaii, under contract with Frosty Lands Foods International, Inc., d.b.a. Lorenz International. Transferee holds no ICC authority. Application for temporary authority has been filed.

MC–FC 78063, filed March 2, 1979. Transferee: RUSSELL A. KARCHNER, d.b.a. RUSSELL KARCHNER TRUCKING, Box 20, Sybertsville, PA 18251. Transferor: Gervase Murphy, 105 W. Independent St., Orwigsburg, PA 17961. Representative: Keith W. Karchner, Box 130, Sybertsville, Pa. 18251. Authority sought for purchase by transferee of the operating rights of transferor set forth in Permit MC 140618, issued October 4, 1976, as follows: *Petroleum motor oil, lubricating oil, greases, and undercoating and oil additives* (except in bulk), from Congo, WV, to points in Bucks, Montgomery, Delaware, Philadelphia, Cumberland, Dauphin, Lancaster, Perry and Schuylkill Counties, PA, under contract with Penn Harris Oil Co, of Camp Hill, PA; Shollenberger Oil Co., of Pottsville, PA, and Loos & Dilworth, Inc., of Philadelphia. Transferee holds authority under MC 79700. Application for temporary authority has not been filed.

MC–FC 78064, filed March 6, 1979. Transferee: EDWARD J. STINSON, Route 1, Box 256, Glen Rose, TX 76043. Transferor: H. J. NOLL, 1014 Daisy St., Houston, TX 77012. Representative: Joe G. Fender, 711 Louisiana, Suite 1150, Houston, TX 77002. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates MC 117836 and Subs 1, 3, 8, and 12, issued May 8, 1962, October 19, 1966, April 11, 1963, December 4, 1963, and May 30, 1978, authorizing transportation of bananas, from New Orleans, LA, to points in TX; from Galveston, TX, to Clovis and Roswell, NM, Monroe, LA, Little Rock, AR, Albuquerque, NM, and points in TX, OK, and AR; and from Houston, TX, to Albuquerque, NM. Transferee holds no ICC authority and no application for temporary authority has been filed.

MC–FC 78066, filed March 5, 1979. Transferee: DONALDSON FREIGHT DELIVERY, INC., 12891 Nelson St., Garden Grove, CA 92642. Transferor: G & H TRANSPORTATION, INC., 1501 Chapin Road, Montebello, CA 90640. Representative: Fred H. Mackensen, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. Authority sought for purchase by transferee of the operating rights of transferor in Certificate of Registration No. MC 96621 Sub 6 issued January 6, 1978, authorizing the transportation of general comodities, with exceptions, (1) between points in the Los Angeles Basin Territory; (2) between points in the San Diego Territory; (3) between the Territories above serving points on and within ten miles laterally of Interstate Highways 5 and 15; and (4) between points within the Territories in (1) and (2) above and intermediate points as defined in (3) above, on the one hand, and, on the other, Golets, CA serving points on and within ten miles laterally of U.S. Highway 101. Transferee holds no ICC authority. Application for temporary authority has not been filed.

MC–FC 78068, filed March 12, 1979. Transferee: YUMA COUNTY TRANSPORTATION CO., 310 East Second Ave., Yuma, CO 80759. Transferor: EDWARD P. RUFF and THOMAS E. BROOKS, d.b.a. BROOKS TRANSPORTATION COMPANY, 101 Oak St., Sterling, CO 80751. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Authority sought for purchase by transferee of a portion of the operating rights of transferor in Certificate MC 73639 issued June 27, 1974, as follows: *General commodities*, with the usual exceptions, between Sterling, CO, and Holyoke, CO serving Holyoke, CO, for purposes of joinder only, from Sterling, CO, over U.S. Highway 6 to Holyoke, CO, and return over the same route; and between

Holyoke, CO, and McCook, NE, serving Holyoke, CO, for the purpose of joinder only, and serving Imperial, NE, and all points intermediate between Imperial, NE and McCook, NE, from Holyoke, CO, over U.S. Highway 6 to McCook, NE, and return over the same route. Transferee holds authority under MC 96877 (Sub-1). Application for temporary authority has been filed.

MC–FC 78071, filed March 14, 1979. Transferee: STEEL EXPRESS, INC. 1507 Ripley St., P.O. Box 5217, Lake Station, IN 46405. Transferor: D. F. BAST, INC., P.O. Box 2288, Allentown, PA 18001. Representative: Alan Kahn, Suite 1920, 2 Penn Center Plaza, Philadelphia, PA 19102. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate MC 6078 Sub 46, issued February 4, 1966, as follows: Iron and steel articles and equipment and supplies, used or useful in the production and distribution of such articles, between the facilities of Bethlehem Steel Corporation at Burns Harbor, Porter County, IN, on the one hand, and, on the other, points in IL, IA MI, MO, and WI. Transferee holds no authority from the Commission. Application for temporary authority has been filed.

MC–FC 78072, filed March 14, 1979. Transferee: GOVERNMENT CONTRACT SERVICES, INC., 4112 Dewmar Court, Kensington, MD 20795. Transferor: SOUTHERN MARYLAND TRANSPORTATION CO., INC. (same as transferee). Representative: Thomas M. Auchincloss, Jr., 918 16th St., N.W., Washington, D.C. 20006. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate MC 96818 Sub 4, issued September 22, 1976, authorizing general commodities, with exceptions, between the site of the U.S. Navy Quicktrans Air Cargo System Station, Naval Air Station, Norfolk, VA, on the one hand, and, on the other, the sites of the Naval Weapons Laboratory, Dahlgren, VA, the Naval Air Station, Patuxent River, MD, the Naval Ordnance Station, Indian Head, MD, and the Naval Station, Washington, D.C., with exceptions. Transferee holds no ICC authority, and no temporary authority application has been filed.

MC–FC 78073, filed March 5, 1979. Transferee: BOLDUC-GOULET EXPRESS, INC., Old Worcester Road, P.O. Box 217, Webster, MA 01570. Transferor: HANNIGAN'S EXPRESS, INC., Barbara T. Goff, (Assignee For Benefit Of Creditors) c/o Barbara T. Goff, 1 State Street, Boston, MA 02109. Transferee's representative: George Robinson, 293 Main Street, Webster, MA 01570. Transferor's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 9928 issued April 22, 1960 authorizing the transportation of (1) general commodities, with usual exceptions, over regular routes, between Ware and Worcester, MA, including intermediate and specific off-route points in MA, and (2) paper, paper products, woolen cloth and dyeing supplies, pipe couplings and supplies, asbestos products, and machinery, over irregular routes, between Brookfield, MA and points in MA within 10 miles of Brookfield, on the one hand, and, on the other, points in Providence County, RI. Transferee holds authority from this Commission in Certificate MC 17764. Application has not been filed for temporary authority under Section 210a(b) (49 U.S.C. 11349).

MC–FC 78075, filed March 9, 1979. Transferee: R. M. ORMES TRANSPORTATION, Inc., 20 Atlantic Avenue, Woburn, MA 01801. Transferor: TIPTON MOVING, INC., 20 Atlantic Avenue, Woburn, MA 01801. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 25260 and MC 25260 (Sub-1), issued April 17, 1972 and September 6, 1972 respectively, authorizing the transportation of household goods, (1) between points in Middlesex, Norfolk, Suffolk and Worcester Counties, MA, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT, and (2) between Brockton, MA and points within 25 miles thereof, on the one hand, and, on the other, points in MA, RI, NH, VT, NY, and CT. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC 78083, filed April 2, 1979. By decision of May 2, 1979, the Motor Carrier Board approved the transfer from WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, FL, 33801, to MOTOR CARGO TRANSPORT CORP., 21 D'Shibe Terrace, Vineland, NJ, 08360, of a portion of the operating rights in Certificate MC 95540 (Sub-663), issued August 6, 1970, authorizing generally the transportation of glassware and glass containers, from and to Tuckahoe, NY, Relay, MD, Bridgeton and Salem, NJ, Auburn, Lewiston, South Paris, Buckfield, and Portland, ME, and Manchester, NH, points in Cumberland County, NJ, and points in CT, DE, MD, MA, NY, PA, RI, VA, and DC. Transferee holds no authority from the Commission. No application for temporary authority has been filed. Applicants' representatives: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW, Washington, DC 20036; Paul Daniell, 1200 Peachtree Center Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303.

MC–FC 78086, filed March 15, 1979. Transferee: JOSEPH TALLERICO, 200 N. Keyser Ave., Old Forge, PA 18518. Transferor: JOSEPH GILCHRIST, 855 W. Oak St., Old Forge, PA 18518. Applicants' representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 139806, issued October 2, 1975, as follows: (1)(a) *lamps* and *lamp shades* and *wall plaques*, from the plant site of Grossinger Industries, Old Forge, PA, to points in IL, IN, OH, MI, WV, VA, MD, and NJ (except Camden and points north of and including Middlesex and Mercer Counties), (b) *parts, materials and supplies* used in the manufacture of the commodities in (1)(a) above, in the reverse direction of (1)(a) above. (2)(a) *lamp shades*, from the plant site of Hillcrest Shades, Inc., Old Forge, PA, to the destination points named in (1)(a), and (b) *materials and supplies* used in the manufacture of lamp shades, in the reverse direction of (2)(a). (3)(a) *incandescent light bulbs*, from the plant site of Pennsylvania Illuminating Corporation, Scranton, PA, to the destinations points named in (1)(a) above, and (b) *parts, materials and supplies* used in the manufacture of incandescent light bulbs, in the reverse direction of (3)(a). (4)(a) *fluorescent and incandescent lamp fixtures*, from the plant sites of Alleghany Lamp Manufacturing, Inc., and Scott Manufacturing Co., Wilkes-Barre, PA, to the destination points named in (1)(a) above, and (b) *parts, materials, and supplies* used in the manufacture of the commodities in (4)(a), in the reverse direction of (4)(a). (5)(a) *fluorescent and incandescent lamp fixtures*, from the plantsites of Globe Lighting Products, Inc., West Hazleton, PA and Fulton Lamp Manufacturing Co., Inc., Berwick, PA, to points in IL, IN, MI, OH, WV, MD (except points in the Baltimore Commercial Zone as defined by the Commission and points on the Delmarva Peninsula), and NJ (except Camden and points north of and including Middlesex and Mercer Counties), and (b) *parts,*

materials and supplies used in the manufacture of the commodities in (5)(a), in the reverse direction of (5)(a). The operations in (1) through (5) above are restricted against the transportation of commodities in bulk, and restricted to the transportation of traffic originating at the respectively named plant sites. Transferor holds authority from this Commission under MC 139331. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC FC–78090, filed April 17, 1979. Transferee: TRAFIK SERVICES, INC., 11 Newark St., Providence, RI 02908. Transferor: PROVIDENCE–SPRINGFIELD DESPATCH, INC., 540 Huntington Ave., Providence, RI 02907. Applicants' representative: Francis P. Barrett, P.O. Box 238, Milton, MA 02187. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate MC 59666, issued March 21, 1968, authorizing transportation of *General commodities*, with the usual exceptions, between Providence, RI and Holyoke, MA, serving all intermediate points and the off-route points of Ware and S. Hadley, MA, those in Providence County, RI, Hampden County, MA, and that part of Worcester County, MA south of MA Hwy 9, over specified regular routes. Transferee holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC 78092, filed March 26, 1979. Transferee: BOBBY W. RAGLAN, doing business as TEKAMAH TRANSFER, 1414 J St., Tekamah, NE 68061. Transferor: D. K. CONKLIN, doing business as TEKAMAH TRANSFER, 1521 "O" St., Tekamah, NE 68061. Representative: Bobby W. Raglan, 1414 J St., Tekamah, NE 68061. Authority sought by transferee to purchase the operating rights of transferor as set forth in certificates MC 25198 and MC 25198 (Sub- 1), issued August 26, 1949 and December 21, 1973, respectively, as follows: *General commodities*, with the usual exceptions, between Tekamah and Omaha, NE, over U.S. Hwy 73, serving all intermediate points, and serving the off-route points of Council Bluffs, IA and Decatur, NE. *Feed, farm machinery, farm machinery parts, draintile, and building materials*, from Sioux City, IA to Tekamah, NE and points in NE within 25 miles of Tekamah. *Livestock and agricultural commodities*, between Tekamah, NE and points in NE within 25 miles thereof, on the one hand, and, on the other, points in IA. Transferee presently holds no authority from this Commission. Application has been filed for Temporary authority under 49 U.S.C. § 11349.

MC–FC 78093, filed April 2, 1979. Transferee: HERMAN L. ROSS, doing business as WYKAGYL EXPRESS, 346 S. Eighth Ave., Mount Vernon, NY 10550. Transferor: OTIS CAREY, doing business as WYKAGYL EXPRESS, 172 Morris St., New Rochelle, NY 10801. Authority sought by transferee to purchase the operating rights of transferor, as set forth in Certificate MC 105328, issued January 10, 1978, as follows: *Household goods* as defined by the Commission, between points in Westchester County, NY, on the one hand, and, on the other, points in CT, MA, NJ, NY, and PA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC 78145 filed May 17, 1979. Transferee: CAJUN CARTAGE & WAREHOUSING CORP., 1205 St. Louis Street, New Orleans, LA 70150. Transferor: C. NEAL CARSON doing business as CARSON CARRIERS, same address as transferee. Representative: Thomas N. Willess, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to be purchased: operating rights of transferor set forth in certificate number MC 57946, Sub. No. 2, issued July 21, 1978, authorizing the transportation of general commodities (with usual exceptions) between New Orleans, LA and points within 10 miles of New Orleans, on the one hand, and, on the other, points in that part of Louisiana in the area bounded by a line beginning at the TX–LA State line and drawn easterly along Louisiana Highway 12 to junction U.S. Highway 190 at or near Ragley, LA, thence along U.S. Highway 190 to junction U.S. Highway 71 at or near Krotz Springs, LA, thence northerly along U.S. Highway 71 to junction U.S. Highway 167 at or near Alexandria, LA, thence northerly along U.S. Highway 167 to the Arkansas-Louisiana State line at or near Junction City, AR. Cajun Cartage & Warehousing Corp. holds no authority from this Commission. However, transferee is owned by the transferor. Temporary authority is not sought.

Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission on or before July 18, 1979. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC–F 13927F. Authority sought to transfer to NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Tulsa, OK 74151, a portion of the operating rights of TRANS–NATIONAL TRUCK, INC., P.O. Box 4168, Amarillo, TX, and to transfer to Trans-National Truck, Inc., a portion of the operating rights of National Refrigerated Transport, Inc. Applicants' attorney: Charles W. Singer, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. Operating rights sought to be transferred to National Refrigerated Transport, Inc., from Trans-National Truck, Inc., are contained in sub numbers under docket MC 133655 or portions thereof and authorize the transportation of cellulose materials and products, foodstuffs, furniture, department store merchandise, meat and meat products, printed matter materials, pulpboard and pulpboard articles, containers, advertising materials, beverages, carbon products, and various other specified commodities from, to, or between the following States: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, and District of Columbia, with various specified restrictions. Trans-National Truck, Inc., is authorized to operate from, to and between all points in the United States (except Alaska and Hawaii). Operating rights sought to be transferred to Trans-National Truck, Inc., from National Refrigerated Transport, Inc., are contained in docket MC 118159 and sub numbers thereunder or portions thereof and authorize the

transportation of foodstuffs, containers, glassware, flat glass, paper and paper products, pulpboard and pulpboard articles, meat and meat products, beverages, compounds and deodorants, tile flooring, picture frames, cleaning, bleaching, washing and scouring items, and various other specified commodities, from, to or between the following States: Alabama, Arizona, Arkansas, California, Colorado, Connnecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and District of Columbia, with various specified restrictions. National Refrigerated Transport, Inc., is authorized to operate from, to and between all points in the United States (except Alaska and Hawaii). Trans-National Truck, Inc., and National Refrigerated Transport, Inc., are commonly controlled. No application has been filed for temporary authority under Section 210a(b).

MC–F 13990F. Authority sought for purchase by NEYRINCK BROTHERS, INC., 7140 Riga Highway, Riga, Mich. 49276, a portion of the operating rights of GRA-BELL TRUCK LINE, INC., 679 Lincoln Avenue, Holland, Mich. 49423. Applicants attorney: Aloysius B. O'Mara, 105 W. Jefferson St., P.O. Box 165, Blissfield, Mich. 49228. Operating rights sought to be purchased: common carrier authority to transport fertilizer and fertilizer materials from Toledo, Ohio to points in Michigan with no transportation for compensation on return. Approval of the proposed transaction will result in a split of vendor's authority. Vendor is authorized to transport fertilizer and fertilizer material from Toledo, Ohio to points in Michigan. Vendor proposes to retain the authority set forth in MC 113434 (Sub-26) authorizing the transportation of sauerkraut from Jonesville, Michigan to points in Ohio, Pennsylvania and Kentucky and from Fremont, Ohio to points in Pennsylvania and Kentucky as well as all other authority now held in other certificates. None of the authority being retained by transferor duplicates the authority sought to be transferred. Vendee is authorized to operate as a contract carrier in the State of OH. Application has not been filed for temporary authority under section 11349.

MC–F 13993F. Transferee: NORTH PENN TRANSFER OF CONNECTICUT, INC., Route 63 and 202, Lansdale, PA 19446. Transferor: WOOSTER EXPRESS, INC., Route 63 and 202, Lansdale, PA 19446. Applicant's Representative: JOHN W. FRAME, ICC PRACTITIONER, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. authority sought for merger by transferee of the operating rights of transferor as set forth in Certificate No. MC–3598, issued March 14, 1944, MC–3598, Sub No. 4, issued June 23, 1968, MC–3598, Sub No. 5, issued November 4, 1966, MC–3598, Sub No. 6, issued July 7, 1971, MC–3598, Sub No. 7, issued November 21, 1972, and MC–3598, Sub No. 8 (originally MC–52810, acquired 8/31/77 under Docket No. MC–F 12765), as follows: (a)(1) *General commodities* (except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Northampton, MA, and Newark, NJ, as follows: From Northampton over US Hwy 5 to New Haven, CT, then over US Hwy 1 to Newark; from Northampton over US Hwy 5 to Springfield, MA, then over Alternate US Hwy 5 to Hartford, CT, then over CT Hwy 9 to Middletown, CT, then over CT Hwy 15 to New Haven, and then over US Hwy 1 to Newark; From Northampton to Hartford as specified above, then over US Hwy 6 to Thomaston, CT, then over CT Hwy 8 to Stratford, CT, then over US Hwy 1 to Newark; and return over these routes to Northampton. Service is authorized to and from the Off-route points of Adams and Pittsfield, MA, and points and places in MA within 12 miles of Springfield, MA: Bloomfield, Watertown, Glastonbury, Portland, New Britain, Somers, East Hampton, Sharon, Kent, New Milford, Washington, Colchester, Haddam, East Haddam, New Canaan, and Danbury, CT, Scarsdale, Freeport, Garden City, Hempstead, Lynbrook, Mineola, Rockville Center, White Plains, and Tuckahoe, NY, and points and places in the New York, NY Commercial Zone, as defined in 1 M.C.C. 665, and those in New Jersey within 20 miles of Newark, NJ, other than those in New York, NY Commercial Zone. Between Southbridge, MA and Hartford, CT: From Southbridge over MA Hwy 131 to Sturbridge, MA, then over MA Hwy 15 to the MA-CT State line, and then over CT Hwy 15 to Hartford, and return over the same route. Service is authorized to and from the off-route points of Willington, Eastford, and Thompson, CT. Between New Haven, CT and Boston, MA: From New Haven over US Hwy 1 to Boston, and return over the same route. Service is authorized to and from the off-route points of Norwich and Saybrook, CT, Brockton, Beverly, Salem, Newton, Malden, Lynn, Everett, Winchester, Arlington, Weburn, Taunton, Somerville, Cambridge, and Chelsea, MA, and points and places in Rhode Island. Between Canton, CT and Hartford, CT: From Canton over US Hwy 44 to Hartford, and return over the same route. Service is authorized to and from the off-route points of Torrington, New Hartford, and Winchester, CT. Between Hartford, CT and New Bedford, MA: From Hartford over US Hwy 6 via Manchester and Willimantic, CT to New Bedford (also from Manchester over Alternate US Hwy 6 to Willimantic), and return over the same route. Service is authorized to and from the off-route points of Plainfield, Griswold, Sterling, and Putnam, CT and Dighton, MA. Between Boston, MA and Springfield, MA; From Boston over US Hwy 20 to Springfield and return over the same route. Service is authorized to and from the off-route points of Clinton, Warren, Russel, and Great Barrington. Between Northampton, MA and New Haven, CT: From Northampton over MA Hwy 10 to the MA-CT State line, then over CT Hwy 10 to New Haven, and return over the same route. Between Boston, MA and Northampton, MA: From Boston over US Hwy 20 to junction MA Hwy 9, then over MA Hwy 9 to Northampton, and return over the same route. Service is authorized to and from all intermediate points on the above-specified routes. Between Boston, MA and Northampton, MA: From Boston over MA Hwy 2 to Greenfield, MA, then over US Hwy 5 to Northampton, and return over the same route. Service is authorized to and from all intermediate points between Ayer, MA and Greenfield, MA, including Ayer and Greenfield, and the off-route points of Haverhill, Lowell, Winchendon, Royalston, and Monroe, MA. Between Boston, MA and Southbridge, MA: From Boston over US Hwy 20 to Marlboro, MA, then over MA Hwy 85 to junction MA Hwy 16 at a point approximately 2 miles east of Milford, MA, then over MA Hwy 16 to Douglas, MA, then over unnumbered highway to junction MA Hwy 197 at a point approximately 2 miles northeast of Webster, MA, then over MA Hwy 197 to junction MA Hwy

131, and then over MA Hwy 131 to Southbridge, and return over the same route. Service is authorized to and from all intermediate points between Marlboro, MA and Southbridge, MA, and the off-route points of Ashland, Dudley, and Blackstone, MA. (2) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), serving points in CT as off-route points in connection with carrier's presently authorized regular route operations in MC-3598. (3) *General Commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading). Between NY, NY and Philadelphia, PA, serving the intermediate point of Trenton, NJ, restricted to traffic moving to or from points other than New York, NY, all other intermediate points without restriction; and off-route points within ten miles of the specified portions of US Hwy 1 and US Hwy 130 (formerly NJ Hwy 25): From New York over US Hwy 1 to Philadelphia, and return over the same route. From New York over US Hwy 1 to junction of US Hwy 130 (formerly NJ Hwy 25), then over US Hwy 130 to Camden, NJ, and then across the Delaware River to Philadelphia, and return over the same route. Irregular Routes: (a) *Shirts, piece goods, pajamas, thread, trimmings, buttons, underwear, leather, paper, glass and metal frames,* between Jersey City, Newark, Elizabeth, Linden, Rahway, Perth Amboy, and Fords, NJ, on the one hand, and, on the other, New York, NY. (b) *Handkerchiefs,* from South River, NJ, to New York, NY, with no transportation for compensation on return except as otherwise authorized. (c) *Machinery, equipment,* and *supplies,* used or useful in the manufacture of shirts and handkerchiefs, from New York, NY, to Perth Amboy and South River, NJ, with no transportation for compensation on return except as otherwise authorized. (4) Regular Routes: (a) *Gummed tape,* serving the plant site of the Crowell Corporation at Yorklyn, DE, as an off-route point in connection with carrier's regular-route operations authorized herein between Philadelphia, PA and Wilmington, DE. (b) *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodites in bulk, and those requiring special equipment). Between Philadelphia, PA and Wilmington, DE, serving all intermediate points: From Philadelphia over US Hwy 13 via Chester, PA to Wilmington, and return over the same route. Restriction: The service authorized is subject to the limitation that service at Wilmington, Camden, intermediate or off-route points south of Philadelphia, and points south of Camden is restricted to shipments moving over carrier's lines to or from points north of Philadelphia or points north of Camden. (5) *Irregular Routes. Food* and *foodstuffs* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft Foods Division of Kraftco Corporation at or near Fogelsville, PA, to points in CT, MA, ME, NH, RI, and VT, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority granted herein is restricted to the transportation of traffic originating at the named origin points and destined to the named destination points. (6) *Regular Routes. General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) serving all intermediate points on US Hwy 1 between Baltimore, MD, and junction US Hwys 1 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (b) Serving all intermediate points on US Hwy 40 between Baltimore, MD and junction US Hwys 40 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (c) Serving all intermediate points on US Hwy 1 between New Brunswick and Rahway, NJ (except Rahway), and points on US Hwy 222 between junction US Hwys 222 and 40 and junction US Hwys 1 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (d) Serving points in Bergen, Passaic (except Paterson and Passaic, NJ), Hudson, Essex (except Irvington, NJ), Union, Morris, and Middlesex Counties, NJ (except those located south of the Raritan River), and Nassau County, NY, Edgewood Arsenal, Aberdeen Proving Ground, MD, and Bound Brook, NJ, as off-route points in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. Restriction: The authority granted above is restricted to the transportation of traffic moving from, to, or through Aberdeen, MD, except that traffic moving from, to, or through Edgewood Arsenal or Aberdeen Proving Grounds, MD, or points in MD on US Hwys 1 and 40 may move from, to, or through Baltimore, MD, without such prior movement through Aberdeen, MD. (e) Between Baltimore, MD and Washington, DC, serving all intermediate points, and serving as off-route points Frizzelburg, MD, and points in that part of MD bounded by a line extending from Baltimore, MD, westward along US Hwy 40 to junction MD Hwy 32, then along MD Hwy 32 to junction US Hwy 140, then along US Hwy 140 to Westminster, MD, then along MD Hwy 482 to junction MD Hwy 30, then along MD Hwy 30 to MD Hwy 88, then along MD Hwy 88 to junction MD Hwy 137, then along MD Hwy 137 to Hereford, MD, then along MD Hwy 45 to Baltimore, then southeasterly along MD Hwy to Annapolis, MD, then along US Hwy 50 to Washington, DC, then along US Hwy 1 to Baltimore, MD, including all points on the indicated portions of the specified highways, and Rockville and Indianhead, MD; (f) From Baltimore over US Hwy 1 to Washington, DC, and return over the same route. (g) From Baltimore, over US Hwy 40 to junction US Hwy 29, then over US Hwy 29 to Washington, DC, and return over the same route. Restriction: The operations authorized under the 2 route descriptions immediately above are restricted to the transportation of traffic moving from, to, or through Baltimore, MD. Restriction: The authority granted under 6 (a), (b), (c), (d), (e), (f), and (g) above, shall not be severable by sale or otherwise from the irregular route authority under (7) herein. (7) *Regular Route, general commodities,* Between Baltimore, MD and New York, NY, serving the intermediate points of Rahway, NJ, and those between Rahway and New York; and the off-route points of Paterson, Passaic and Irvington, NJ. (a) From Baltimore over US Hwy 40 to junction MD Hwy 7, near Havre de Grace, MD, then over MD Hwy 7 to Elkton, MD, then over US Hwy 40 via State Road, DE to junction I-295 (formerly shown as junction US Hwy 130), then over I-295 to junction US Hwy 130, then over US Hwy 130 to junction US Hwy 1, then over US Hwy 1 to New York, and return over the same route. (b) From Baltimore over the above-specified route to State Road, DE, then over US Hwy 13 via Chester, PA to junction US Hwy 1, and then over US Hwy 1 to New York, and return over the same route. (c) From Baltimore to Chester as specified above, then across the Delaware River

to Bridgeport, NJ, then over US Hwy 130 to junction US Hwy 1, and then over US Hwy 1 to New York, and return over the same route. (d) From Baltimore over US Hwy 1 to New York, and return over the same route. From Baltimore, MD to Washington, DC, with service authorized to Washington, DC restricted to traffic moving from New York, NY. From Baltimore over US Hwy 1 to Washington, DC and return over the same route with no transportation for compensation except as otherwise authorized. *Irregular Routes. General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Aberdeen, MD, on the one hand, and, on the other, New York, NY, points on Long Island, NY, and points in NJ. Restriction: The authority granted under the commodity description next-above is subject to the following conditions: Said authority is restricted against the pickup or delivery of any traffic at Aberdeen, MD, other than that which carrier is authorized to transport under (6) herein. Said authority and that held by carrier under (7) herein from or to points in NJ and NY through Oxford and West Grove, PA, shall be construed as comprising a single operating right and shall not be severable by sale or otherwise. *General commodities* (except those of unusual value, classes A and B explosives, sand, gravel, earth, stone, household goods as defined by the Commission, and commodities requiring special equipment) between points in Harford County, MD, on the one hand, and, on the other, points in that part of MD within 60 miles of Bel Air, MD, other than Baltimore, MD, and that part of PA south and east of US Hwy 1, within 60 miles of Bel Air, MD, including points on the indicated portion of the highway specified. *General commodities* (except those of unusual value, classes A and B explosives, alcoholic liquors, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Baltimore, MD on the one hand, and, on the other, Quantico, VA, points in the District of Columbia, and points in MD except those in Harford County and those east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal. *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Oxford and West Grove, PA, and points in PA within 5 miles of West Grove, on the one hand, and, on the other, points in NJ, those in NY, NY, and on Long Island, NY, those in that part of MD west of the Chesapeake Bay and on and east of US Hwy 1, and those in that part of DE north of the Chesapeake and Delaware Canal. Between Wilmington, DE, on the one hand, and, on the other, points in that part of DE and PA on and east of that portion of US Hwy 13, between Wilmington, DE and Philadelphia, PA, including Wilmington and Philadelphia. Restriction: Carrier shall not, pursuant to the irregular-route authority in (7) herein transport traffic between any points authorized in (6) herein to be served by it in regular-route operations. NORTH PENN TRANSFER OF CONNECTICUT, INC., holds no authority from this Commission. However, NORTH PENN TRANSFER, INC. owns all of the stock of NORTH PENN TRANSFER OF CONNECTICUT and is authorized to operate as a common carrier in the States of PA, DC, MD, DE, NJ, NY, MA, RI, CT, VA, NC, OH, AL, GA, FL, SC, KY, TN, WV, ME, VT, and NH. Application has not been filed for temporary authority under section 11349.

Note.—Under MC-F 12806, North Penn Transfer of Connecticut, Inc. was granted control of Wooster Express, Inc. and Baltimore-New York Express, Inc. by an order served July 27, 1977.

MC-F 13994F Authority sought for control by AMNACO, INC., 2661 South Broadway, Green Bay, Wisconsin, of CONTRACT DISTRIBUTION SYSTEM, INC., 1820 First National Bank Tower, Atlanta, Georgia 30303, and for acquisition by AL J. SCHNEIDER and DONALD J. SCHNEIDER, 2661 South Broadway, Green Bay, Wisconsin 54304, of control of such rights through the transaction. Applicant's attorney: Charles W. Singer, 2480 East Commercial Boulevard, Fort Lauderdale, Florida 33308. CONTRACT DISTRIBUTION SYSTEM, INC., holds no authority but has been authorized by an administratively final Order in No. MC-144232 (Sub-No. 1F), to transport such commodities as are dealt in, or used by, manufacturers and distributors of paint, chemicals and related articles (except commodities in bulk), between points in the United States (except (1) Alaska and Hawaii, (2) from Richmond, KY to Louisville, KY and Cincinnati, OH in connection with traffic having a subsequent movement by rail, (3) from Garland, TX to Memphis, TN and (4) between Louisville, KY and St. Louis, MO and points in their respective commercial zones and points in Illinois, Indiana, and Ohio and those in Allegheny, Beaver, Indiana and Westmoreland Counties, PA on the one hand, and, on the other, points in Michigan) under a continuing contract with Sherwin Williams Company of Cleveland, Ohio. AMNACO, INC., is not a motor carrier but is a person in control of several regulated motor carriers.

MC-F 13995F. Authority sought for control by U.S. TRUCK LINES, INC. OF DELAWARE, 785 Union Commerce Building, Cleveland, OH 44115 of MERCURY FREIGHT LINES, INC., P.O. Box 1247, Mobile, AL 36601 through ownership of capital stock. Applicant's attorney: John C. Bradley, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. Common carrier operating rights sought to be controlled: MC 113528 (Sub-1), Regular Routes General Commodities (With The Usual Exceptions) Between Birmingham, AL., and Mobile AL., serving all intermediate points between Birmingham and the junction of Alabama Highway 5 and Alabama Highway 14 and the off-route point of Semmes, AL; Between junction Alabama Highway 5 and Alabama Highway 14, and Selma, AL., serving all intermediate points; Between Selma, AL., and Pensacola, FL., serving the intermediate and off-route points of Craig Field, Camden, Monroeville, Frisco City, Huxford, and Atmore, AL., Molina, Cantonment, and Gonzalez, FL., and points within 15 miles of Pensacola; Between Selma, AL, and Clanton, AL., serving all intermediate points; Between Selma, AL., and Stafford, AL., serving the intermediate point of Orrville, AL., and with service at Safford for purpose of joinder only; Between Mobile, AL., and Stockton, AL., serving no intermediate points; Between Camden, AL., and Catherine, AL., as an alternate route for operating convenience only, serving no intermediate points, and with service at Catherine for purpose of joinder only; Between Monroeville, AL., and Camden, AL., as an alternate route for operating convenience only, serving no intermediate points; *Empty vehicles.* Between Mobile, AL., and Pensacola, FL., serving no intermediate points. MC 113528 (Sub-4), Regular Routes General Commodities (With The Usual Exceptions) Between Birmingham, AL., and Fort Worth, TX., serving the intermediate point of Dallas, TX., Between Birmingham, AL., and Houston, TX., serving the intermediate point of Beaumont, TX.; Between Selma, AL., and junction U.S. Highway 80 and U.S. Highway 11, serving no intermediate points, and serving the junction of U.S. Highways 80 and 11 for the purpose of joinder only. MC 113528 (Sub-5), Regular Routes General Commodities (With The

Usual Exceptions) Between Mobile, AL., and Pensacola, FL., serving the intermediate and off-route points located within a 15 mile airline radius of the corporate limits of Pensacola; Between Monroeville, AL., and junction Alabama Highways 89 and 41, as an alternate route for operating convenience only, serving no intermediate points, and serving junction of said highways for purpose of joinder only; Between Birmingham, AL., and junction Alabama Highways 191 and 22, as an alternate route for operating convenience only, serving no intermediate points; Between Stockton, AL., and junction Alabama Highways 59 and 21 (at or near Uriah, AL.), serving no intermediate points and serving the junction of said highways for purpose of joinder only. MC 113528, (Sub-8), Regular Routes General Commodities (With The Usual Exceptions) Serving the site of the National Aeronautics and Space Administration, Manned Spacecraft Center, located near Houston, TX., and in the vicinity of Clear Lake, TX., as an off-route point in connection with carrier's authorized regular-route operations to and from Houston, TX. MC 113528 (Sub-10), Regular Routes General Commodities (With The Usual Exceptions) Between Mobile, AL., and junction U.S. Highway 11 and Mississippi Highway 26, located at or near Poplarville, MS., serving no intermediate points and serving junction U.S. Highway 11 and Mississippi Highway 26 for purpose of joinder only. MC 113528 (Sub-11), Regular Routes General Commodities (With The Usual Exceptions) Between Mobile, AL., and junction U.S. Highway 49 and U.S. Highway 80 (at or near Jackson, Miss.), serving no intermediate points, but serving junction U.S. Highway 49 and U.S. Highway 80 as a point of joinder with carrier's presently authorized regular routes. MC 113528 (Sub-12), Regular Routes General Commodities (With The Usual Exceptions) Serving Bay Minette, AL., as an intermediate point in connection with carrier's authorized regular-route operations between Mobile, AL., and Stockton, AL.; Serving Picayune, MS., and the Mississippi Test Facility of the National Aeronautics and Space Administration, located in Hancock County, MS., near Picayune, as off-route points in connection with carrier's authorized regular-route operations between Hattiesburg, MS., and Hammond, LA.; Serving Baton Rouge, LA., and points within 15 miles of Baton Rouge, as intermediate and off-route points in connection with carrier's authorized regular-route operations between Birmingham, AL., and Houston, TX.; Serving Lake Charles, LA., and points within 15 miles of Lake Charles, as intermediate and off-route points in connection with carrier's authorized regular-route operations between Birmingham, AL., and Houston, TX. MC 113528 (Sub-13), Regular Routes General Commodities Regular Route General Commodities (With The Usual Exceptions) Serving the plant site of the Hammermill Paper Company, located at or near Burnsville, AL., as an off-route point in connection with carrier's authorized regular-route operations to, from, and through Selma, AL. MC 113528 (Sub-16), (With The Usual Exceptions) Between Birmingham, AL., and Atlanta, GA., serving all intermediate and off-route points within 15 miles of Birmingham, and serving all intermediate and off-route points in Fulton, Douglas, Haralson, Cobb, DeKalb, Clayton, and Carroll Counties, GA., on and west of a line beginning at the Georgia-Florida State line and extending along U.S. Highway 41 to Atlanta, and thence along U.S. Highway 29 to the Georgia-South Carolina State line restricted to the transportation of shipments moving between Birmingham, and points within 15 miles of Birmingham, on the one hand, and, on the other, Atlanta, and points in the seven counties described above in Georgia. MC 113528 (Sub-18TA), Regular Routes General Commodities (With The Usual Exceptions) Serving Norcross, GA., and points in its commercial zone and the Tucker-Stone Mountain Industrial District as off-route points in connection with applicant's regular-route operations restricted against transportation traffic between the named points and, Atlanta, GA. MC 113528 (Sub-19), Irregular Routes General Commodities (With The Usual Exceptions) Serving points in Fulton, Cobb, Douglas, Clayton, and DeKalb Counties, GA., points in that part of Fayette County, GA., on and north of a line from the Fulton-Fayette County line along Georgia Highway 74 to junction Georgia Highway 54, thence along Georgia Highway 54 to the Fayette-Clayton County line, points in that part of Henry County, GA., on, north, and west of a line from the Clayton-Henry County line along Georgia Highway 3 to junction Georgia Highway 81, thence along Georgia Highway 81 to junction Georgia Highway 20, thence along Georgia Highway 20 to the Henry-Newton County line, points in that part of Rockdale County, GA., on, south, and west of Georgia Highway 212, and points in that part of Gwinnett County, GA., on, south, and west of a line from the DeKalb-Gwinnett County line along Georgia Highway 124 to junction Georgia Highway 20, thence along Georgia Highway 20 to junction Georgia Highway 120, thence along Georgia Highway 120 to the Gwinnett-Fulton County line as off-route points in connection with carrier's otherwise authorized routes, restricted against the transportation of traffic, direct or interline, between Atlanta, GA., on the one hand, and, on the other, the points named herein. MC 113528 (Sub-21), Irregular Routes Tobacco and Tobacco Products. From points in North Carolina to points in that part of Alabama south of U.S. Highway 278, with no transportation for compensation on return except as otherwise authorized. MC 113528 (Sub-22), Irregular Routes General Commodities (With The Usual Exceptions), Between points in Sumter County, S.C., on the one hand, and, on the other points in North Carolina and South Carolina; *Household goods, new furniture*, and *general commodities*, (with the usual exceptions), between Sumter, S.C., on the one hand, and, on the other, points in that part of Alabama south of U.S. Highway 278. *Kitchen cabinets*, set up and *kitchen sinks*, from Bennettsville, S.C., to points in that part of Alabama south of U.S. Highway 278, with no transportation for compensation on return except as otherwise authorized. *Mineral wool, rock wool, siding, roofing*, and *roofing materials*, from Leeds, AL., and points in Jefferson County, AL., to points in North Carolina and South Carolina, with no transportation for compensation on return except as otherwise authorized. MC 113528 (Sub-23G), Irregular Routes General Commodities (With The Usual Exceptions) Between points in that part of Alabama south of U.S. Highway 278 and, points in North Carolina and South Carolina. MC 113528 (Sub-25), Irregular Routes. *Iron and steel articles, aluminum articles, iron and steel tanks, aluminum tanks* and *parts, attachments and accessories* for iron and steel tanks and aluminum tanks, From Liberty County, TX., to points in AL, AK, KS, LA, MS, MO, NM, and OK, with no transportation for compensation on return except as otherwise authorized, restricted to traffic originating at the facilities of Pittsburgh-Des Moines Steel Company. MC 113528 (Sub-34), Irregular Routes, *Particleboard and paneling*, From the facilities of Vanply, Inc., at or near Many, LA., to points in AL, GA, NC, and SC. MC 113528 (Sub-35), Regular Routes General Commodities (With The Usual Exceptions) Servinng the facilities of K-Mart Corporation's Distributing Center in Coweta County,

GA., as an off-route point in connection with carrier's otherwise authorized regular-route operations. MC 113528 (Sub-36F), Irregular Routes, *Plastic pipe, pipe fittings, couplings,* and *valves,* (except commodities in bulk), From points in Geneva, County, AL., to points in GA, LA, MS, TN, and TX; *Materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), From points in GA, LA, MS, TN and TX, to points in Geneva County, AL. (Hearing site: Cleveland, OH.) U.S. TRUCK LINES, INC. OF DELAWARE holds no authority from this Commission. However, it is in control of the Transferree in the application through ownership of its capital stock. Application has not been filed for temporary authority under section 210a(b).

MC–F 13999F. Applicant (Transferee): WINTZ MOTOR FREIGHT, INC., 656 Pelham Boulevard, St. Paul, MN 55114. (Transferor): WINTZ WAREHOUSING CO., 656 Pelham Boulevard, St. Paul, MN 55114. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought for purchase by Wintz Motor Freight, Inc., 656 Pelham Boulevard, St. Paul, MN 55114, of the interstate operating authority of Wintz Warehousing Company, 656 Pelham Boulevard, St. Paul, MN 55114, and for control of such rights through the transaction. Applicants' attorney: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Operating rights sought to be transferred: Certificate MC 129757 (dated September 24, 1974): *Irregular Routes: Meats, meat products, dairy products, and articles distributed by meat packinghouses,* from Minneapolis, Minn., to points in Anoka (except the city of Anoka and Coon Rapids), Carver, Dakota, Hennepin (except Osseo and Brooklyn Park), Ramsey, Scott, and Washington Counties, Minn., with no transportation for compensation on return except as otherwise authorized. *Meats, and meat products, dairy products and articles distributed by meat packinghouses,* as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from Minneapolis, Minn., to Anoka, Coon Rapids, Osseo, and Brooklyn Park, Minn., with no transportation for compensation on return except as otherwise authorized. *Restriction:* The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions or limitations in the future as it may find necessary to order to insure that carrier's operations shall conform to the provisions of section 210 of the Act. Permit MC 117681: *Irregular Routes: Ink,* in bulk, in tank vehicles, from Minneapolis, Minn., to points in North Dakota, South Dakota, Nebraska, Iowa, Wisconsin, and Minnesota, with no transportation for compensation on return except as otherwise authorized. *Restriction:* The service authorized herein is subject to the following conditions: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with George H. Morrill Company, Chicago, Ill. The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions or limitations in the future as it may find necessary in order to insure carrier's operations shall conform to the provisions of section 210 of the Act. The purpose of this application is to resolve all issues of common control between the applicants by vesting all interstate authority of the commonly controlled applicants in Wintz Motor Freight, Inc. Vendee is authorized to operate as a common carrier in the States of MN, WI and as a contract carrier in the States of MN, IA, ND, SD, WI. Application has not been filed for temporary authority under section 11349.

MC–F–14002F. Authority sought for control by BRAY LINES INCORPORATED, 1401 North Little Street, Cushing, OK 74023, of SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380, and for acquisition by BRAY CORPORATION, 1401 North Little Street, Cushing, OK 74023, of control of Subler Transfer, Inc., through the acquisition by Bray Lines Incorporated. Applicant's attorney: Edward T. Lyons, Jr., 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264. Operating rights sought to be controlled: (1) *Foodstuffs* and other specified commodities falling within the generic description of foodststuffs; (2) *Such Commodities* as are used by meat packers and other specified persons in the conduct of their business; (3) and numerous other specified commodities including, *packaged petroleum products, steel strapping* and *paper* and *paper products, carpeting* and *floor coverings, heating stoves, building materials, rubber articles, refractory products, glass, cleaning compounds* and *supplies, farm machinery* and *agricultural implements, alkalies, animal food, washing machines* and *laundry equipment,* and *metal products, automobile parts and appliances, household appliances* and *refrigeration equipment,* from, to, and between specified points or areas in CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI and DC, with certain restrictions and limitations of points, as more specifically described in Docket MC 117883 and sub-numbers thereunder. Bray Lines Incorporated is authorized to operate as a motor common carrier in all states in the United States except AK, CT, DE, HI, ME, MD, MA, NH, NJ, NY, PA, RI, VT and DC. This notice does not purport to be a complete description of the operating rights of the carrier involved. For more information with respect to the specific authorities of applicant or the carrier to be controlled, inquiries should be made to the Commission in Washington, DC, or at its Regional Offices in Dallas, TX or Philadelphia, PA, at which complete descriptions of all pertinent authorities are on file as part of the application. Application has not been filed for temporary authority. (Hearing site: Washington, DC.)

MC–F 14003F. Applicant: ANR FREIGHT SYSTEM, INC., One Woodward Avenue, Detroit, MI 48226. Representative: Roland Rice, Esq., 501 Perpetual Bldg., 1111 E Street, N.W., Washington, DC 20004. Gwenn L. Carr, Esq., One Woodward Avenue, Detroit, MI 48226. An application of ANR Freight System, Inc., One Woodward Avenue, Detroit, MI 48226, for authority to acquire control of Associated Truck Lines, Inc., 200 Monroe North, Grand Rapids, MI 49503, accompanied by a Motion to Dismiss for want of jurisdiction. ANR Freight System, Inc., is a wholly owned subsidiary of American Natural Resources Company and, with Commission approval, owns the stock of Graves Truck Line. In addition, it has pending before the Commission an application, unopposed, in MC–F 13816 to acquire the stock of another carrier, Garrett Freight Lines. Operating rights sought to be transferred: None. The parent holding company, American Natural Resources Company, owns the stock of Associated Truck Lines (its first carrier acquisition) through an intermediate holding company, Associated Freightways, Inc. The sole purpose of the instant application is to place the stock of Associated Truck Lines, Inc. in ANR Freight System, Inc., which already owns the Graves stock and is seeking to acquire the stock of Garrett. No other change is sought. In similar cases the Commission has declined to assume jurisdiction. As

shown, a Motion to Dismiss accompanies the application.

MC–F 14004F. Authority sought for purchase by DAVID W. HASSLER, INC., R.D. #8, York, Pennsylvania 17403 of the operating rights of C. W. Bierkamp & Sons, Inc., 1821 Monroe Street, York, Pennsylvania 17404. Applicants' attorneys, S. Harrison Kahn, Jeremy Kahn, Kahn and Kahn, Suite 733 Investment Building, 1511 K Street, N.W., Washington, D.C. 20005. Operating rights sought to be purchased are those in Docket MC 111795 and MC 111795 (Sub-5), authorizing the transportation of limestone and limestone products, in bulk, from West Manchester Township, York County, Pennsylvania to points in DE, MD, and NJ, and portions of NY and VA, and from Thomasville, PA to points in DE, MD, NJ, and New York, NY. Vendee holds authority in MC 100439 and MC 100439 (Sub-4) to transport petroleum and petroleum products from Baltimore, MD, to certain points in PA and industrial asphalt from York, PA to points in Sussex County, VA. Approval of this transaction will not result in (a) dual operations; (b) splitting of operating authority; or (c) duplicating authority. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–F14009F. Authority sought to purchase by ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223, of a portion of the operating rights of SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road, N.W., Atlanta, GA 30321, and for acquisition by Richard E. Doran, Robert J. Doran and C. M. Doran of 1601 Blue Rock Street, Cincinnati, OH 45223, of control of such rights through the purchase. Applicants' attorneys are JOHN P. McMAHON, 100 East Broad Street, Columbus, OH 43215, and GUY H. POSTELL, 3384 Peachtree Road, N.E., Atlanta, GA 30326. Operating rights sought to be purchased: (1) commodities, the transportation of which because of their size and weight require the use of special equipment, and (2) self-propelled articles each weighing 15,000 pounds or more and related machinery, tools, parts and supplies, limited to the transportation of such commodities as are transported on trailers and restricted against the transportation of pipe, pipeline machinery, equipment and supplies incidental to and used in connection with the construction, operation, repair, servicing, and dismantling of pipelines and the stringing or picking up thereof, between points in Gallatin and Grant Counties, KY, on the one hand, and, on the other, points in TN. Vendee is authorized to operate as a common carrier of general commodities, size and weight commodities, and specified commodities between various points in the contiguous forty-eight states. Application has not been filed for temporary authority under section 11349. (Hearing site: Columbus, OH).

MC–F14011F. NORTH PENN TRANSFER, INC., Routes 63 and 202, Lansdale, PA 19446; NORTH PENN TRANSFER OF CONNECTICUT, INC., Routes 63 and 202, Lansdale, PA 19446; JOHN W. FRAME, ICC Practitioner, Box 628, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Authority sought for merger by transferee of the operating rights of transferor as set forth in Certificate No. MC–3598, issued March 14, 1944, MC–3598, Sub No. 4, issued June 23, 1968, MC–3598, Sub No. 5, issued November 4, 1966, MC–3598, Sub No. 6, issued July 7, 1971, MC–3598, Sub No. 7, issued November 21, 1972, and MC–3598, Sub No. 8 (originally MC–52810, acquired 8/31/77 under Docket No. MC–F–12765), as follows: (A)(1) *General commodities* (except those of unusual value, and except dangerous explosives, households goods as defined in Practices of Motor Common Carriers of Household Goods, 17. M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Northampton, MA, and Newark, NJ, as follows: From Northampton over U.S. Hwy 5 to New Haven, CT, then over U.S. Hwy 1 to Newark; from Northampton over U.S. Hwy 5 to Springfield, MA, then over Alternate U.S. Hwy 5 to Hartford, CT, then over CT Hwy 9 to Middletown, CT, then over CT Hwy 15 to New Haven, and then over U.S. Hwy 1 to Newark; from Northampton to Hartford as specified above, then over U.S. Hwy 6 to Thomaston, CT, then over CT Hwy 8 to Stratford, CT, and then over U.S. Hwy 1 to Newark; and return over these routes to Northampton. Service is authorized to and from the off-route points of Adams and Pittsfield, MA, and points and places in MA within 12 miles of Springfield, MA; Bloomfield, Watertown, Glastonbury, Portland, New Britain, Somers, East Hampton, Sharon, Kent, New Milford, Washington, Colchester, Haddam, East Haddam, New Canaan, and Danbury, CT, Scarsdale, Freeport, Garden City, Hempstead, Lynbrook, Mineola, Rockville Center, White Plains, and Tuckahoe, NY, and points and places in the New York, NY Commercial Zone, as defined in 1 M.C.C. 665, and those in New Jersey within 20 miles of Newark, NJ, other than those in New York, NY Commerical Zone. Between Southbridge, MA and Hartford, CT: From Southbridge over MA Hwy 131 to Sturbridge, MA, then over MA Hwy 15 to the MA–CT State line, and then over CT Hwy 15 to Hartford, and return over the same route. Service is authorized to and from the off-route points of Willington, Eastford, and Thompson, CT. Between New Haven, CT and Boston, MA: From New Haven over U.S. Hwy 1 to Boston, and return over the same route. Service is authorized to and from the off-route points of Norwich and Saybrook, CT, Brockton, Beverly, Salem, Newton, Malden, Lynn, Everett, Winchester, Arlington, Weburn, Taunton, Somerville, Cambridge, and Chelsea, MA, and points and places in Rhode Island. Between Canton, CT and Hartford, CT: From Canton over U.S. Hwy 44 to Hartford, and return over the same route. Service is authorized to and from the off-route points of Torrington, New Hartford, and Winchester, CT. Between Hartford, CT and New Bedford, MA: From Hartford over U.S. Hwy 6 via Manchester and Willimantic, CT to New Bedford (also from Manchester over Alternate U.S. Hwy 6 to Willimantic), and return over the same route. Service is authorized to and from the off-route points of Plainfield, Griswold, Sterling, and Putnam, CT and Dighton, MA. Between Boston, MA and Springfield, MA: From Boston over U.S. Hwy 20 to Springfield and return over the same route. Service is authorized to and from the off-route points of Clinton, Warren, Russel, and Great Barrington, MA. Between Northampton, MA and New Haven, CT: From Northampton over MA Hwy 10 to the MA–CT State line, then over CT Hwy 10 to New Haven, and return over the same route. Between Boston, MA and Northampton, MA: From Boston over U.S. Hwy 20 to junction MA Hwy 9, then over MA Hwy 9 to Northampton, and return over the same route. Service is authorized to and from all intermediate points on the above-specified routes. Between Boston, MA and Northampton, MA: From Boston over MA Hwy 2 to Greenfield, MA, then over U.S. Hwy 5 to Northampton, and return over the same route. Service is authorized to and from all intermediate points between Ayer, MA and Greenfield, MA, including Ayer and Greenfield, and the off-route points of Haverhill, Lowell, Winchendon, Royalston, and Monroe, MA. Between Boston, MA and Southbridge, MA: From Boston over U.S. Hwy 20 to Marlboro, MA, then over MA Hwy 85 to junction

MA Hwy 16 at a point approximately 2 miles east of Milford, MA, then over MA Hwy 16 to Douglas, MA, then over unnumbered highway to junction MA Hwy 197 at a point approximately 2 miles northeast of Webster, MA, then over MA Hwy 197 to junction MA Hwy 131, and then over MA Hwy 131 to Southbridge, and return over the same route. Service is authorized to and from all intermediate points between Marlboro, MA and Southbridge, MA, and the off-route points of Ashland, Dudley, and Blackstone, MA. (2) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), serving points in CT as off-route points in connection with carrier's presently authorized regular route operations in MC–3598. (3) *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), Between NY, NY and Philadelphia, PA, serving the intermediate point of Trenton, NJ, restricted to traffic moving to or from points other than New York, NY, all other intermediate points without restriction; and off-route points within ten miles of the specified portions of U.S. Hwy 1 and U.S. Hwy 130 (formerly NJ Hwy 25): From New York over U.S. Hwy 1 to Philadelphia, and return over the same route. From New York over U.S. Hwy 1 to junction of U.S. Hwy 130 (formerly NJ Hwy 25), then over U.S. Hwy 130 to Camden, NJ, and then across the Delaware River to Philadelphia, and return over the same route. Irregular routes: (a) *Shirts, piece goods, pajamas, thread, trimmings, buttons, underwear, leather, paper, glass and metal frames,* between Jersey City, Newark, Elizabeth, Linden, Rahway, Perth Amboy, and Fords, NJ, on the one hand, and, on the other, New York, NY. (b) *Handkerchiefs,* from South River, NJ, to New York, NY, with no transportation for compensation on return except as otherwise authorized. (c) *Machinery, equipment,* and *supplies,* used or useful in the manufacture of shirts and handkerchiefs, from New York, NY, to Perth Amboy and South River, NJ, with no transportation for compensation on return except as otherwise authorized. (4) Regular routes: (a) *Gummed tape,* serving the plant site of the Crowell Corporation at Yorklyn, DE, as an off-route point in connection with carrier's regular-route operations authorized herein between Philadelphia, PA and Wilmington, DE. (b) *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) Between Philadelphia, PA and Wilmington, DE, serving all intermediate points: From Philadelphia over U.S. Hwy 13 via Chester, PA to Wilmington, and return over the same route. Restriction: The service authorized is subject to the limitation that service at Wilmington, Camden, intermediate or off-route points south of Philadelphia, and points south of Camden is restricted to shipments moving over carrier's lines to or from points north of Philadelphia or points north of Camden. (5) *Irregular Routes. Food* and *foodstuffs* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft Foods Division of Kraftco Corporation at or near Fogelsville, PA, to points in CT, MA, ME, NH, RI, and VT, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority granted herein is restricted to the transportation of traffic originating at the named origin points and destined to the named destination points. (6) *Regular Routes. General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) serving all intermediate points on U.S. Hwy 1 between Baltimore, MD, and junction U.S. Hwys 1 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (b) Serving all intermediate points on U.S. Hwy 40 between Baltimore, MD and junction U.S. Hwys 40 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (c) Serving all intermediate points on U.S. Hwy 1 between New Brunswick and Rahway, NJ (except Rahway), and points on U.S. Hwy 222 between junction U.S. Hwys 222 and 40 and junction U.S. Hwys 1 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (d) Serving points in Bergen, Passaic (except Paterson and Passaic, NJ), Hudson, Essex (except Irvington, NJ), Union, Morris, and Middlesex Counties, NJ (except those located south of the Raritan River), and Nassau County, NY, Edgewood Arsenal, Aberdeen Proving Ground, MD, and Bound Brook, NJ, as off-route points in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. Restriction: The authority granted above is restricted to the transportation of traffic moving from, to, or through Aberdeen, MD, except that traffic moving from, to, or through Edgewood Arsenal or Aberdeen Proving Grounds, MD, or points in MD on U.S. Hwys 1 and 40 may move from, to, or through Baltimore MD, without such prior movement through Aberdeen, MD. (e) Between Baltimore, MD and Washington, DC, serving all intermediate points, and serving as off-route points Frizzelburg, MD, and points in that part of MD bounded by a line extending from Baltimore, MD, westward along U.S. Hwy 40 to junction MD Hwy 32, then along MD Hwy 32 to junction U.S. Hwy 140, then along U.S. Hwy 140 to Westminster, MD, then along MD Hwy 482 to junction MD Hwy 30, then along MD Hwy 30 to MD Hwy 88, then along MD Hwy 88 to junction MD Hwy 137, then along MD Hwy 137 to Hereford, MD, then along MD Hwy 45 to Baltimore, then southeasterly along MD Hwy 2 to Annapolis, MD, then along U.S. Hwy 50 to Washington, DC, then along U.S. Hwy 1 to Baltimore, MD, including all points on the indicated portions of the specified highways, and Rockville and Indianhead, MD. (f) From Baltimore over U.S. Hwy 1 to Washington, DC, and return over the same route. (g) From Baltimore, over U.S. Hwy 40 to junction U.S. Hwy 29, then over U.S. Hwy 29 to Washington, DC, and return over the same route. Restriction: The operations authorized under the 2 route descriptions immediately above are restricted to the transportation of traffic moving from, to or through Baltimore, MD. Restriction: The authority granted under 6 (a), (b), (c), (d), (e), (f), and (g) above, shall not be severable by sale or otherwise from the irregular route authority under (7) herein. (7) *Regular Routes, general commodities,* Between Baltimore, MD and New York, NY, serving the intermediate points of Rahway, NJ, and those between Rahway and New York; and the off-route points of Paterson, Passaic and Irvington, NJ: (a) From Baltimore over U.S. Hwy 40 to junction MD Hwy 7, near Havre de Grace, MD, then over MD Hwy 7 to Elkton, MD, then over U.S. Hwy 40 via State Road, DE to junction I–295 (formerly shown as junction U.S. Hwy 130), then over I–295 to junction U.S. Hwy 130, then over U.S. Hwy 130 to junction U.S. Hwy 1, then over U.S. Hwy 1 to New York, and

return over the same route. (b) From Baltimore over the above-specified route to State Road, DE, then over U.S. Hwy 13 via Chester, PA to junction U.S. Hwy 1, and then over U.S. Hwy 1 to New York, and return over the same route. (c) From Baltimore to Chester as specified above, then across the Delaware River to Bridgeport, NJ, then over U.S. Hwy 130 to junction U.S. Hwy 1, and then over U.S. Hwy 1 to New York, and return over the same route. (d) From Baltimore over U.S. Hwy 1 to New York, and return over the same route. From Baltimore, MD to Washington, DC, with service authorized to Washington, DC restricted to traffic moving from New York, NY. From Baltimore over U.S. Hwy 1 to Washington, DC and return over the same route with no transportation for compensation except as otherwise authorized. *Irregular Routes. General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Aberdeen MD, on the one hand, and, on the other, New York, NY, points on Long Island, NY, and points in NJ. Restriction: The authority granted under the commodity description next-above is subject to the following conditions: Said authority is restricted against the pickup or delivery of any traffic at Aberdeen, MD, other than that which carrier is authorized to transport under (6) herein. Said authority and that held by carrier under (7) herein from or to points in NJ and NY through Oxford and West Grove, PA, shall be construed as comprising a single operating right and shall not be severable by sale or otherwise. *General commodities* (except those of unusual value, classes A and B explosives, sand, gravel, earth, stone, household goods as defined by the Commission, and commodities requiring special equipment) between points in Harford County, MD, on the one hand, and, on the other, points in that part of MD within 60 miles of Bel Air, MD, other than Baltimore, MD, and that part of PA south and east of U.S. Hwy 1, within 60 miles of Bel Air, MD, including points on the indicated portion of the highway specified. *General commodities* (except those of unusual value, classes A and B explosives, alcoholic liquors, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Baltimore, MD on the one hand, and, on the other, Quantico, VA, points in the District of Columbia, and points in MD except those in Harford County and those east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal. *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Oxford and West Grove, PA, and points in PA within 5 miles of West Grove, on the one hand, and, on the other, points in NJ, those in NY, NY, and on Long Island, NY, those in that part of MD west of the Chesapeake Bay and on and east of U.S. Hwy 1, and those in that part of DE north of the Chesapeake and Delaware Canal. Between Wilmington, DE, on the one hand, and, on the other, points in that part of DE and PA on and east of that portion of U.S. Hwy 13, between Wilmington, DE and Philadelphia, PA, including Wilmington and Philadelphia. Restriction: Carrier shall not, pursuant to the irregular-route authority in (7) herein transport traffic between any points authorized in (6) herein to be served by it in regular-route operations. North Penn Transfer, Inc., is authorized to operate as a common carrier in the states of PA, DC, MD, DE, NJ, NY, MA, RI, CT, VA, NC, OH, AL, GA, FL, SC, KY, TN, WV, ME, VT, and NH. Application has not been filed for temporary authority under section 11349.

MC–F 14014F. Applicants: MURPHY MOTOR FREIGHT LINES, INC., 2323 Terminal Road, St. Paul, MN 55113, and BEATRICE MOTOR FREIGHT, INC., 123 Court Street, Beatrice, NE 68310. Representative: Jerry E. Hess, 2323 Terminal Road, St. Paul, MN 55113. Approval sought for a Pooling Agreement between the applicants herein for the transportation of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Omaha, NE and Lincoln, NE, whereby Beatrice will deliver all of the parties inbound traffic to Lincoln, NE and pick up all of their outbound traffic therefrom. Tender and receipt of all such traffic will take place at the facility of Murphy Motor Freight Lines in Omaha, NE. If a hearing is deemed necessary, the applicants request that it be held in Omaha, NE.

Note.—Both parties hereto presently hold authority from the Interstate Commerce Commission to transport general commodities between Omaha and Lincoln, NE over U.S Hwy. 6. The authority of Beatrice Motor Freight may be found in MC 65019 and the authority of Murphy Motor Freight Lines may be found in MC–F 13663.

MC–F 14015. Authority sought for control by TRIMAC TRANSPORTATION GROUP LIMITED, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, and STOTHERT HOLDINGS LTD., 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, of Municipal Tank Lines Limited, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, and for acquisition by Trimac Limited, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, J. R. McCaig, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, M. W. McCaig, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, and the estate of R. W. McCaig, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, for control of Municipal Tank Lines Limited through the acquisition of Trimac Transportation Group Limited and Stothert Holdings Ltd. Applicants' attorneys: Richard H. Streeter and Edward K. Wheeler, 1729 H Street, N.W. Washington, D.C. 20006. Operating rights sought to be controlled: Soybean oil and soybean meal, in bulk, as a common carrier by motor vehicle, over irregular routes, from the facilities of Cargill, Inc., at or near Sidney, OH to ports of entry on the International Boundary Line between the U.S. and Canada located at points in MI and NY. Neither Trimac Transportation Group Limited nor Stothert Holdings Ltd. hold authority from this Commission. However, Trimac Transportation Group Limited controls H. M. Trimble & Sons Ltd., 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, which is authorized to operate as a common carrier in ND, AK, WA, MT, AZ, AR, WI, WY, CA, CO, IL, IA, TN, TX, KS, ID, KY, LA, UT, MN, MS, MO, NE, NV, NM, OK, OR, and SD. Trimac Transportation Group Limited and Stothert Holdings Ltd. jointly control Oil & Industry Suppliers Ltd., 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, which is authorized to operate as a common carrier in WA, OR, ID, MT, WY, ND, SD, MN, WI, UT, CO, NE, KS, IA, MO, IL, IN, NM, TX, OK and AR; and Mercury Tanklines Limited, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, which is authorized to operate as a contract carrier between points in KY, IL, OH, MD, MI, CA, PA, NY, and VA and points on the U.S./Canada International Boundary Line in MI, NY, MN, WA, ND, and MT. Approval of control of these cariers was given by the I.C.C. in Docket MC F 9553 and MC–F 10380. An application has not been filed for temporary authority under Section 11349 (fomerly 210a(b)). Approval of this application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation act of 1975.

MC–F 14018. Authority sought for purchase by CASAZZA TRUCKING COMPANY, d.b.a. CASAZZA TRUCKING CO., 1250 Glendale Ave., Sparks, NV., 89431, of a portion of the operating rights of WELLS CARGO, INC., 1775 East 4th Street, Reno, NV., 89512, and for acquisition by EARL CASAZZA, 1250 Glendale Ave., Sparks, NV., 89431, of control of such rights through the transaction. Applicants representative: Earl Casazza, 1250 Glendale Ave., Sparks, NV., 89431. Operating rights sought to be purchased: Petroleum and petroleum products, as described in Appendix XII to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, in bulk, in tank vehicles, as a common carrier over irregular routes from Sparks and Fallon, NV to points in Modoc, Lassen, Plumas, Sierra, NV, Placer, Eldorado, Alpine, and Mono Counties, CA with no transportation for compensation on return except as otherwise authorized. Contaminated Shipments of the above-specified commodities, from Sparks and Fallon, NV, to points in Alameda, Contra Costa, Sacramento, and Yolo Counties, CA, with no transportation for compensation on return except as otherwise authorized. Vendee is authorized to operate as a common carrier in the States of CA and NV. Application has not been filed for temporary authority under section 11349.

MC–F 14021F. Authority sought for purchase by MISSOURI PACIFIC TRUCK LINES, INC., a Texas corporation, d.b.a. MISSOURI PACIFIC TRUCK LINES, INC., 210 North 13th Street, St. Louis, MO 63103, of certain operating rights of Missouri Pacific Railroad Company, 210 North 13th St., St. Louis, MO 63103. Applicants' representative: Robt S. Davis, Commerce Counsel, Missouri Pacific Railroad Company, 210 North 13th Street, St. Louis, MO 63103. Operating rights sought to be transferred: MC–54828 (Subs- 1 and 2) issued to the New Orleans & Lower Coast Railroad Company (NOLC) in July, 1944, and August, 1954, respectively, authorizing transportation of general commodities between New Orleans, Louisiana, and Venice, Louisiana, serving intermediate points. Service under the Certificates from their inception was provided by The Texas & Pacific Motor Transport Company under contract with NOLC and subsequently by Missouri Pacific Truck Lines. Missouri Pacific Railroad Company acquired the Certificates when the NOLC was merged into it, effective November 1, 1979. All motor carrier operations for Missouri Pacific Railroad Company are provided by its wholly owned subsidiary, Missouri Pacific Truck Lines. The railroad holds no motor carrier authority except the subject Certificates, which it acquired as incident to the NOLC merger. Since the motor carrier operations authorized by the subject Certificates have always been provided by Missouri Pacific Truck Lines or its predecessor, it has applied to the Commission for approval of the transfer of the subject Certificates from Missouri Pacific Railroad Company to Missouri Pacific Truck Lines, Inc. Service to the public will not be affected by the transfer. Application has not been filed for temporary authority under section 11349.

MC–F 14028F. Authority sought for purchase by BRIGGS TRANSPORTATION CO., North 400 Griggs-Midway Bldg., St. Paul, MN 55104, of a portion of the operating rights of SCOTT'S TRANSPORTATION SERVICE, INC. (WITTE TRANSPORTATON COMPANY, Assignor). Applicants' Attorneys: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL and William S. Rosen, 630 Osborn Bldg., St. Paul, MN 55102. Operating rights sought to be transferred are contained in MC 115554, authorizing the transportation, over irregular routes, of *General Commodities*, except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between points in IA and IL within 25 miles of Rock Island, IL, including Rock Island, IL. Vendee is authorized to operate as a common carrier in the States of IL, IN, IA, OH, WI, MN, KS, KY, MO, NB, SD, CO and WY. Application has been filed for temporary authority under section 11349 of the Act.

MC–F 14029F. Transferee: J. & L. REFRIGERATED SERVICE, INC., 312 Willow Way, Lee's Summit, MO 64064. Transferor: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, Texas 75220. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, Kansas 67202. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 140033 (Sub-31) as follows: *Foodstuffs* (except commodities iin bulk) in vehicles equipped with mechanical refrigeration, from the facilities of Inland Storage Distribution Center, located at Kansas City, Kansas, to points in Oklahoma and Texas; Restricted to traffic originating at the facilities of Inland Storage Distribution Center and destined to the named states. J. & L. Refrigerated Service, Inc., holds no permanent authority from this Commission. However has received Emergency Temporary and Regular Temporary authority, MC 144435 R–1, R–4 and Sub-2 TA, none of which duplicates authority sought in this application. Application has been filed for temporary authority under section 11349.

MC–F 14030F. Authority sought for purchase by NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe Street, Denver CO 80216 of a portion of the operating rights of BRIGGS TRANSPORTATION CO., North 400, Griggs-Midway Building, St. Paul MN 55104, and for acquisition by NW Transport Service, Inc. and in turn Donn D. McMorris and Jerry D. McMorris, 5231 Monroe Street, Denver CO of control of such rights through purchase. Applicant's attorneys: David E. Driggers, 1600 Lincoln Center Building, 1660 Lincoln Street, Denver CO 80264 for transferee, and Carl L. Steiner, 39 So. LaSalle Street, Chicago IL 60603 for transferor. Operating rights sought to be transferred: Regular routes, general commodities, with usual exceptions: (1) Between Denver, Colorado, and junction of U.S. Highways No. 26 and No. 87 in Wyoming, serving all intermediate points, and the off-route points in Yoder, Lagrange, and Huntley, Wyoming: From Denver over U.S. Highway No. 85 to Torrington, Wyoming; thence over U.S. Highway No. 26 to junction U.S. Highway No. 87, and return over the same route. (2) Between Guernsey, Wyoming, and Sunrise, Wyoming, serving all intermediate points: From Guernsey over unnumbered highway to Sunrise, and return over same route. (3) Between Lingle, Wyoming, and Lusk, Wyoming, serving the intermediate point of Jay Em, Wyoming: From Lingle over U.S. Highway No. 85 to Lusk, and return over the same route. (4) Between Torrington, Wyoming, and Gering, Nebraska, serving all intermediate points and off-route points with one mile of Nebraska Highway No. 29 between Gering and Scottsbluff, Nebraska: From Torrington over U.S. Highway No. 26 to Scottsbluff, thence over Nebraska Highway No. 29 to Gering, and return over the same route. (5) Between Scottsbluff, Nebraska, and Alliance, Nebraska, serving all intermediate points: From Scottsbluff over U.S. Highway No. 26 to junction U.S. Highway No. 385, thence over U.S. Highway No. 385 to Alliance, and return

over the same route. Transferee is authorized to operate as a common carrier in AZ, CO, ID, NE, NM, UT and WY. Application has been filed for temporary authority under Section 210a(b). (Hearing site: Denver CO and Scottsbluff NE.)

MC–F 14032F. Authority sought for purchase by CHIPPEWA MOTOR FREIGHT, INC., 1000 East 41st Street, Sioux Falls, SD 57105, to purchase a portion of the operating rights of R–W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI., 48180, and for acquisition of control of such rights by LEWIS INDUSTRIES, INC., 510 Northwestern Bank Bldg., Sioux Falls, SD, 57102, through the purchase. Applicants attorneys: Carl L. Steiner, 39 South LaSalle St., Chicago, IL, 60603, and Martin J. Leavitt, 22375, Haggerty Road, P.O. Box 400, Northville, MI, 48167. Operating rights sought to be transferred are as a common carrier, over irregular routes as follows: General Commodities, with the usual exceptions, between Hartford City, IN and Fort Wayne, IN. Vendee is authorized to operate as a common carrier in the States of MN, WI, IL, IN, IA, and OH. Application has not been filed for temporary authority under Section 210a(b).

MC–F 14033F. Transferee: THE DANIEL COMPANY OF SPRINGFIELD, 3725 West Division, Springfield, MO 65803. Transferor: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: Turner White, 910 Plaza Towers, Springfield, MO 65804. Authority sought for purchase by The Daniel Company of Springfield of a portion of the operating rights of Cox Refrigerated Express, Inc., at 10606 Goodnight Lane, Dallas, TX 75220, in Docket MC 140033, (Sub-33), issued September 12, 1978, as follows: Irregular routes: *Such merchandise as is dealt in by grocery and food business houses, in vehicles equipped with mechanical refrigeration* (except commodities in bulk, in tank vehicles). From the facilities of Kraft, Inc., at Springfield, MO, to points in AL, AR, AZ, CA, CO, FL, GA, KS, KY, LA, MS, NM, NC, OK, SC, TN, TX and VA. The certificate contains a restriction against tacking and a further restriction to traffic originating at the named origin and destined to the named destinations. Transferee presently holds Authority under its Lead Docket MC 143085 and Subs thereunder as a Common Carrier, and holds a Permit under its Lead Docket MC 139274 and Subs. Dual operations have been approved. There is presently pending an application under Section 210a(b) by Transferee seeking Temporary Authority to operate the described Authority.

MC–F 14034F. Authority sought for purchase by STAM–WIN, INC., 3700 Park East Drive, Cleveland, Ohio 44122, of operating rights and certain properties of T. T. TRANSPORT CO., 3985 Hutchinson Road, Cincinnati, Ohio 45211, and for the acquisition by LEASEWAY TRANSPORTATION CORP., 3700 Park East Drive, Cleveland, Ohio 44122, of control of said operating rights through the transaction. Applicant's Attorney, J. A. Kundtz, 1100 National City Bank Building, Cleveland, Ohio 44114. Operating rights sought to be transferred and controlled: Injection molding machines, infrared gas heaters, containers, container closures, plastic pipe and fittings, and plastic articles, from the facilities of Van Dorn Company at Cleveland and Conneaut, Ohio, Leetsdale, Pennsylvania, and Elizabeth, New Jersey, to points in CT, IL, IN, KY, MD, MI, MA, MO, NY, OH, PA, RI, VA, and WV, and materials used in the manufacture thereof in the reverse direction. Stam-Win, Inc. holds no authority from this Commission. It is controlled by Leaseway Transportation Corp. which controls certain common and contract carriers some of which are authorized to operate throughout the United States. Application has been filed for Temporary Authority under Section 210a(b).

MC–F 14037F. Transferee: GORDON FAST FREIGHT, INC., 2205 Pacific Highway East, Tacoma, WA 98422. Transferor: V & J REFRIGERATED SERVICE, INC., 3623 6th South, Seattle, WA. Representative: Michael D. Duppenthaler, 211 South Washington Street, Seattle, WA 98104. Authority sought to be controlled: *Alcoholic Beverages* (except wine, in bulk, in tank vehicles), from points in CA to points in King, Pierce, and Snohomish Counties, WA, as a *common* carrier, by motor vehicle, over irregular routes. Vendee is authorized to operate as a common carrier in WA, OR, CA, ZA, and NV. Application has been filed for temporary authority under section 11349.

MC–F 14039F. Authority sought by ALLTRANS EXPRESS U.S.A., INC., of 1335 Sixth Street, San Francisco, CA. 94107, to acquire control of MMAR TRANSPORTATION, INC., of 128 Pennsylvania Street, Kearney, NJ. 07032, through the purchase of 80% MMAR's capital stock. Applicants' attorneys: S. S. Eisen, 370 Lexington Avenue, New York, NY. 10017 and Steven L. Weiman, Suite 145, 4 Professional Drive, Gaithersburg, MD. 20760. Operating rights sought to be controlled: General commodities (except commodities in bulk, classes A and B explosives, commodities of unusual value and commodities requiring special equipment), as a common carrier over irregular routes between New York, NY, Baltimore, MD, Newark, NJ, Philadelphia, and Pittsburgh, PA, New Haven, CT, Holyoke and Boston, MA, Cincinnati, Cleveland, Dayton and Columbus, OH, St. Louis, MO, Chicago, Rockford and Peoria, IL, Milwaukee, WI, Los Angeles, San Francisco, San Diego, Fresno, Emeryville, Oakland, San Jose, Stockton and Sacramento, CA, Phoenix and Tuscon, AZ, Las Vegas and Reno, NV, Seattle and Spokane, WA, Portland, OR, and Salt Lake City, UT. Limitation: Limited to the transportation of shipments moving on bills of lading of freight forwarders as defined in section 402(a)(5) of the Interstate Commerce Act. Restriction: Restricted against the transportation of shipments (a) between Pittsburgh, PA, and Cleveland, OH; (b) from Pittsburgh, PA, and Cleveland, OH, to New York, NY, and Newark, NJ; (c) between Peoria and Chicago, IL; (d) between Cleveland, OH, Chicago, IL, and Milwaukee, WI; (e) between Salt Lake City, UT, Spokane, WA, and Portland, OR; and (f) between Los Angeles, San Francisco, San Diego, Fresno, Emeryville, Oakland, San Jose, Stockton and Sacramento, CA, Phoenix and Tuscon, AZ, Las Vegas and Reno, NV, Seattle, WA, and Portland, OR. Vendee is authorized to operate in the State of CA. Application has not been filed for temporary authority under Section 11349.

MC–F 14041F. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Authority sought by McLean Trucking Company, 1920 West First Street, P.O. Box 213, Winston-Salem, NC 27102 to merge with Wolverine Express, Inc., 1920 West First Street, P.O. Box 213, Winston-Salem, NC 27102 and Interlake Equipment Corporation of same address, both of which are now wholly owned subsidiaries of McLean Trucking Company. Operating rights sought to be merged: General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) over regular routes between named points in Michigan, including Grand Rapids, Lansing, Flint, Alma, Ludington, Traverse City, Muskegon,

Holland, Kalamazoo and other points in the southern peninsula, on the one hand, and, on the other, Toledo, OH, South Bend, IN and Chicago, IL; specified commodities over irregular routes within the above described territory. Vendee is authorized to operate as a common carrier in the States of AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC. Application has not been filed for temporary authority under Section 11345.

Note.—Wolverine Express, Inc. and Interlake Equipment Corporation have been operated as wholly owned subsidiaries of McLean Trucking Company pursuant to the decision of the Commission in Docket MC-F 13133 served on August 19, 1977. Common control may be involved.

MC-F 14042F, Transferee LADLIE TRANSPORTATION, INC., 103 East Main Street, Albert Lea, MN 56007. Transferor LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representatives: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402, and Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Authority sought for purchase by Transferee of a portion of the operating rights of Transferor as set forth in Certificate MC 135874 (Sub-42), served January 29, 1976, as follows: *Irregular* route, *common* carrier. *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* as defined in Sections A and C of Appendix I to the report in Descriptions in *Motor Carrier* Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson and Co. at Albert Lea, MN, to points in IL, IA, KS and MO. Transferee has ETA, TA and permanent applications pending under MC 136758. No tacking is sought. Application is being filed for temporary authority under Section 210a(b).

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before July 18, 1979.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 2245 (Deviation No. 10), THE O.K. TRUCKING COMPANY, 3000 E. Crescentville Rd., Cincinnati, OH 45241, filed May 2, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Indianapolis, IN over Interstate Hwy 70 to Terre Haute, IN, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Indianapolis, IN over US Hwy 136 to Danville, IL, then over US Hwy 150 to Terre Haute, IN and return over the same route.

MC 11220 (Deviation No. 42), GORDONS TRANSPORTS, INC., 184 W. McLemore Ave., Memphis, TN 38101, filed March 26, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Little Rock, AR over U.S. Hwy 65 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Jackson, MS, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Little Rock, AR over U.S. Hwy 70 to Memphis, TN, then over U.S. Hwy 51 to Jackson, MS, and return over the same route.

MC 11220 (Deviation 41), GORDONS TRANSPORTS, INC., 184 W. McLemore Ave., Memphis, TN 38101, filed March 29, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Idabel, OK over US Hwy 259 to junction US Hwy 59, then over US Hwy 59 to Livingston, TX, then over TX Hwy 146 to junction US Hwy 90, then over US Hwy 90 to Houston, TX, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Idabel, OK over US Hwy 70 to Durant, OK, then over US Hwy 75 to Houston, TX, and return over the same route.

Note.—A portion of this deviation is premised on a grant of temporary authority under section 210(a)(b). If applicant's right to operate all or part of the leased authority expires, this deviation, if authorized, will likewise expire.

MC 29910 (Deviation 40), ARKANSAS-BEST FREIGHT SYSTEM, INC., P.O. Box 48, Fort Smith, AR 72902, filed April 2, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Cleveland, OH over US Hwy 480 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Pennsylvania Hwy 153, then over Pennsylvania Hwy 153 to junction Pennsylvania Hwy 322, then over Pennsylvania Hwy 322 to Harrisburg, PA, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Cleveland, OH over US Hwy 422 to junction Ohio Hwy 8, then over Ohio Hwy 8, via Akron to Canton, OH, then over US Hwy 30 to junction Pennsylvania Turnpike, then over Pennsylvania Turnpike to junction US Hwy 11, then over US Hwy 11, to Harrisburg, PA, and return over the same route. Restrictions: Service is subject to restrictions as follows: (1) That carrier in operating over the Pennsylvania Turnpike shall handle only traffic which is moving between points in Massachusetts, Rhode Island, Connecticut, and the metropolitan area of New York, NY, including Jersey City, Newark and Elizabeth, NJ, on the one hand, and, on the other, points west of the Ohio-Indiana State Line and points in Ohio north of US Hwy 30 and Lima, OH, on US Hwy 30; or that which is moving between points south of Elizabeth, NJ, on the one hand, and, on the other, points west of the Illinois-Indiana State Line, including Gary, IN, and (2) that authority applicable shall continue only so long as carrier shall, by reason of other authority granted, be entitled or authorized to operate over other routes between the termini of the said above specified two routes.

MC 48958 (Deviation 87), ILLINOIS-CALIFORNIA EXPRESS, INC., 601 Ross St., P.O. Box 9050, Amarillo, TX 79189, filed March 29, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Wichita Falls, TX, over US Hwy 277 to junction Interstate Hwy 35, then over Interstate Hwy 35 to Kansas City, MO, and (2) From Wichita Falls, TX, over Interstate Hwy 35 to junction US Hwy 81, then over US Hwy 81 to junction US Hwy 50, then over US Hwy 50 to Kansas City, MO, and return

over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Wichita Falls, TX over US Hwy 287 to junction US Hwy 66, then over US Hwy 66 to junction NM Hwy 39, then over NM Hwy 39 to junction NM Hwy 58 (US 56), then over NM Hwy 58 to junction US Hwy 85, then over US Hwy 85 to junction US Hwy 6, then over US Hwy 6, to junction US Hwy 138, then over US Hwy 138 to junction US Hwy 30, then over US Hwy 30 to junction US Hwy 34, then over US Hwy 34 to junction US Hwy 73, then over US Hwy 73 to junction US Hwy 40, then over US Hwy 40 to Kansas City, MO, and return over the same route.

MC 55312 (Deviation 10) (Cancels Deviation NO. 8), CONTINENTAL TENNESSEE LINES, INC., 1785 Hwy 80 West, P.O. Box 8435, Jackson, MS 39204, filed March 26, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express*, and *newspapers* in the same vehicle with passengers, over deviation routes as follows: From Shepherdsville, KY over Interstate Hwy 65 to junction TN Hwy 25, then over TN Hwy 25 to Gallatin, TN, with the following access route: From junction US Hwy 31W and TN Hwy 109, over TN Hwy 109 to Gallatin, TN, and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Shepherdsville, KY over KY Hwy 61 to Boston, KY, then over US Hwy 62 to Leitchfield, KY, then over KY Hwy 259 to junction US Hwy 31W, then over US Hwy 31W to junction KY Hwy 101, then over KY Hwy 101 to Scottsville, KY, then over US Hwy 31E to Gallatin, TN, and return over the same route.

MC 59583 (Deviation 60), THE MASON AND DIXON LINES, INC., P.O. Box 969, Kingsport, TN 37662, filed May 7, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Richmond, VA over Interstate Hwy 95 to Petersburg, VA, then over Interstate Hwy 85 to Henderson, NC, and (2) From Richmond, VA over Interstate Hwy 95 to Roanoke Rapids, NC and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Richmond, VA over US Hwy 60, to junction VA Hwy 24, then over VA Hwy 24 to Appamatox, VA, then over US Hwy 460 to Lynchburg, VA, then over US Hwy 29 to Greensboro, NC, then over Interstate Hwy 85 to (a) Henderson, NC, then over US Hwy 1 to Norlina, NC, then over US Hwy 158 to (b) Roanoke Rapids, NC, and return over the same routes.

MC 10343 (Deviation 26), CHURCHILL TRUCK LINES, INC., P.O. Box 250, Highway 36 West, Chillicothe, MO 64601, filed May 2, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over the deviation routes as follows: (1) From Wichita, KS, over the Kansas Turnpike to Topeka, KS and return over the same route for operating convenience only, (2) From Wichita, KS over the Kansas Turnpike to junction Interstate Hwy 35, then over Interstate Hwy 35 to Kansas City, MO, and return over the same route for operating convenience only, and (3) From Wichita, KS over Interstate Hwy 135 (formerly Interstate Hwy 35W) to junction US Hwy 50, then over US Hwy 50 to junction Interstate Hwy 35, then over Interstate Hwy 35 to Kansas City, MO, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: (1) From Wichita, KS over Kansas Hwy 15 to junction US Hwy 40, then over US Hwy 40 to junction Kansas Hwy 18, then over Kansas Hwy 18 to junction US Hwy 24, then over US Hwy 24 to Topeka, KS, and return over the same route, and (2) From Wichita, KS over Kansas Hwy 15, to junction US Hwy 56, then over US Hwy 56 to junction US Highway 50, then over US Hwy 50 to Kansas City, MO and return over the same route.

MC 111231 (Deviation No. 67), JONES TRUCK LINES, INC, 610 E. Emma Ave., Springdale, AR 72764, filed May 4, 1979. Carrier's representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Carrier proposes to operate as a *comon carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Kansas City, MO over Interstate Hwy 35 to junction Interstate Hwy 80, then over Interstate Hwy 80 to Chicago, IL and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Kansas City, MO over US Hwy 73 to Hiawatha, KS, then over US Hwy 36 to junction KS Hwy 15E, then east over US Hwy 36 to Marysville, KS, then over US Hwy 77 to Lincoln, NE, then over US Hwy 6 to junction IL Hwy 92, then over IL Hwy 92 to junction US Hwy 34, then over US Hwy 34 to Chicago, IL, and return over the same route.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18942 Filed 6-15-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 118
Monday, June 18, 1979

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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1

CONSUMER PRODUCT SAFETY COMMISSION.

Revised Agenda [1]

TIME AND DATE: 4 p.m., Tuesday, June 12, 1979.

LOCATION: 8th Floor Conference Room, 1111 18th St., NW., Washington, DC.

STATUS: Part open, part closed to the public.

MATTERS TO BE CONSIDERED:

A. Open to public:

1. *Briefing on Abestos in Products Other than Hair Dryers.*—The staff will brief the Commission on CPSC chronic hazards programs concerning asbestos in consumer products other than hair dryers.

B. Closed to the Public:

2. *Lead in Paint: Tee Shirts.*—The staff will brief the Commission on issues to litigation concerning enforcement of lead in paint regulations. (Closed under exemption 10: litigation)

C. Open to the Public:

3. *Hair Dryers/Abestos.*—The staff will present a review of procedures it is using in matters involving asbestos in hair dryers.

[1] Agenda revised June 12, by oral vote of the Commission to add items 2 and 3, and to close discussion of item 2 to the public. In making these changes, the Commission determined that agency business requires consideration of these matters without seven days notice.

Agenda originally approved June 8; at that time, the Commission determined that agency business requires consideration of item 1 without seven days notice.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111 18th Street, NW., Washington, DC 20207, Telephone: (202) 634-7700.

[S-1192-79 Filed 6-14-79; 11:45 am]

BILLING CODE 6355-01-M

2

U.S. CONSUMER PRODUCT SAFETY COMMISSION.

Revised Agenda [1]

TIME AND DATE: 10:30 a.m., Wednesday, June 20, 1979.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Briefing on Minorities Program.*—The staff will make recommendations on the use of Fiscal Year 1980 funds for information and education programs directed toward minority populations.

2. *Briefing on Cellulose Insulation: 27 (e) Labeling Rule.*—The staff will brief the Commission on a proposed labeling rule under section 27(e) of the Consumer Product Safety Act. This rule will address proper installation, warning of fire hazards if the insulation is installed too close to certain heat sources. The staff will brief the Commission on other cellulose insulation issues at a briefing on June 25. The Commission will consider cellulose insulation at the June 28 Meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111 18th Street NW, Washington, DC 20207, Telephone: (202) 634-7700.

[S-1193-79 Filed 6-14-79; 11:45 am]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION.

Agenda

TIME AND DATE: 9:30 a.m., Thursday, June 21, 1979.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the public.

[1] Agenda revised June 13, 1979, with deletion of former item 2: Briefing on Rest Removers Petition, HP 79-2, which will be rescheduled.

In addition, the meeting will begin at 10:30, instead of at 10:00, as previously scheduled.

MATTERS TO BE CONSIDERED:

1. *CB Antennas: Notice and Plan.*—The Commission will consider a draft Federal Register document giving notice of CPSC's intent to develop a safety standard to address electrocution hazards associated with the erection and dismantling of Citizens Band base station antennas. The staff will also discuss the management plan for conducting the standard development process.

2. *Skateboards Petition, CP 79-3.*—The Commission will consider a petition in which the Consumer Affairs Committee, Americans for Democratic Action asks CPSC to ban skateboards.

3. *Burn Prevention Project.*—The Commission will consider a proposed one-site replication of Project Burn Prevention, and other national efforts on burn prevention. The Commission previously considered these matters at the May 17 Briefing and at the June 6 Meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111 18th Street, NW., Washington, DC 20207, Telephone: (202) 634-7700.

Agenda approved June 8, 1979.

[S-1194-79 Filed 6-14-79; 11:45 am]

BILLING CODE 6355-01-M

4

CONSUMER PRODUCT SAFETY COMMISSION.

Agenda

TIME AND DATE: 9:30 a.m., Monday, June 25, 1979.

LOCATION: Third Floor Hearing Room, 1111-18th St. NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Briefing on Cellulose Insulation.—The staff will brief the Commission on the final amendment to the Interim Safety Standard, and the Certification Rule for Cellulose Insulation. The Commission proposed both rules on March 8, 1979. The Commission will consider the Safety Standard, the Certification Rule, and a Labeling Rule (briefing scheduled for June 20) at the June 28 Commission Meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111-18th Street, NW., Washington, D.C. 20207, Telephone: (202) 634-7700.

Agenda approved June 8, 1979.

[S-119-79 Filed 6-14-79; 11:45]

BILLING CODE 6355-01-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, June 19, 1979.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public:

1. Proposed designation of South Carolina Human Affairs Commission as a 706 Agency.
2. Proposed revision of interpretations of the age Discrimination in Employment Act of 1967, as amended (29 CFR 860).
3. Proposed contracts for computer analyses and expert witness services in connection with a pending court case.
4. Report on operations of the Office of Review and Appeals.
5. Report on Commission operations by the Executive Director.

Closed to the public:

1. Litigation Authorization: General Counsel Recommendations.
2. Proposed Decision in Charge TN03-1711.
3. Proposed Reconsideration of Decision in Charge 052-77-0749.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued June 12, 1979.

[S-1201-79 Filed 6-14-79; 3:57 pm]

BILLING CODE 6570-06-M

6

June 13, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., June 20, 1979.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Hearing Room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the office of public information.

Power Agenda—326th Meeting, June 20, 1979, Regular Meeting (10 a.m.)

CAP-1. Project No. 2709, Monongahela Power Co., The Potomac Edison Power Co., and West Penn Power Co.
CAP-2. Project No. 2372, Pennsylvania Electric Co.
CAP-3. Project No. 1992, California Fire Mountain Lodge.
CAP-4. Docket Nos. ER79-336, ER79-337, Central Illinois Public Service Co., Kentucky Utilities, and Southern Illinois Power Cooperative.
CAP-5. Docket No. ER79-343, Florida Power Corp.
CAP-6. Docket No. ER79-334, Upper Peninsula Power Co.
CAP-7. Docket No. ER79-342, Union Electric Co. and Kentucky Utilities Co.
CAP-8. Docket No. ER79-344, West Texas Utilities Co.
CAP-9. Docket No. ER79-335, Central Louisiana Electric Co.
CAP-10. Docket Nos. EL78-15 and ER78-339, Public Service Co. of New Hampshire.
CAP-11. Docket No. ER78-515, Montana Power Co.
CAP-12. Docket No. ER79-107, Upper Peninsula Power Co.
CAP-13. Docket Nos. ER79-216 and ER79-217, Boston Edison Co.

Miscellaneous Agenda—326th Meeting, June 20, 1979, Regular Meeting

CAM-1. Wesco Pipeline Co.
CAM-2. Elimination of order No. 539 conditions in producer temproary and permanent certificates.
CAG-1. Docket Nos. RP73-97 and RP78-93 (PGA79-1), Kentucky West Virginia Gas Co.
CAG-2 Docket No. CP72-156 (PGA No. 79-1a), Texas Gas Transmission Corp.
CAG-3. Docket Nos. RP71-107 and RP72-127 (PGA No. 79-2), Northern Natural Gas Co.
CAG-4. Docket No. RP73-64 (PGA No. 78-2) (DCA No. 78-2), Southern Natural Gas Co.
CAG-5. Docket No. RP78-5, City of Des Arc, Ark., complainant vs. Mississippi River Transmission Corp., respondent.
CAG-6. Docket No. RP75-73 (advance payments), Texas Eastern Transmission Corp.
CAG-7. Docket No. RP77-59, South Texas Natural Gas Gathering Co.
CAG-8. Docket No. RI78-16, West Lake Natural Gasoline Co.
CAG-9. Docket No. RI77-53, CRA, Inc.
CAG-10. Docket No. CI78-870, American Natural Gas Production Co.; Docket No. CI78-845 and CI78-846, Helmerich & Payne, Inc.; Docket No. CI78-153, Monsanto Co.; Docket No. CI78-1131, Amoco Production Co.; Docket No. CI76-629, Continental Oil Co.; Docket No. CI76-641, Atlantic Richfield Co.; Docket No. CI7-646, Getty Oil Co.; Docket No. CI79-402, Getty Oil Co.; Docket Nos. CS71-181, et al., Herman Lang, et al.; Docket Nos. CS71-208, et al., Santa Fe Energy Co.; Docket No. CS79-331, Cisco Gathering System; Docket No. G-9299, Phillips Petroleum Co.; Docket No. CI72-685, Phillips Petroleum Co.; Docket No. CI78-450, Continental Oil Co.; Docket No. CI78-527, Continental Oil Co.; Docket No. CI78-527, Continental Oil Co.; Docket No. CI77-509, Sonat Exploration Co.; Docket No. CI78-1215, The Superior Oil Co.
CAG-11. Docket No. CI78-864, Shell Oil Co.
CAG-12. Docket Nos. CI78-199, et al., Bethlehem Steel Corp., et al.
CAG-13. Docket Nos. CI74-425, et al., Chevron U.S.A. Inc., et al.
CAG-14. Docket No. G-7004, Pennzoil Co.
CAG-15. Docket No. CP76-255, Michigan Wisconsin Pipe Line Co.
CAG-16. Docket No. CP70-7 (Phase II), Southern Natural Gas Co.
CAG-17. Docket No. CP79-287, Texas Gas Transmission Corp.
CAG-18. Docket No. CP73-70, Columbia Gulf Transmission Co.

Power Agenda—326th Meeting, June 20, 1979, Regular Meeting

I. Electric Rate Matters

ER-1. Docket Nos. ER79-332 and ER79-333, Ohio Power Co.
ER-2. Docket No. ER79-352, Florida Power & Light Co.
ER-3. Docket No. ER79-97, Tucson Gas & Electric Co.

Miscellaneous Agenda: 326th Meeting, June 20, 1979, Regular Meeting

M-1. Docket No. RM79-10, Determination of power plant design capacity.
M-2. Reserved.
M-3. Reserved.
M-4. Docket No. RM79-1, Rate making treatment of certain research, development, and demonstration expenses.
M-5. Docket No. RM79-18, Certification of pipe line transportation for certain high priority uses.
M-6. Docket No. RM79-22, amendment and clarification of the commission's interim regulation implementing the Natural Gas Policy Act of 1978 and Regulations under the Natural Gas Act.
M-7. Docket No. RM79-15, final regulations for the implementation of section 401 of the Natural Gas Policy Act of 1978.

Gas Agenda—326th Meeting, June 20, 1979, Regular Meeting

I. Pipeline Rate Matters

RP-1. Docket No. RP76-4, National Fuel Gas Supply Corp.
RP-2. Docket No. RP77-107, United Gas Pipe Line Co.

II. Producer Matters

CI-1. Docket No. RI79-23, Southern Union Gathering Co.
CI-2. Docket No. RI77-129, Coastal States Gas Producing Co.
CI-3. Docket No. CI75-201, Atlantic Richfield Co., et al.
CI-4. Docket No. CI75-277, J. G. Stone, Sun Oil Co., and United Gas Pipe Line Co.

Kenneth F. Plumb,

Secretary.

[S-1197-79 Filed 6-14-79; 3:30 pm]

BILLING CODE 6450-01-M

7

FEDERAL ELECTION COMMISSION.

FEDERAL REGISTER NO.: FR-S-1189.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 21, 1979 at 10 a.m.

CHANGE IN MEETING: The following items have been added to the open portions of the meeting:

Advisory opinion 1979-17—James T. Lynn, counsel, Republican National Committee.
Advisory opinion 1979-21—Glenn E. Watts, chairman, CWA-COPE PCC.
Index pricing policy.
Financial control and compliance manual for presidential candidates.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S-1190-79 Filed 6-14-79; 3:30 pm]
BILLING CODE 6715-01-M

8

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., June 21, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Agreement No. 10109-3: Application for approval of extension of a cooperative working agreement among noncontainerized cargo carriers at United States ports on the Atlantic and Gulf Coasts.

Portions closed to the public:

1. Docket No. 79-10: Rates of Far Eastern Shipping Company—Consideration of the record.
2. Commission Action Regarding TMT v. F.M.C.—D.C. Cir. 78-1307.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-1186-79 Filed 6-13-79; 11:36 am]
BILLING CODE 6730-01-M

9

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 3 p.m., June 12, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20753.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Commission Action Regarding TMT v. F.M.C.—D.C. Cir. 78-1307.
2. Criminal Indictments of Certain Carriers and Individuals.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-1199-79 Filed 6-14-79; 3:34 pm]
BILLING CODE 6730-01-M

10

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

June 14, 1979.

TIME AND DATE: 10 a.m., June 21, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

Secretary of Labor v. Valley Camp Coal Company, MORG 78-46-P.
Secretary of Labor v. Stash Brothers, Inc., PITT 79-44-P.
Secretary of Labor v. Cut Slate, Inc., WILK 79-13-PM

CONTACT PERSON FOR MORE INFORMATION: Joanne Kelley, 202-653-5632.

[S-1200-79 Filed 6-14-79; 3:37 pm]
BILLING CODE 6820-12-M

11

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [44 FR 33236 June 8, 1979 and 44 FR 33549 June 11, 1979.]

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, June 4, 1979 and Wednesday, June 6, 1979.

CHANGES IN MEETING: Rescheduling.

The following items scheduled for consideration at a closed meeting on Tuesday, June 12, 1979, at 10:00 a.m. has been rescheduled for Wednesday, June 13, 1979 at 8:00 a.m.:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling or meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: Mike Rogan at (202) 755-1638.

June 13, 1979.

[S-1196-79 Filed 6-14-79; 12:27 pm]
BILLING CODE 8010-01-M

federal register

Monday
June 18, 1979

Part II

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Fair Market Rents for New Construction and Substantial Rehabilitation; All Market Areas Section 8 Projects

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 888]

[Docket No. R-79-677]

Fair Market Rents for New Construction and Substantial Rehabilitation; All Market Areas Section 8 Projects

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: This Proposed Rule will amend the Section 8 Fair Market Rents applicable to New Construction and Substantial Rehabilitation for all Market Areas. The Proposed Fair Market Rents are intended to reflect the changes which have occurred in the general levels of market rents for recently completed or newly constructed dwelling units within each market area since their last annual or special (interim) revision.

DATE: July 3, 1979. Comments should be filed by this deadline with the Rules Docket Clerk at the above address.

ADDRESS: 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: Edward M. Winiarski, Supervisory Appraiser, Valuation Branch, Technical Support Division, Office of Multifamily Housing Development, 451–7th Street, S.W., Washington, D.C. 20410. (202) 755–5743. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This proposed rule would establish revised section 8 Fair Market Rents applicable to new construction and substantial rehabilitation for all market areas in compliance with the requirements of section 8(c)(1) of the U.S. Housing Act of 1937 and implementing regulations that Fair Market Rents be established and published in the **Federal Register** at least annually.

These Fair Market Rents are based primarily on the levels of rental paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. They are estimates of the rentals that prospective tenants who have income above 80 percent of the median income would be willing and able to pay for recently completed or newly constructed dwelling units of modest design. Families with incomes 80% or less of the median income for the area, with certain adjustments, may be eligible for housing assistance under the section 8 programs. The last annual revision was published June 13, 1978, effective April 1, 1978. After consideration of comments received as a result of this publication, revised rents will be published effective April 1, 1979.

The Proposed Rule includes Fair Market Rents for 0, 1, 2, 3, and 4 or more bedroom units in five structural categories (detached, semi-detached/row, walkup, elevator 2–4 story, and elevator 5+ story.) However, Departmental policy discourages construction of high-rise family projects. For the McAlester, Oklahoma market area only, Fair Market Rents are included for mobile homes.

Proposals involving combinations of structure type and unit size by bedroom count for which Fair Market Rents have not been published for effect may not be approved until publication of the applicable Fair Market Rents, first for comment and then for effect.

Interested parties are encouraged at all times to submit information and data on Fair Market Rents which will be considered in initiating revisions as needed. It has been determined that because of the immediate need to provide revised Fair Market Rents in order to meet this year's departmental Production goals for assisted housing reservations and starts, a 15-day comment period is reasonable and in the public interest. A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

It is therefore proposed that Schedule A of Part 888 be amended as set for below.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d))

Issued at Washington, D.C., on May 4, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

These Fair Market Rents have been trended ahead 2 years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

Note.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-bedroom for the elderly, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units, and (3) single room occupancy dwelling units are those for 0-bedroom units of the same type.

[FR Doc. 79-18591 Filed 6-15-79; 8:45 am]

BILLING CODE 4210-01-M

AREA OFFICE HARTFORD, CONN. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HARTFORD/NEW HAVEN	DETACHED			518	578	622
	SEMI-DETACHED/ROW		423	491	550	593
	WALKUP	358	417	486	546	587
	ELEVATOR-2-4 Sty	375	435	505		
	5 + Sty	386	448	518		
BRIDGEPORT/DANBURY	DETACHED			541	605	650
	SEMI-DETACHED/ROW		445	515	581	625
	WALKUP	378	438	511	570	616
	ELEVATOR-2-4 Sty	393	457	529		
	5 + Sty	406	470	541		
NEW MILFORD	DETACHED			510	565	610
	SEMI-DETACHED/ROW		406	483	537	581
	WALKUP	348	401	478	531	574
	ELEVATOR-2-4 Sty	364	417	498		
	5 + Sty	376	429	510		
RIDGEFIELD/STAMFORD	DETACHED			557	618	661
	SEMI-DETACHED/ROW		454	525	588	629
	WALKUP	387	449	520	582	629
	ELEVATOR-2-4 Sty	405	468	542		
	5 + Sty	417	478	553		
WINDHAM	DETACHED			480	543	588
	SEMI-DETACHED/ROW		388	457	515	557
	WALKUP	324	383	450	510	552
	ELEVATOR-2-4 Sty	337	395	463		
	5 + Sty	350	412	480		
NORWICH/NEW LONDON	DETACHED			509	569	614
	SEMI-DETACHED/ROW		418	484	540	584
	WALKUP	350	408	477	535	579
	ELEVATOR-2-4 Sty	366	423	496		
	5 + Sty	378	438	509		

AREA OFFICE BOSTON, MASS. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BOSTON	DETACHED			---	---	---
	SEMI-DETACHED/ROW		401	454	569	646
	WALKUP	323	400	441	516	621
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	336	433	488	649	712
CAPE COD	DETACHED			507	543	638
	SEMI-DETACHED/ROW			372	448	513
	WALKUP	280	347	365	442	508
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	306	398	429		
PITTSFIELD	DETACHED			---	---	---
	SEMI-DETACHED/ROW		348	421	531	582
	WALKUP	290	331	374	460	554
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	309	353	437		
SPRINGFIELD	DETACHED			---	---	---
	SEMI-DETACHED/ROW		328	388	521	594
	WALKUP	218	322	364	460	566
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	274	353	416		
WORCHESTER	DETACHED			---	---	---
	SEMI-DETACHED/ROW		357	421	522	614
	WALKUP	316	347	408	480	585
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	318	389	456		
FALL RIVER	DETACHED			---	---	---
	SEMI-DETACHED/ROW		354	431	555	564
	WALKUP	318	331	408	483	537
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	---	370	438		

AREA OFFICE BOSTON, MASS. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LOWELL	DETACHED			654	747	790
	SEMI-DETACHED/ROW		392	446	530	633
	WALKUP	325	373	432	505	603
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	329	423	479		
SALEM	DETACHED			---	---	---
	SEMI-DETACHED/ROW		374	436	489	604
	WALKUP	297	364	408	478	575
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	336	433	483		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MANCHESTER, N.H. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MAINE STATEWIDE	DETACHED		372	425	481	547
	SEMI-DETACHED/ROW	313	359	410	463	524
	WALKUP	287	328	377	423	481
	ELEVATOR-2-4 Sty	342	376	459		
	5 + Sty	379	418	509		
VERMONT STATEWIDE	DETACHED			416	483	565
	SEMI-DETACHED/ROW		353	405	461	529
	WALKUP	297	344	394	444	498
	ELEVATOR-2-4 Sty	324	363	435		
	5 + Sty	360	404	483		
NEW HAMPSHIRE STATEWIDE	DETACHED		396	465	537	627
	SEMI-DETACHED/ROW	301	345	410	469	545
	WALKUP	283	326	390	443	505
	ELEVATOR-2-4 Sty	286	342	436		
	5 + Sty	318	380	484		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PROVIDENCE, R.I. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PROVIDENCE	DETACHED			460	520	555
	SEMI-DETACHED/ROW		375	450	515	555
	WALKUP	275	365	435	490	530
	ELEVATOR-2-4 Sty	280	385	495		
	5 + Sty	285	390	499		
NEWPORT	DETACHED			465	500	530
	SEMI-DETACHED/ROW		350	410	480	520
	WALKUP	240	315	375	425	470
	ELEVATOR-2-4 Sty	275	355	410		
	5 + Sty	280	360	420		
WESTERLY	DETACHED			460	520	555
	SEMI-DETACHED/ROW		370	455	520	555
	WALKUP	276	355	440	495	535
	ELEVATOR-2-4 Sty	285	370	465		
	5 + Sty	290	375	480		
PAWTUCKET	DETACHED			460	520	540
	SEMI-DETACHED/ROW		350	415	490	530
	WALKUP	270	355	410	475	525
	ELEVATOR-2-4 Sty	275	375	470		
	5 + Sty	285	380	500		
WOONSOCKET	DETACHED			455	515	530
	SEMI-DETACHED/ROW		325	385	460	500
	WALKUP	265	320	385	425	470
	ELEVATOR-2-4 Sty	270	370	490		
	5 + Sty	280	370	495		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEWARK, N.J. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEWARK	DETACHED			695	770	807
	SEMI-DETACHED/ROW	449	489	621	711	773
	WALKUP	394	429	551	631	689
	ELEVATOR-2-4 Sty	454	482	602	671	734
	5 + Sty	498	533	654	735	792
ATLANTIC CITY	DETACHED			623	691	715
	SEMI-DETACHED/ROW	377	411	480	558	616
	WALKUP	348	380	441	512	567
	ELEVATOR-2-4 Sty	414	448	515	597	650
	5 + Sty	479	525	516	717	781
ASBURY PARK	DETACHED			615	694	735
	SEMI-DETACHED/ROW	418	462	542	637	702
	WALKUP	364	403	475	559	620
	ELEVATOR-2-4 Sty	409	460	557	633	708
	5 + Sty	454	512	610	698	766
CAMDEN/ BURLINGTON/ GLOUCESTER	DETACHED			612	683	721
	SEMI-DETACHED/ROW	378	415	503	583	642
	WALKUP	344	376	458	529	584
	ELEVATOR-2-4 Sty	410	445	538	620	679
	5 + Sty	452	495	602	698	762
FREEHOLD	DETACHED			674	752	792
	SEMI-DETACHED/ROW	425	469	600	693	758
	WALKUP	371	410	531	614	674
	ELEVATOR-2-4 Sty	409	460	585	671	745
	5 + Sty	454	512	638	735	803
NORTH BERGEN	DETACHED			698	776	816
	SEMI-DETACHED/ROW	461	505	624	717	767
	WALKUP	406	445	554	637	697
	ELEVATOR-2-4 Sty	462	515	665	731	784
	5 + Sty	506	567	718	795	843

AREA OFFICE NEWARK, N.J. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TRENTON	DETACHED			630	701	738
	SEMI-DETACHED/ROW	419	456	521	600	659
	WALKUP	384	416	475	546	601
	ELEVATOR-2-4 Sty	453	488	557	639	697
	5 + Sty	495	539	621	717	780
VINELAND	DETACHED			526	596	634
	SEMI-DETACHED/ROW	325	363	419	498	557
	WALKUP	293	326	376	447	502
	ELEVATOR-2-4 Sty	356	392	451	533	591
	5 + Sty	398	442	514	611	674
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BUFFALO, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ALBANY/ GLENS FALLS/ MASSENA/ SYRACUSE	DETACHED			429	517	571
	SEMI-DETACHED/ROW		317	376	458	508
	WALKUP	249	309	361	424	479
	ELEVATOR-2-4 Sty	273	339	426		
	5 + Sty	294	360	447		
ITHACA/ WATERTOWN/ SCHENECTADY/ BINGHAMTON	DETACHED			429	517	571
	SEMI-DETACHED/ROW		317	376	458	508
	WALKUP	249	309	361	424	479
	ELEVATOR-2-4 Sty	273	339	426		
	5 + Sty	294	360	447		
PLATTSBURGH	DETACHED			438	517	571
	SEMI-DETACHED/ROW		370	404	466	526
	WALKUP	292	319	370	432	492
	ELEVATOR-2-4 Sty	369	396	455		
	5 + Sty	382	417	498		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BUFFALO, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BUFFALO	DETACHED			448	505	568
	SEMI-DETACHED/ROW		355	392	459	532
	WALKUP	282	314	363	428	453
	ELEVATOR-2-4 Sty	353	374	444		
	5 + Sty	409	433	506		
ELMIRA	DETACHED			440	510	565
	SEMI-DETACHED/ROW		383	422	475	530
	WALKUP	299	329	389	449	510
	ELEVATOR-2-4 Sty	358	401	479		
	5 + Sty	383	425	505		
JAMESTOWN	DETACHED			448	504	566
	SEMI-DETACHED/ROW		375	409	468	535
	WALKUP	308	334	379	435	501
	ELEVATOR-2-4 Sty	370	396	460		
	5 + Sty	390	430	515		
ROCHESTER	DETACHED			436	487	539
	SEMI-DETACHED/ROW		353	401	465	524
	WALKUP	275	301	356	419	471
	ELEVATOR-2-4 Sty	368	393	467		
	5 + Sty	389	426	510		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW YORK, N. Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEW YORK CITY	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW	---	502	599	697	813
	WALKUP	390	461	555	652	753
	ELEVATOR-2-4 Sty	448	523	623	710	801
	5 + Sty	560	646	779	906	990
SUFFOLK	DETACHED	---	---	548	674	763
	SEMI-DETACHED/ROW	406	429	507	549	657
	WALKUP	328	397	471	508	568
	ELEVATOR-2-4 Sty	408	501	592	---	---
	5 + Sty	430	512	629	---	---
WESTCHESTER	DETACHED	---	---	636	723	769
	SEMI-DETACHED/ROW	---	450	531	635	709
	WALKUP	350	410	492	600	678
	ELEVATOR-2-4 Sty	374	429	534	625	---
	5 + Sty	427	489	597	---	---
ORANGE	DETACHED	---	---	506	582	628
	SEMI-DETACHED/ROW	---	345	414	488	563
	WALKUP	247	325	388	476	515
	ELEVATOR-2-4 Sty	366	469	555	---	---
	5 + Sty	376	478	564	---	---
ROCKLAND	DETACHED	---	---	648	735	779
	SEMI-DETACHED/ROW	---	420	523	617	662
	WALKUP	328	397	500	595	640
	ELEVATOR-2-4 Sty	350	428	544	---	---
	5 + Sty	385	464	586	---	---
NASSAU	DETACHED	---	---	713	758	874
	SEMI-DETACHED/ROW	---	515	619	714	812
	WALKUP	380	475	580	676	750
	ELEVATOR-2-4 Sty	386	509	602	---	---
	5 + Sty	393	515	644	---	---

AREA _____ OFFICE NEW YORK, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PUTNAM	DETACHED	---	---	636	723	769
	SEMI-DETACHED/ROW	---	450	531	635	709
	WALKUP	350	410	492	600	678
	ELEVATOR-2-4 Sty	374	429	534	625	---
	5 + Sty	427	489	597	---	---
POUGHKEEPSIE	DETACHED	---	--	465	520	570
	SEMI-DETACHED/ROW	---	323	402	473	523
	WALKUP	255	303	368	447	497
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	335	387	467	---	---
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA _____ OFFICE SAN JUAN, P.R. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SAN JUAN	DETACHED			367	432	470
	SEMI-DETACHED/ROW		346	367	432	470
	WALKUP	274	346	367	432	470
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	322	395	418	486	524
PONCE	DETACHED			387	456	495
	SEMI-DETACHED/ROW		364	387	456	495
	WALKUP	292	364	387	456	495
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	338	414	440	510	615
MAYAGUEZ	DETACHED			379	446	487
	SEMI-DETACHED/ROW		357	379	446	487
	WALKUP	284	357	379	446	487
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	332	407	431	501	540
ARECIBO	DETACHED			379	446	487
	SEMI-DETACHED/ROW		357	379	446	487
	WALKUP	284	357	379	446	487
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	332	407	431	501	540
ST. CROIX	DETACHED			423	487	506
	SEMI-DETACHED/ROW		279	408	469	488
	WALKUP	244	276	369	384	434
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	-	-	-	-	-
ST. THOMAS	DETACHED			468	557	592
	SEMI-DETACHED/ROW		343	429	516	550
	WALKUP	256	340	414	454	520
	ELEVATOR-2-4 Sty	305	391	467		
	5 + Sty	-	-	-	-	-

AREA OFFICE Philadelphia, Pa. REGION III- PHILADELPHIA.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WILMINGTON, DEL.	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		288	384	541	.0
	WALKUP	255	285	357	434	0
	ELEVATOR-2-4 Sty	270	335	410	460	0
	5 + Sty	300	375	438	500	0
DOVER, DEL.	DETACHED			---	---	---
	SEMI-DETACHED/ROW		266	355	500	0
	WALKUP	236	264	330	401	0
	ELEVATOR-2-4 Sty	250	310	379	426	0
	5 + Sty	278	356	403	463	0
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE WASHINGTON, DC REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WASHINGTON, DC	DETACHED		0	0	0	0
	SEMI-DETACHED/ROW		427	507	552	624
	WALKUP	296	389	469	542	600
	ELEVATOR-2-4 Sty	327	421	503		
	5 + Sty	337	430	577		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BALTIMORE, MD. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BALTIMORE/ WALDORF	DETACHED			547	642	696
	SEMI-DETACHED/ROW		342	383	471	602
	WALKUP	284	327	368	459	540
	ELEVATOR-2-4 Sty	298	360	423		
	5 + Sty	308	366	464		
HAGERSTOWN	DETACHED			475	559	633
	SEMI-DETACHED/ROW		333	360	440	566
	WALKUP	283	317	353	423	528
	ELEVATOR-2-4 Sty	293	338	402		
	5 + Sty	298	348	409		
SALISBURY	DETACHED			460	530	630
	SEMI-DETACHED/ROW		306	349	425	565
	WALKUP	254	286	343	408	534
	ELEVATOR-2-4 Sty	264	305	393		
	5 + Sty	269	314	400		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PHILADELPHIA, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PHILADELPHIA	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		368	458	504	554
	WALKUP	283	336	422	488	529
	ELEVATOR-2-4 Sty	307	373	444		
	5 + Sty	356	400	464		
ALLENTOWN/ BETHLEHEM	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		320	396	475	524
	WALKUP	277	311	391	468	511
	ELEVATOR-2-4 Sty	329	347	407		
	5 + Sty	337	371	456		
BELLEFONTE	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		307	413	465	509
	WALKUP	259	298	379	457	497
	ELEVATOR-2-4 Sty	297	330	421		
	5 + Sty	324	361	459		
HARRISBURG	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		323	405	518	572
	WALKUP	277	318	391	505	559
	ELEVATOR-2-4 Sty	304	354	402		
	5 + Sty	341	382	435		
LANCASTER/YORK	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		314	386	459	493
	WALKUP	260	309	374	448	481
	ELEVATOR-2-4 Sty	292	343	433		
	5 + Sty	322	371	470		
READING/ POTTSTOWN	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		319	377	472	517
	WALKUP	263	304	352	438	479
	ELEVATOR-2-4 Sty	296	351	398		
	5 + Sty	321	384	450		

AREA OFFICE PHILADELPHIA, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SCRANTON	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		356	418	478	540
	WALKUP	275	332	402	473	522
	ELEVATOR-2-4 Sty	302	363	423		
	5 + Sty	352	417	467		
WELLSBORO	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		307	413	465	509
	WALKUP	259	298	379	457	497
	ELEVATOR-2-4 Sty	297	330	421		
	5 + Sty	324	361	459		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PITTSBURGH, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PITTSBURGH	DETACHED		427	460	536	619
	SEMI-DETACHED/ROW		399	438	500	576
	WALKUP	289	359	414	469	543
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	321	388	466		
NEW CASTLE/ SHARON	DETACHED		356	417	492	591
	SEMI-DETACHED/ROW		347	387	456	548
	WALKUP	255	315	361	426	494
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	305	365	438		
ERIE	DETACHED		399	440	491	575
	SEMI-DETACHED/ROW		371	407	442	533
	WALKUP	268	331	383	438	507
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	318	380	439		
ALTOONA/ JOHNSTOWN	DETACHED		377	434	506	591
	SEMI-DETACHED/ROW		377	414	473	553
	WALKUP	268	331	400	451	519
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	301	360	434		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE RICHMOND, VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RICHMOND	DETACHED			383	444	525
	SEMI-DETACHED/ROW		298	341	411	459
	WALKUP	239	274	338	408	455
	ELEVATOR-2-4 Sty	239	304	389		
	5 + Sty	241	324	406		
NEWPORT NEWS/ HAMPTON	DETACHED			368	447	490
	SEMI-DETACHED/ROW		298	337	419	467
	WALKUP	229	254	298	382	427
	ELEVATOR-2-4 Sty	242	273	334		
	5 + Sty	255	279	347		
FREDERICKSBURG/ CHARLOTTESVILLE/	DETACHED			396	458	523
	SEMI-DETACHED/ROW		288	340	410	462
	WALKUP	234	279	335	406	454
	ELEVATOR-2-4 Sty	234	297	381		
	5 + Sty	235	318	399		
ROANOKE/ LYNCHBURG/ DANVILLE/	DETACHED			360	423	476
	SEMI-DETACHED/ROW		265	324	408	451
	WALKUP	214	251	307	385	427
	ELEVATOR-2-4 Sty	228	290	378		
	5 + Sty	231	312	390		
HARRISONBURG/ WARRENTON/	DETACHED			342	382	465
	SEMI-DETACHED/ROW		265	320	382	433
	WALKUP	213	251	298	375	431
	ELEVATOR-2-4 Sty	220	276	359		
	5 + Sty	239	297	374		
CHESAPEAKE/ NORFOLK/ PORTSMOUTH/ VIRGINIA BEACH/ SUFFOLK	DETACHED			381	451	508
	SEMI-DETACHED/ROW		290	338	422	462
	WALKUP	239	288	335	417	461
	ELEVATOR-2-4 Sty	255	288	347		
	5 + Sty	268	292	366		

AREA OFFICE RICHMOND, VA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BRISTOL	DETACHED			328	414	450
	SEMI-DETACHED/ROW		268	326	380	422
	WALKUP	229	263	326	380	422
	ELEVATOR-2-4 Sty	246	292	372		
	5 + Sty	248	326	402		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE CHARLESTON, WEST VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CHARLESTON	DETACHED			425	467	520
	SEMI-DETACHED/ROW		335	401	447	501
	WALKUP	230	293	340	401	452
	ELEVATOR-2-4 Sty	340	393	443		
	5 + Sty	345	399	448		
BECKLEY/ BLUEFIELD	DETACHED			383	420	469
	SEMI-DETACHED/ROW		283	360	393	443
	WALKUP	248	283	320	357	392
	ELEVATOR-2-4 Sty	301	357	400		
	5 + Sty	306	362	405		
HUNTINGTON	DETACHED			386	464	504
	SEMI-DETACHED/ROW		283	367	439	483
	WALKUP	199	263	346	418	458
	ELEVATOR-2-4 Sty	301	357	427		
	5 + Sty	306	362	432		
PARKERSBURG	DETACHED			341	393	432
	SEMI-DETACHED/ROW		283	321	371	409
	WALKUP	231	264	313	352	388
	ELEVATOR-2-4 Sty	293	352	427		
	5 + Sty	299	357	432		
WHEELING	DETACHED			343	425	481
	SEMI-DETACHED/ROW		276	325	407	464
	WALKUP	232	269	316	396	431
	ELEVATOR-2-4 Sty	297	355	430		
	5 + Sty	302	360	435		
MARTINSBURG/ FAIRMONT	DETACHED			396	439	491
	SEMI-DETACHED/ROW		330	373	420	470
	WALKUP	253	307	359	396	446
	ELEVATOR-2-4 Sty	336	369	411		
	5 + Sty	342	374	416		

OFFICE CHARLESTON, WEST VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
POINT PLEASANT	DETACHED			340	391	428
	SEMI-DETACHED/ROW		272	320	369	406
	WALKUP	230	263	312	348	386
	ELEVATOR-2-4 Sty	291	348	389		
	5 + Sty	296	354	395		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					

AREA OFFICE BIRMINGHAM, ALA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BIRMININGHAM/ TUSCALOOSA	DETACHED			475	535	565
	SEMI-DETACHED/ROW		300	345	405	435
	WALKUP	260	290	340	395	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
DOTHAN	DETACHED			420	470	495
	SEMI-DETACHED/ROW		285	335	395	435
	WALKUP	250	280	320	395	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
FLORENCE	DETACHED			440	500	525
	SEMI-DETACHED/ROW		285	340	400	435
	WALKUP	260	285	335	395	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
HUNTSVILLE	DETACHED			450	515	540
	SEMI-DETACHED/ROW		285	340	400	435
	WALKUP	235	280	335	390	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
MOBILE	DETACHED			450	515	545
	SEMI-DETACHED/ROW		280	340	405	435
	WALKUP	235	280	325	395	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
MONTGOMERY	DETACHED			445	505	530
	SEMI-DETACHED/ROW		290	335	395	435
	WALKUP	255	290	335	390	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
JACKSONVILLE	DETACHED			333	400	450
	SEMI-DETACHED/ROW		302	324	386	422
	WALKUP	227	255	314	376	411
	ELEVATOR-2-4 Sty	299	337	452		
	5 + Sty	310	351	471		
FT. WALTON BEACH PENSACOLA	DETACHED			380	414	462
	SEMI-DETACHED/ROW		239	311	396	413
	WALKUP	220	236	286	370	400
	ELEVATOR-2-4 Sty	261	326	438		
	5 + Sty	292	331	444		
GAINESVILLE	DETACHED			346	460	487
	SEMI-DETACHED/ROW		306	339	425	450
	WALKUP	247	268	339	400	439
	ELEVATOR-2-4 Sty	288	326	438		
	5 + Sty	300	340	456		
PANAMA CITY	DETACHED			371	414	450
	SEMI-DETACHED/ROW		240	302	390	413
	WALKUP	220	236	286	380	400
	ELEVATOR-2-4 Sty	284	322	432		
	5 + Sty	296	335	450		
TALLAHASSEE	DETACHED			375	427	460
	SEMI-DETACHED/ROW		298	330	417	432
	WALKUP	227	258	307	387	402
	ELEVATOR-2-4 Sty	294	333	446		
	5 + Sty	306	347	465		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MIAMI	DETACHED		-	454	477	541
	SEMI-DETACHED/ROW		338	406	469	520
	WALKUP	269	306	386	462	505
	ELEVATOR-2-4 Sty	276	311	414		
	5 + Sty	332	357	498		
FT. LAUDERDALE	DETACHED			505	525	570
	SEMI-DETACHED/ROW		324	415	490	535
	WALKUP	275	297	404	457	499
	ELEVATOR-2-4 Sty	281	328	409		
	5 + Sty	325	388	491		
FT. MYERS	DETACHED			365	440	480
	SEMI-DETACHED/ROW		303	355	430	472
	WALKUP	246	295	345	424	462
	ELEVATOR-2-4 Sty	252	302	351		
	5 + Sty	290	330	386		
KEY WEST	DETACHED			491	616	676
	SEMI-DETACHED/ROW		375	474	590	639
	WALKUP	307	346	443	531	571
	ELEVATOR-2-4 Sty	319	355	443		
	5 + Sty	344	378	481		
W. PALM BEACH	DETACHED			463	535	568
	SEMI-DETACHED/ROW		320	428	506	549
	WALKUP	285	319	397	500	543
	ELEVATOR-2-4 Sty	298	347	414		
	5 + Sty	332	355	467		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TAMPA	DETACHED			350	411	446
	SEMI-DETACHED/ROW		263	300	367	417
	WALKUP	227	247	288	346	390
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
COCOA	DETACHED			347	404	442
	SEMI-DETACHED/ROW		274	337	394	432
	WALKUP	222	239	289	326	346
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
DAYTONA BEACH FT. PIERCE	DETACHED			343	401	423
	SEMI-DETACHED/ROW		281	343	385	421
	WALKUP	227	245	298	335	355
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
LAKELAND	DETACHED			341	380	402
	SEMI-DETACHED/ROW		292	341	365	400
	WALKUP	240	257	298	346	365
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
ORLANDO	DETACHED			354	402	437
	SEMI-DETACHED/ROW		279	344	392	427
	WALKUP	205	241	298	354	374
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SARASOTA	DETACHED			389	441	467
	SEMI-DETACHED/ROW		324	377	412	451
	WALKUP	261	279	323	391	413
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
ST. PETERSBURG	DETACHED			378	413	435
	SEMI-DETACHED/ROW		267	333	399	430
	WALKUP	244	266	318	405	426
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ATLANTA, GA REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ATLANTA	DETACHED			382	441	483
	SEMI-DETACHED/ROW		300	351	420	460
	WALKUP	270	292	346	407	446
	ELEVATOR-2-4 Sty	295	316	370		
	5 + Sty	305	340	408		
ALBANY	DETACHED			328	422	452
	SEMI-DETACHED/ROW		253	311	403	429
	WALKUP	228	246	305	397	424
	ELEVATOR-2-4 Sty	253	271	330		
	5 + Sty	301	321	400		
AUGUSTA	DETACHED			331	395	443
	SEMI-DETACHED/ROW		261	308	378	422
	WALKUP	230	255	299	366	410
	ELEVATOR-2-4 Sty	255	279	323		
	5 + Sty	301	328	391		
BRUNSWICK	DETACHED			346	403	434
	SEMI-DETACHED/ROW		273	323	385	413
	WALKUP	236	261	311	372	401
	ELEVATOR-2-4 Sty	261	286	336		
	5 + Sty	317	348	419		
COLUMBUS	DETACHED			333	389	428
	SEMI-DETACHED/ROW		278	320	374	423
	WALKUP	239	260	309	368	406
	ELEVATOR-2-4 Sty	263	284	333		
	5 + Sty	309	334	400		
MACON	DETACHED			348	376	425
	SEMI-DETACHED/ROW		251	320	372	423
	WALKUP	220	238	316	347	391
	ELEVATOR-2-4 Sty	244	262	340		
	5 + Sty	293	315	413		

AREA OFFICE ATLANTA, GA REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ROME	DETACHED			327	388	429
	SEMI-DETACHED/ROW		257	301	364	408
	WALKUP	224	245	296	357	396
	ELEVATOR-2-4 Sty	248	270	321		
	5 + Sty	300	327	397		
SAVANNAH	DETACHED			382	441	487
	SEMI-DETACHED/ROW		296	368	430	468
	WALKUP	254	285	348	410	453
	ELEVATOR-2-4 Sty	278	309	372		
	5 + Sty	332	369	453		
VALDOSTA	DETACHED			322	367	420
	SEMI-DETACHED/ROW		254	303	362	412
	WALKUP	222	241	296	344	393
	ELEVATOR-2-4 Sty	245	265	320		
	5 + Sty	290	314	387		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ASHLAND	DETACHED			407	462	523
	SEMI-DETACHED/ROW		329	383	436	490
	WALKUP	269	303	354	399	441
	ELEVATOR-2-4 Sty	287	320	369		
	5 + Sty	356	397	468		
BOWLING GREEN	DETACHED			382	439	521
	SEMI-DETACHED/ROW		304	366	415	491
	WALKUP	239	272	334	404	443
	ELEVATOR-2-4 Sty	251	288	350		
	5 + Sty	310	359	440		
CORBIN	DETACHED			425	510	572
	SEMI-DETACHED/ROW		325	405	482	537
	WALKUP	259	294	374	442	486
	ELEVATOR-2-4 Sty	277	310	390		
	5 + Sty	346	386	486		
COVINGTON	DETACHED			414	494	568
	SEMI-DETACHED/ROW		337	388	453	519
	WALKUP	263	303	354	412	463
	ELEVATOR-2-4 Sty	276	320	369		
	5 + Sty	345	393	463		
FRANKFORT	DETACHED			420	500	565
	SEMI-DETACHED/ROW		318	399	473	531
	WALKUP	260	294	375	442	488
	ELEVATOR-2-4 Sty	278	310	390		
	5 + Sty	335	371	471		
HOPKINSVILLE	DETACHED			375	422	476
	SEMI-DETACHED/ROW		311	361	402	452
	WALKUP	250	279	326	370	425
	ELEVATOR-2-4 Sty	266	294	339		
	5 + Sty	310	362	427		

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LEXINGTON	DETACHED			420	478	539
	SEMI-DETACHED/ROW		352	402	454	509
	WALKUP	260	294	375	442	479
	ELEVATOR-2-4 Sty	274	386	390		
	5 + Sty	337	382	479		
LOUISVILLE	DETACHED			384	492	552
	SEMI-DETACHED/ROW		312	363	460	515
	WALKUP	267	302	356	427	469
	ELEVATOR-2-4 Sty	280	315	369		
	5 + Sty	347	393	461		
MIDDLESBORO	DETACHED			435	507	553
	SEMI-DETACHED/ROW		335	414	480	520
	WALKUP	261	294	375	442	486
	ELEVATOR-2-4 Sty	273	310	390		
	5 + Sty	341	384	485		
MURRAY	DETACHED			384	438	484
	SEMI-DETACHED/ROW		321	366	413	463
	WALKUP	255	290	332	374	444
	ELEVATOR-2-4 Sty	270	306	350		
	5 + Sty	330	377	440		
NEWPORT	DETACHED			424	498	564
	SEMI-DETACHED/ROW		342	396	455	515
	WALKUP	263	303	354	409	452
	ELEVATOR-2-4 Sty	281	320	370		
	5 + Sty	351	396	469		
OWENSBORO	DETACHED			410	453	502
	SEMI-DETACHED/ROW		344	392	430	478
	WALKUP	229	255	369	396	433
	ELEVATOR-2-4 Sty	241	270	381		
	5 + Sty	305	335	472		

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PADUCAH	DETACHED			352	437	494
	SEMI-DETACHED/ROW		296	336	414	460
	WALKUP	243	274	315	388	423
	ELEVATOR-2-4 Sty	259	289	328		
	5 + Sty	317	349	406		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSON, MISS REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
JACKSON	DETACHED			376	462	513
	SEMI-DETACHED/ROW	291	315	361	446	493
	WALKUP	281	307	360	442	482
	ELEVATOR-2-4 Sty	341	373	441		
	5 + Sty	350	381	451		
BILOXI	DETACHED			315	375	425
	SEMI-DETACHED/ROW	232	261	305	366	410
	WALKUP	232	260	305	366	407
	ELEVATOR-2-4 Sty	305	329	392		
	5 + Sty	317	339	404		
CORINTH	DETACHED			307	391	440
	SEMI-DETACHED/ROW		253	293	371	415
	WALKUP	218	251	293	371	412
	ELEVATOR-2-4 Sty	285	319	384		
	5 + Sty	293	329	395		
GREENVILLE	DETACHED			358	379	421
	SEMI-DETACHED/ROW		277	335	355	400
	WALKUP	236	267	334	352	389
	ELEVATOR-2-4 Sty	304	339	423		
	5 + Sty	311	348	433		
GREENWOOD	DETACHED			319	351	402
	SEMI-DETACHED/ROW		271	319	342	383
	WALKUP	237	269	319	342	380
	ELEVATOR-2-4 Sty	304	340	409		
	5 + Sty	312	349	420		
GULFPORT	DETACHED			315	375	425
	SEMI-DETACHED/ROW	232	261	305	366	410
	WALKUP	232	260	305	366	407
	ELEVATOR-2-4 Sty	305	329	392		
	5 + Sty	317	339	404		

AREA OFFICE JACKSON, MISS REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HATTIESBURG	DETACHED			314	371	415
	SEMI-DETACHED/ROW	206	239	291	347	392
	WALKUP	195	232	290	344	382
	ELEVATOR-2-4 Sty	275	308	390		
	5 + Sty	283	317	401		
SOUTHAVEN	DETACHED		273	356	373	420
	SEMI-DETACHED/ROW	229	264	356	362	401
	WALKUP	225	262	323	362	401
	ELEVATOR-2-4 Sty	284	334	406		
	5 + Sty	291	343	417		
TUPELO	DETACHED			307	391	440
	SEMI-DETACHED/ROW		253	293	371	415
	WALKUP	218	251	293	371	412
	ELEVATOR-2-4 Sty	285	319	384		
	5 + Sty	291	326	390		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE GREENSBORO, N.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GREENSBORO	DETACHED			372	446	505
	SEMI-DETACHED/ROW		297	339	414	478
	WALKUP	263	297	339	414	478
	ELEVATOR-2-4 Sty	287	321	362		
	5 + Sty	309	351	401		
ASHEVILLE	DETACHED			338	424	486
	SEMI-DETACHED/ROW		286	326	401	463
	WALKUP	246	286	326	401	463
	ELEVATOR-2-4 Sty	270	310	349		
	5 + Sty	303	344	393		
CHARLOTTE	DETACHED			366	432	492
	SEMI-DETACHED/ROW		290	332	403	463
	WALKUP	255	290	332	403	463
	ELEVATOR-2-4 Sty	280	314	356		
	5 + Sty	315	357	408		
DURHAM	DETACHED			342	411	473
	SEMI-DETACHED/ROW		279	326	391	448
	WALKUP	244	279	326	391	448
	ELEVATOR-2-4 Sty	269	303	350		
	5 + Sty	309	351	401		
GREENVILLE	DETACHED			339	396	455
	SEMI-DETACHED/ROW		279	321	379	437
	WALKUP	244	279	321	379	437
	ELEVATOR-2-4 Sty	269	303	344		
	5 + Sty	309	351	401		
RALEIGH	DETACHED			384	475	534
	SEMI-DETACHED/ROW		311	353	431	497
	WALKUP	276	311	353	431	497
	ELEVATOR-2-4 Sty	301	335	377		
	5 + Sty	317	360	412		

AREA OFFICE GREENSBORO, N.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WINSTON-SALEM	DETACHED			347	422	482
	SEMI-DETACHED/ROW		295	336	405	462
	WALKUP	254	295	336	405	462
	ELEVATOR-2-4 Sty	278	318	359		
	5 + Sty	306	348	397		
FAYETTEVILLE	DETACHED			333	393	448
	SEMI-DETACHED/ROW		272	317	368	423
	WALKUP	240	272	317	368	423
	ELEVATOR-2-4 Sty	263	295	339		
	5 + Sty	301	335	383		
WILMINGTON	DETACHED			354	423	481
	SEMI-DETACHED/ROW		271	318	380	443
	WALKUP	244	271	318	380	443
	ELEVATOR-2-4 Sty	268	295	340		
	5 + Sty	306	341	390		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GREENVILLE	DETACHED	286	314	347	414	476
	SEMI-DETACHED/ROW	280	308	342	409	470
	WALKUP	269	297	330	398	459
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
GREENWOOD	DETACHED	297	308	342	398	442
	SEMI-DETACHED/ROW	280	302	336	392	437
	WALKUP	269	291	325	381	426
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
MYRTLE BEACH	DETACHED	286	314	353	414	493
	SEMI-DETACHED/ROW	280	308	347	409	487
	WALKUP	269	297	336	398	476
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
NORTH AUGUSTA	DETACHED	286	308	347	398	454
	SEMI-DETACHED/ROW	280	302	342	392	448
	WALKUP	269	291	330	381	437
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
ORANGEBURG	DETACHED	286	308	347	398	448
	SEMI-DETACHED/ROW	280	302	342	392	442
	WALKUP	269	291	330	381	431
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
ROCKHILL	DETACHED	286	308	347	398	454
	SEMI-DETACHED/ROW	280	302	342	392	448
	WALKUP	269	291	330	381	437
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
COLUMBIA	DETACHED	286	308	347	403	454
	SEMI-DETACHED/ROW	280	302	342	398	448
	WALKUP	269	291	330	386	437
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
AIKEN	DETACHED	286	308	347	398	454
	SEMI-DETACHED/ROW	280	302	342	392	448
	WALKUP	269	291	330	381	437
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
ANDERSON	DETACHED	297	308	342	398	442
	SEMI-DETACHED/ROW	280	302	336	392	437
	WALKUP	269	291	324	381	426
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
BEAUFORT	DETACHED	286	314	353	414	493
	SEMI-DETACHED/ROW	280	308	347	409	487
	WALKUP	269	297	336	398	476
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
CHARLESTON	DETACHED	286	314	353	414	493
	SEMI-DETACHED/ROW	280	308	347	409	487
	WALKUP	269	297	336	398	476
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
FLORENCE	DETACHED	286	308	347	398	448
	SEMI-DETACHED/ROW	280	302	342	392	442
	WALKUP	269	291	330	381	431
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPARTANBURG	DETACHED	286	314	347	414	476
	SEMI-DETACHED/ROW	280	308	342	409	470
	WALKUP	269	297	330	398	459
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE KNOXVILLE, TENN REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
KNOXVILLE	DETACHED			356	421	454
	SEMI-DETACHED/ROW		275	340	410	443
	WALKUP	243	265	329	394	427
	ELEVATOR-2-4 Sty	270	292	351		
	5 + Sty	292	324	378		
CHATTANOOGA	DETACHED			335	400	432
	SEMI-DETACHED/ROW		292	329	394	427
	WALKUP	259	281	313	378	410
	ELEVATOR-2-4 Sty	286	308	356		
	5 + Sty	313	335	378		
JOHNSON CITY	DETACHED			313	373	400
	SEMI-DETACHED/ROW		259	302	362	389
	WALKUP	227	248	286	346	373
	ELEVATOR-2-4 Sty	248	275	313		
	5 + Sty	275	302	340		
KINGSPORT	DETACHED			313	373	400
	SEMI-DETACHED/ROW		259	302	362	389
	WALKUP	227	248	286	346	373
	ELEVATOR-2-4 Sty	248	275	313		
	5 + Sty	275	302	340		
OAKRIDGE	DETACHED			356	421	454
	SEMI-DETACHED/ROW		275	340	410	443
	WALKUP	243	265	329	394	427
	ELEVATOR-2-4 Sty	270	292	351		
	5 + Sty	292	324	378		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE NASHVILLE, TENN. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MEMPHIS	DETACHED			350	399	457
	SEMI-DETACHED/ROW	286	312	350	393	426
	WALKUP	209	234	284	333	364
	ELEVATOR-2-4 Sty	261	297	355		
	5 + Sty	293	330	396		
JACKSON	DETACHED			285	322	368
	SEMI-DETACHED/ROW	202	230	270	316	359
	WALKUP	193	220	266	304	343
	ELEVATOR-2-4 Sty	239	276	328		
	5 + Sty	264	302	359		
UNION CITY	DETACHED			284	315	351
	SEMI-DETACHED/ROW	208	236	283	315	351
	WALKUP	198	232	278	313	348
	ELEVATOR-2-4 Sty	259	291	343		
	5 + Sty	299	340	397		
NASHVILLE	DETACHED			376	429	469
	SEMI-DETACHED/ROW		270	311	408	454
	WALKUP	227	259	305	408	447
	ELEVATOR-2-4 Sty	243	292	340		
	5 + Sty	259	324	373		
CLARKSVILLE	DETACHED			356	407	445
	SEMI-DETACHED/ROW		233	311	397	422
	WALKUP	189	233	285	356	386
	ELEVATOR-2-4 Sty	211	259	308		
	5 + Sty	233	292	335		
COLUMBIA	DETACHED			356	407	445
	SEMI-DETACHED/ROW		234	311	400	427
	WALKUP	189	234	281	376	410
	ELEVATOR-2-4 Sty	211	259	308		
	5 + Sty	233	292	335		

AREA OFFICE CHICAGO, ILLINOIS REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CHICAGO	DETACHED			713	769	832
	SEMI-DETACHED/ROW		510	556	612	671
	WALKUP	356	418	492	587	616
	ELEVATOR-2-4 Sty	380	446	525	626	
	5 + Sty	411	514	618		
MOLINE	DETACHED			547	599	650
	SEMI-DETACHED/ROW		443	469	529	558
	WALKUP	331	367	423	493	527
	ELEVATOR-2-4 Sty	363	397	458		
	5 + Sty	376	412	525		
ROCK ISLAND	DETACHED			547	599	650
	SEMI-DETACHED/ROW		443	469	529	558
	WALKUP	331	367	427	511	540
	ELEVATOR-2-4 Sty	363	397	458		
	5 + Sty	376	412	525		
ROCKFORD	DETACHED			613	666	728
	SEMI-DETACHED/ROW		403	432	492	529
	WALKUP	318	363	412	472	504
	ELEVATOR-2-4 Sty	354	388	460		
	5 + Sty	367	416	506		
STERLING	DETACHED			479	542	605
	SEMI-DETACHED/ROW		389	412	512	575
	WALKUP	301	339	381	434	455
	ELEVATOR-2-4 Sty	333	367	415		
	5 + Sty	346	382	432		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE CHICAGO, ILL. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPRINGFIELD	DETACHED			433	490	552
	SEMI-DETACHED/ROW		361	411	468	524
	WALKUP	309	338	406	462	515
	ELEVATOR-2-4 Sty	320	357	425		
	5 + Sty	369	408	480		
BELLEVILLE	DETACHED			391	450	517
	SEMI-DETACHED/ROW		304	367	425	488
	WALKUP	255	294	362	419	474
	ELEVATOR-2-4 Sty	274	312	380		
	5 + Sty	311	350	431		
CARBONDALE	DETACHED			415	475	539
	SEMI-DETACHED/ROW		322	393	449	511
	WALKUP	271	312	387	441	491
	ELEVATOR-2-4 Sty	295	332	407		
	5 + Sty	337	373	462		
CHAMPAIGN	DETACHED			412	470	532
	SEMI-DETACHED/ROW		325	388	446	505
	WALKUP	276	314	384	440	491
	ELEVATOR-2-4 Sty	296	332	402		
	5 + Sty	335	371	456		
DANVILLE	DETACHED			445	505	569
	SEMI-DETACHED/ROW		361	423	479	538
	WALKUP	308	347	417	474	528
	ELEVATOR-2-4 Sty	333	370	441		
	5 + Sty	368	407	492		
E. ST. LOUIS	DETACHED			381	442	508
	SEMI-DETACHED/ROW		300	357	416	479
	WALKUP	249	290	353	411	465
	ELEVATOR-2-4 Sty	272	311	375		
	5 + Sty	319	360	440		

AREA OFFICE CHICAGO, ILL. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LA SALLE	DETACHED			422	485	552
	SEMI-DETACHED/ROW		333	398	458	523
	WALKUP	274	314	381	439	491
	ELEVATOR-2-4 Sty	295	333	400		
	5 + Sty	341	381	465		
QUINCY	DETACHED			375	433	494
	SEMI-DETACHED/ROW		300	352	409	467
	WALKUP	251	289	347	402	454
	ELEVATOR-2-4 Sty	272	311	366		
	5 + Sty	309	347	418		
PEORIA	DETACHED			467	528	591
	SEMI-DETACHED/ROW		381	444	501	564
	WALKUP	333	372	439	496	549
	ELEVATOR-2-4 Sty	355	393	459		
	5 + Sty	395	434	515		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE INDIANAPOLIS, IND. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BLOOMINGTON	DETACHED			440	476	523
	SEMI-DETACHED/ROW		273	356	389	423
	WALKUP	237	268	346	381	423
	ELEVATOR-2-4 Sty	258	289	389		
	5 + Sty	308	345	446		
INDIANAPOLIS	DETACHED			456	542	584
	SEMI-DETACHED/ROW		296	362	442	482
	WALKUP	257	290	352	437	472
	ELEVATOR-2-4 Sty	278	312	395		
	5 + Sty	329	365	455		
EVANSVILLE	DETACHED			449	488	534
	SEMI-DETACHED/ROW		294	377	410	444
	WALKUP	257	283	356	394	440
	ELEVATOR-2-4 Sty	279	305	401		
	5 + Sty	324	359	455		
FORT WAYNE	DETACHED			458	497	544
	SEMI-DETACHED/ROW		302	368	406	445
	WALKUP	259	293	346	386	444
	ELEVATOR-2-4 Sty	281	314	390		
	5 + Sty	333	367	453		
GARY	DETACHED			485	531	572
	SEMI-DETACHED/ROW		337	406	453	483
	WALKUP	299	328	391	434	476
	ELEVATOR-2-4 Sty	320	351	434		
	5 + Sty	373	412	499		
HAMMOND	DETACHED			485	541	586
	SEMI-DETACHED/ROW		340	403	450	489
	WALKUP	296	328	391	434	469
	ELEVATOR-2-4 Sty	318	351	434		
	5 + Sty	365	401	489		

AREA OFFICE INDIANAPOLIS, IND. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LAFAYETTE	DETACHED			450	497	539
	SEMI-DETACHED/ROW		307	359	403	434
	WALKUP	270	303	355	394	433
	ELEVATOR-2-4 Sty	292	326	400		
	5 + Sty	343	379	449		
SOUTH BEND	DETACHED			494	541	584
	SEMI-DETACHED/ROW		335	406	443	481
	WALKUP	296	329	401	440	480
	ELEVATOR-2-4 Sty	318	352	445		
	5 + Sty	367	405	495		
TERRE HAUTE	DETACHED			448	496	540
	SEMI-DETACHED/ROW		308	355	399	433
	WALKUP	266	299	351	394	432
	ELEVATOR-2-4 Sty	288	322	395		
	5 + Sty	341	376	447		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DETROIT, MICH. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DETROIT/ANN ARBOR YPSILANTI	DETACHED			497	533	561
	SEMI-DETACHED/ROW		428	459	488	533
	WALKUP	295	339	409	451	481
	ELEVATOR-2-4 Sty	319	379	424		
	5 + Sty	342	413	509		
FLINT/ SAGINAW	DETACHED			456	491	519
	SEMI-DETACHED/ROW		346	415	462	496
	WALKUP	268	320	375	422	450
	ELEVATOR-2-4 Sty	303	361	403		
	5 + Sty	325	392	484		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE GRAND RAPIDS, MICH. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GRAND RAPIDS	DETACHED					
	SEMI-DETACHED/ROW	---	347	388	437	495
	WALKUP	235	280	340	390	439
	ELEVATOR-2-4 Sty	290	343	383		
	5 + Sty	304	374	402		
BATTLE CREEK/ B. HARBOR/ KALAMAZOO/ MUSKEGON/	DETACHED					
	SEMI-DETACHED/ROW		356	397	447	506
	WALKUP	240	286	348	399	450
	ELEVATOR-2-4 Sty	296	350	391		
	5 + Sty	310	382	411		
LANSING/ JACKSON	DETACHED					
	SEMI-DETACHED/ROW		363	405	457	517
	WALKUP	245	293	355	407	459
	ELEVATOR-2-4 Sty	303	353	400		
	5 + Sty	317	390	420		
MARQUETTE/ TRAVERSE CITY	DETACHED					
	SEMI-DETACHED/ROW		371	415	467	530
	WALKUP	252	299	364	417	470
	ELEVATOR-2-4 Sty	310	367	410		
	5 + Sty	325	400	430		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MINNEAPOLIS, MINN. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MINN-ST. PAUL	DETACHED			542	588	604
	SEMI-DETACHED/ROW		396	445	488	533
	WALKUP	253	311	362	455	477
	ELEVATOR-2-4 Sty	306	356	444	468	
	5 + Sty	338	392	488		
DULUTH	DETACHED			510	555	575
	SEMI-DETACHED/ROW		416	468	513	563
	WALKUP	253	329	431	477	501
	ELEVATOR-2-4 Sty	313	360	455	488	
	5 + Sty	345	396	501		
MANKATO	DETACHED			494	538	583
	SEMI-DETACHED/ROW		378	427	470	516
	WALKUP	258	286	369	423	446
	ELEVATOR-2-4 Sty	306	346	436		
	5 + Sty	337	381	481		
ROCHESTER	DETACHED			478	530	548
	SEMI-DETACHED/ROW		381	428	480	505
	WALKUP	251	295	369	426	450
	ELEVATOR-2-4 Sty	308	354	423		
	5 + Sty	339	390	467		
ST. CLOUD	DETACHED			498	540	557
	SEMI-DETACHED/ROW		378	427	470	514
	WALKUP	251	275	339	433	456
	ELEVATOR-2-4 Sty	300	345	434		
	5 + Sty	330	379	478		
WORTHINGTON	DETACHED			476	520	536
	SEMI-DETACHED/ROW		370	418	461	469
	WALKUP	254	264	310	418	440
	ELEVATOR-2-4 Sty	307	341	430		
	5 + Sty	338	376	474		

AREA OFFICE COLUMBUS, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CINCINNATI	DETACHED			563	587	616
	SEMI-DETACHED/ROW		389	461	481	515
	WALKUP	301	341	393	472	495
	ELEVATOR-2-4 Sty	362	392	454		
	5 + Sty	411	461	522		
COLUMBUS	DETACHED			462	517	545
	SEMI-DETACHED/ROW		319	374	446	479
	WALKUP	281	314	347	418	440
	ELEVATOR-2-4 Sty	330	374	440		
	5 + Sty	380	418	473		
DAYTON	DETACHED			540	589	618
	SEMI-DETACHED/ROW		362	427	483	518
	WALKUP	317	357	398	440	474
	ELEVATOR-2-4 Sty	378	407	459		
	5 + Sty	427	479	581		
ATHENS LIMA MARIETTA NEWARK SPRINGFIELD TROY ZANESVILLE	DETACHED			440	501	528
	SEMI-DETACHED/ROW		330	363	429	462
	WALKUP	281	319	358	391	435
	ELEVATOR-2-4 Sty	325	363	429		
	5 + Sty	374	407	468		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE CLEVELAND, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CLEVELAND	DETACHED			542	584	614
	SEMI-DETACHED/ROW		376	440	487	511
	WALKUP	330	342	398	449	476
	ELEVATOR-2-4 Sty	358	381	443	495	527
	5 + Sty	371	396	461		
AKRON	DETACHED			478	517	545
	SEMI-DETACHED/ROW		351	397	441	477
	WALKUP	290	313	360	406	443
	ELEVATOR-2-4 Sty	323	346	399	448	478
	5 + Sty	341	374	437		
FINDLAY	DETACHED			426	458	489
	SEMI-DETACHED/ROW		323	365	406	429
	WALKUP	267	286	329	374	398
	ELEVATOR-2-4 Sty	298	319	366	412	441
	5 + Sty	309	331	395		
LORAIN	DETACHED			465	505	534
	SEMI-DETACHED/ROW		325	389	433	457
	WALKUP	264	286	350	399	424
	ELEVATOR-2-4 Sty	293	315	389	438	468
	5 + Sty	319	351	422		
MANSFIELD	DETACHED			400	439	473
	SEMI-DETACHED/ROW		311	339	382	421
	WALKUP	253	273	312	356	392
	ELEVATOR-2-4 Sty	281	303	335	383	412
	5 + Sty	293	325	391		
TOLEDO	DETACHED			485	525	553
	SEMI-DETACHED/ROW		346	406	450	481
	WALKUP	283	308	365	414	447
	ELEVATOR-2-4 Sty	315	337	407	456	486
	5 + Sty	340	374	446		

OFFICE CLEVELAND, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
YOUNGSTOWN	DETACHED			460	500	528
	SEMI-DETACHED/ROW		327	384	428	451
	WALKUP	266	289	345	393	419
	ELEVATOR-2-4 Sty	295	318	384	433	463
	5 + Sty	321	353	414		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MILWAUKEE, WIS. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MADISON	DETACHED			462	540	584
	SEMI-DETACHED/ROW		323	398	470	512
	WALKUP	272	305	364	429	-
	ELEVATOR-2-4 Sty	285	318	377	442	-
	5 + Sty	323	356	439	-	-
REEDSVILLE	DETACHED			444	510	564
	SEMI-DETACHED/ROW		359	382	451	528
	WALKUP	250	275	350	415	-
	ELEVATOR-2-4 Sty	263	288	363	428	
	5 + Sty	305	318	429	-	-
SUPERIOR	DETACHED			469	551	587
	SEMI-DETACHED/ROW		325	399	471	523
	WALKUP	281	316	377	449	
	ELEVATOR-2-4 Sty	294	329	391	462	
	5 + Sty	329	359	444	-	
MILWAUKEE	DETACHED			509	597	636
	SEMI-DETACHED/ROW		360	439	510	563
	WALKUP	301	334	393	461	474
	ELEVATOR-2-4 Sty	315	348	406	474	
	5 + Sty	372	393	475	-	
EAU CLAIRE	DETACHED			438	520	562
	SEMI-DETACHED/ROW		306	387	450	486
	WALKUP	262	295	344	409	-
	ELEVATOR-2-4 Sty	276	308	358	422	-
	5 + Sty	309	321	403	-	-
GREEN BAY	DETACHED			439	513	548
	SEMI-DETACHED/ROW		303	371	440	483
	WALKUP	239	271	343	406	
	ELEVATOR-2-4 Sty	252	284	356	453	
	5 + Sty	281	311	417		

AREA OFFICE MILWAUKEE, WIS. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WAUSAU	DETACHED			454	523	552
	SEMI-DETACHED/ROW		331	377	450	486
	WALKUP	253	285	354	418	-
	ELEVATOR-2-4 Sty	266	298	367	431	-
	5 + Sty	296	345	421	-	
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LITTLE ROCK, ARK. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LITTLE ROCK	DETACHED			319	380	457
	SEMI-DETACHED/ROW	210	255	313	373	449
	WALKUP	205	254	307	366	423
	ELEVATOR-2-4 Sty	242	300	362		
	5 + Sty	311	378	438		
FAYETTEVILLE	DETACHED			320	380	460
	SEMI-DETACHED/ROW	206	254	307	366	441
	WALKUP	205	254	302	357	415
	ELEVATOR-2-4 Sty	242	300	356		
	5 + Sty	308	376	431		
FORT SMITH	DETACHED			298	353	426
	SEMI-DETACHED/ROW	192	234	289	342	411
	WALKUP	181	234	283	335	388
	ELEVATOR-2-4 Sty	214	276	334		
	5 + Sty	296	365	425		
JONESBORO	DETACHED			320	378	456
	SEMI-DETACHED/ROW	206	252	311	366	441
	WALKUP	195	252	306	364	417
	ELEVATOR-2-4 Sty	230	297	361		
	5 + Sty	303	371	427		
TEXARKANA	DETACHED			309	368	443
	SEMI-DETACHED/ROW	202	246	303	360	434
	WALKUP	195	242	292	346	402
	ELEVATOR-2-4 Sty	232	286	345		
	5 + Sty	308	376	434		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW ORLEANS, LA REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEW ORLEANS	DETACHED			473	561	680
	SEMI-DETACHED/ROW		309	386	499	598
	WALKUP	255	300	371	473	548
	ELEVATOR-2-4 Sty	266	329	411		
	5 + Sty	373	461	529		
BATON ROUGE	DETACHED			421	498	601
	SEMI-DETACHED/ROW		279	354	469	557
	WALKUP	258	279	354	469	542
	ELEVATOR-2-4 Sty	270	334	418		
	5 + Sty	437	596	644		
LAFAYETTE	DETACHED			446	530	641
	SEMI-DETACHED/ROW		305	384	465	541
	WALKUP	244	305	384	465	541
	ELEVATOR-2-4 Sty	255	316	391		
	5 + Sty	399	462	589		
LAKE CHARLES	DETACHED			471	560	676
	SEMI-DETACHED/ROW		319	396	543	629
	WALKUP	255	319	396	543	629
	ELEVATOR-2-4 Sty	266	331	416		
	5 + Sty	415	480	610		
HOUMA	DETACHED			433	516	624
	SEMI-DETACHED/ROW		288	361	468	543
	WALKUP	230	288	361	468	543
	ELEVATOR-2-4 Sty	240	298	370		
	5 + Sty	380	440	560		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW ORLEANS, LA REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SHREVEPORT	DETACHED			383	437	529
	SEMI-DETACHED/ROW		245	318	366	441
	WALKUP	197	229	305	350	403
	ELEVATOR-2-4 Sty	289	311	332		
	5 + Sty	306	330	441		
ALEXANDRIA	DETACHED			326	387	464
	SEMI-DETACHED/ROW		220	278	329	389
	WALKUP	175	218	273	325	380
	ELEVATOR-2-4 Sty	268	293	315		
	5 + Sty	271	316	400		
MONROE	DETACHED			349	417	503
	SEMI-DETACHED/ROW		238	309	367	424
	WALKUP	187	231	294	353	407
	ELEVATOR-2-4 Sty	286	311	333		
	5 + Sty	287	341	446		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ALBUQUERQUE	DETACHED			329	403	439
	SEMI-DETACHED/ROW		261	297	350	413
	WALKUP	191	235	275	329	376
	ELEVATOR-2-4 Sty	239	281	345		
	5 + Sty	254	302	366		
ALAMOGORDO	DETACHED			308	379	441
	SEMI-DETACHED/ROW		263	293	351	420
	WALKUP	189	235	266	315	364
	ELEVATOR-2-4 Sty	215	251	317		
	5 + Sty	231	272	338		
ARTESIA/ CARLSBAD	DETACHED			320	382	452
	SEMI-DETACHED/ROW		276	314	367	431
	WALKUP	201	245	276	329	376
	ELEVATOR-2-4 Sty	219	254	319		
	5 + Sty	235	276	340		
CLOVIS	DETACHED			314	377	457
	SEMI-DETACHED/ROW		270	307	360	429
	WALKUP	201	244	276	329	376
	ELEVATOR-2-4 Sty	217	252	317		
	5 + Sty	239	273	338		
FT. SUMNER/ MESCALERO	DETACHED			337	403	476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty	235	271	342		
	5 + Sty	251	293	364		
PENASCO/ POJOAQUE	DETACHED			339	404	476
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty	225	270	342		
	5 + Sty	241	292	364		

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GALLUP	DETACHED			345	410	490
	SEMI-DETACHED/ROW		299	333	392	465
	WALKUP	214	271	306	355	382
	ELEVATOR-2-4 Sty	235	282	342		-
	5 + Sty	251	303	364		-
HOBBS	DETACHED			320	382	452
	SEMI-DETACHED/ROW		276	314	367	431
	WALKUP	201	245	276	329	376
	ELEVATOR-2-4 Sty	219	254	319		
	5 + Sty	235	276	340		
LAS CRUCES	DETACHED			317	375	456
	SEMI-DETACHED/ROW		270	304	363	427
	WALKUP	199	246	284	329	371
	ELEVATOR-2-4 Sty	223	258	322		
	5 + Sty	239	279	343		
LAS VEGAS/ LOS ALAMOS/ RATON	DETACHED			339	404	476
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty	225	270	342		
	5 + Sty	241	292	364		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SOCORRO	DETACHED			308	379	441
	SEMI-DETACHED/ROW		263	293	351	420
	WALKUP	189	235	266	315	364
	ELEVATOR-2-4 Sty	215	251	317		-
	5 + Sty	231	272	338		-
DULCE/ RUIDOSO	DETACHED			337	403	476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty	235	271	342		
	5 + Sty	251	293	364		
ISLETA	DETACHED			329	403	439
	SEMI-DETACHED/ROW		261	297	350	413
	WALKUP	191	235	275	329	376
	ELEVATOR-2-4 Sty	239	281	345		
	5 + Sty	254	302	366		
JEMEZ	DETACHED			339	404	476
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty	225	270	342		
	5 + Sty	241	292	364		
LAGUNA	DETACHED			345	410	490
	SEMI-DETACHED/ROW		299	333	392	465
	WALKUP	214	271	306	355	382
	ELEVATOR-2-4 Sty	235	282	342		
	5 + Sty	251	303	364		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SANTA FE	DETACHED			339	404	476
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty	225	270	342		
	5 + Sty	241	292	364		
SILVER CITY/ TAOS/TIERRA AMARILLA	DETACHED			337	403	476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty	235	271	342		
	5 + Sty	251	293	364		
TRUTH OR CONSEQUENCES	DETACHED			308	379	441
	SEMI-DETACHED/ROW		263	293	351	420
	WALKUP	189	235	266	315	364
	ELEVATOR-2-4 Sty	215	251	317		
	5 + Sty	231	272	338		
FARMINGTON	DETACHED			337	403	476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty	235	271	342		
	5 + Sty	251	293	364		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE OKLAHOMA CITY, OKLA. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
OKLAHOMA CITY	DETACHED			366	442	484
	SEMI-DETACHED/ROW	247	286	351	427	469
	WALKUP	203	239	298	368	394
	ELEVATOR-2-4 Sty	229	269	334		
	5 + Sty	263	309	366		
ADA	DETACHED			386	451	514
	SEMI-DETACHED/ROW	285	308	375	440	503
	WALKUP	242	264	323	380	428
	ELEVATOR-2-4 Sty	270	296	362		
	5 + Sty	---	---	---		
ARDMORE	DETACHED			376	433	487
	SEMI-DETACHED/ROW	269	292	364	422	476
	WALKUP	228	248	314	364	403
	ELEVATOR-2-4 Sty	256	281	354		
	5 + Sty	---	---	---		
BARTLESVILLE	DETACHED			344	406	448
	SEMI-DETACHED/ROW		285	329	392	433
	WALKUP	235	256	298	357	389
	ELEVATOR-2-4 Sty	243	262	305		
	5 + Sty	---	---	---		
ENID	DETACHED			424	457	519
	SEMI-DETACHED/ROW	257	329	412	446	508
	WALKUP	211	280	355	379	425
	ELEVATOR-2-4 Sty	237	310	392		
	5 + Sty	---	---	---		
GUYMON	DETACHED			363	439	493
	SEMI-DETACHED/ROW	228	251	352	427	480
	WALKUP	184	205	298	366	403
	ELEVATOR-2-4 Sty	212	237	336		
	5 + Sty	---	---	---		

AREA OFFICE Oklahoma City, Okla. REGION VI - Dallas

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
Lawton	DETACHED			442	464	531
	SEMI-DETACHED/ROW	319	357	431	453	520
	WALKUP	278	312	381	394	446
	ELEVATOR-2-4 Sty	305	343	418		
	5 + Sty					
Mc Alester	DETACHED			320	381	418
	SEMI-DETACHED/ROW		203	313	374	411
	WALKUP	159	178	286	342	368
	ELEVATOR-2-4 Sty	171	188	298		
	5 + Sty					
Muskogee	DETACHED			299	368	405
	SEMI-DETACHED/ROW		250	288	350	393
	WALKUP	196	223	258	320	349
	ELEVATOR-2-4 Sty	205	233	269		
	5 + Sty					
Shawnee	DETACHED			346	389	429
	SEMI-DETACHED/ROW	227	260	335	378	415
	WALKUP	184	216	283	318	343
	ELEVATOR-2-4 Sty	212	248	322		
	5 + Sty					
Stillwater	DETACHED			354	421	474
	SEMI-DETACHED/ROW	250	271	344	411	459
	WALKUP	208	228	293	352	386
	ELEVATOR-2-4 Sty	236	259	332		
	5 + Sty					
Tulsa	DETACHED			380	427	484
	SEMI-DETACHED/ROW		315	366	413	469
	WALKUP	250	290	341	386	433
	ELEVATOR-2-4 Sty	256	296	347		
	5 + Sty	265	319	450		

AREA OFFICE [illegible], Okla REGION VI - Dallas

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
Woodward	DETACHED			386	471	513
	SEMI-DETACHED/ROW	261	283	375	453	502
	WALKUP	218	238	323	392	426
	ELEVATOR-2-4 Sty	246	270	362		
	5 + Sty					
Mc Alester	DETACHED					
	SEMI-DETACHED/ROW		179	243	305	330
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DALLAS, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DALLAS	DETACHED			428	557	611
	SEMI-DETACHED/ROW		296	373	440	513
	WALKUP	220	276	347	409	477
	ELEVATOR-2-4 Sty	243	305	384		
	5 + Sty	341	409	544		
SHERMAN	DETACHED			344	448	492
	SEMI-DETACHED/ROW		239	300	353	412
	WALKUP	178	222	279	330	384
	ELEVATOR-2-4 Sty	195	245	309		
	5 + Sty	321	386	515		
TYLER/ MARSHALL	DETACHED			330	430	472
	SEMI-DETACHED/ROW		229	288	339	396
	WALKUP	172	213	268	315	365
	ELEVATOR-2-4 Sty	187	234	296		
	5 + Sty	305	360	489		
WACO	DETACHED			334	435	477
	SEMI-DETACHED/ROW		230	290	343	400
	WALKUP	172	215	271	318	373
	ELEVATOR-2-4 Sty	188	237	299		
	5 + Sty	306	362	484		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE FORT WORTH, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
FORT WORTH	DETACHED			411	534	585
	SEMI-DETACHED/ROW		283	358	421	492
	WALKUP	211	259	332	392	457
	ELEVATOR-2-4 Sty	233	292	368		
	5 + Sty	327	392	521		
ABILENE	DETACHED			407	529	580
	SEMI-DETACHED/ROW		281	354	417	487
	WALKUP	210	245	329	389	453
	ELEVATOR-2-4 Sty	231	289	365		
	5 + Sty	324	389	516		
WICHITA FALLS	DETACHED			376	489	537
	SEMI-DETACHED/ROW		260	327	386	450
	WALKUP	193	239	305	360	419
	ELEVATOR-2-4 Sty	213	268	337		
	5 + Sty	299	360	477		
SAN ANGELO	DETACHED			376	489	537
	SEMI-DETACHED/ROW		260	327	386	450
	WALKUP	193	237	305	360	419
	ELEVATOR-2-4 Sty	213	268	337		
	5 + Sty	299	360	477		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE HOUSTON, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HOUSTON	DETACHED			495	612	708
	SEMI-DETACHED/ROW	274	334	435	517	621
	WALKUP	268	320	404	499	553
	ELEVATOR-2-4 Sty	322	461	485		
	5 + Sty	407	475	550		
BEAUMONT	DETACHED			450	556	645
	SEMI-DETACHED/ROW	270	313	379	471	543
	WALKUP	245	295	363	449	498
	ELEVATOR-2-4 Sty	294	354	436		
	5 + Sty	366	428	520		
BRYAN	DETACHED			465	575	665
	SEMI-DETACHED/ROW	257	314	409	486	584
	WALKUP	252	299	386	449	530
	ELEVATOR-2-4 Sty	303	358	464		
	5 + Sty	404	442	587		
EL CAMPO	DETACHED			463	554	664
	SEMI-DETACHED/ROW	214	283	358	426	509
	WALKUP	203	277	358	426	490
	ELEVATOR-2-4 Sty	244	332	430		
	5 + Sty	345	405	479		
LUFKIN	DETACHED			453	532	650
	SEMI-DETACHED/ROW	273	310	385	451	548
	WALKUP	232	272	344	403	472
	ELEVATOR-2-4 Sty	278	326	413		
	5 + Sty	338	394	472		
TEXAS CITY	DETACHED			477	579	683
	SEMI-DETACHED/ROW	268	327	408	491	578
	WALKUP	257	321	408	491	558
	ELEVATOR-2-4 Sty	308	385	490		
	5 + Sty	407	475	550		

OFFICE LUBBOCK, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LUBBOCK	DETACHED			339	426	492
	SEMI-DETACHED/ROW	219	259	326	409	468
	WALKUP	206	249	315	396	449
	ELEVATOR-2-4 Sty	254	278	321		-
	5 + Sty	278	309	406		-
AMARILLO	DETACHED			354	442	448
	SEMI-DETACHED/ROW	227	261	333	416	456
	WALKUP	212	249	321	403	436
	ELEVATOR-2-4 Sty	254	278	321		
	5 + Sty	278	309	406		
EL PASO	DETACHED			327	406	449
	SEMI-DETACHED/ROW	227	254	321	399	439
	WALKUP	212	242	309	385	419
	ELEVATOR-2-4 Sty	254	278	321		
	5 + Sty	278	309	406		
MIDLAND	DETACHED			362	434	488
	SEMI-DETACHED/ROW	252	287	348	424	463
	WALKUP	241	278	339	404	448
	ELEVATOR-2-4 Sty	281	306	349		
	5 + Sty	306	337	424		
ODESSA	DETACHED			364	431	473
	SEMI-DETACHED/ROW	250	290	345	409	447
	WALKUP	237	278	333	396	427
	ELEVATOR-2-4 Sty	276	300	343		
	5 + Sty	300	331	417		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SAN ANTONIO, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
AUSTIN	DETACHED			448	569	600
	SEMI-DETACHED/ROW	305	334	428	512	575
	WALKUP	288	312	403	488	527
	ELEVATOR-2-4 Sty	422	427	556		
	5 + Sty	487	490	642		
CORPUS CHRISTI	DETACHED			406	528	630
	SEMI-DETACHED/ROW	246	314	389	475	573
	WALKUP	230	294	366	453	525
	ELEVATOR-2-4 Sty	343	403	511		
	5 + Sty	395	461	586		
DEL RIO/ EAGLE PASS/ LAREDO	DETACHED			424	604	619
	SEMI-DETACHED/ROW	263	344	406	517	583
	WALKUP	245	305	365	465	512
	ELEVATOR-2-4 Sty	386	437	529		
	5 + Sty	443	503	610		
SAN ANTONIO	DETACHED			386	495	579
	SEMI-DETACHED/ROW	268	310	365	473	554
	WALKUP	253	293	351	450	513
	ELEVATOR-2-4 Sty	378	414	505		
	5 + Sty	434	476	583		
HARLINGEN	DETACHED			440	539	660
	SEMI-DETACHED/ROW	232	295	403	515	600
	WALKUP	218	266	344	440	500
	ELEVATOR-2-4 Sty	244	356	493		
	5 + Sty	394	410	568		
VICTORIA	DETACHED			406	528	630
	SEMI-DETACHED/ROW	246	314	389	475	573
	WALKUP	230	294	366	453	525
	ELEVATOR-2-4 Sty	3-3	403	511		
	5 + Sty	395	461	586		

OFFICE DES MOINES, IOWA REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DES MOINES	DETACHED			477	546	630
	SEMI-DETACHED/ROW		324	400	474	562
	WALKUP	248	294	352	404	456
	ELEVATOR-2-4 Sty	318	360	430		
	5 + Sty	346	394	484		
BETTENDORF	DETACHED			464	532	619
	SEMI-DETACHED/ROW		315	400	442	509
	WALKUP	263	285	360	415	478
	ELEVATOR-2-4 Sty	326	372	447		
	5 + Sty	356	407	504		
CEDAR RAPIDS	DETACHED			465	533	625
	SEMI-DETACHED/ROW		327	398	452	523
	WALKUP	262	300	373	428	488
	ELEVATOR-2-4 Sty	322	367	439		
	5 + Sty	351	401	494		
COUNCIL BLUFFS	DETACHED			449	505	574
	SEMI-DETACHED/ROW		290	360	415	475
	WALKUP	250	270	330	380	430
	ELEVATOR-2-4 Sty	301	348	405		
	5 + Sty	326	373	455		
DAVENPORT	DETACHED			463	529	614
	SEMI-DETACHED/ROW		319	410	450	510
	WALKUP	262	283	358	414	477
	ELEVATOR-2-4 Sty	332	387	456		
	5 + Sty	362	423	513		
DUBUQUE	DETACHED			475	543	629
	SEMI-DETACHED/ROW		314	382	457	510
	WALKUP	260	285	360	429	483
	ELEVATOR-2-4 Sty	322	368	440		
	5 + Sty	352	403	495		

OFFICE DES MOINES, IOWA REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MASON CITY	DETACHED			469	535	621
	SEMI-DETACHED/ROW		311	371	435	511
	WALKUP	246	280	343	407	470
	ELEVATOR-2-4 Sty	319	365	432		
	5 + Sty	348	399	486		
SIOUX CITY	DETACHED			452	542	629
	SEMI-DETACHED/ROW		312	381	434	509
	WALKUP	251	287	360	406	479
	ELEVATOR-2-4 Sty	319	365	438		
	5 + Sty	348	399	493		
WATERLOO	DETACHED			469	534	621
	SEMI-DETACHED/ROW		311	378	430	504
	WALKUP	258	285	348	400	474
	ELEVATOR-2-4 Sty	320	368	438		
	5 + Sty	349	403	494		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE TOPEKA, KANSAS REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TOPEKA	DETACHED					
	SEMI-DETACHED/ROW		316	372	433	472
	WALKUP	211	266	325	387	444
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
GARDEN CITY	DETACHED					
	SEMI-DETACHED/ROW		294	355	416	444
	WALKUP	222	261	316	377	416
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
PITTSBURG	DETACHED					
	SEMI-DETACHED/ROW		293	343	404	443
	WALKUP	216	255	308	377	422
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
SALINA	DETACHED					
	SEMI-DETACHED/ROW		294	355	411	450
	WALKUP	222	255	311	377	416
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
WICHITA	DETACHED					
	SEMI-DETACHED/ROW		300	364	427	461
	WALKUP	205	261	321	389	438
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE KANSAS CITY, KAN REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
KANSAS CITY MO.	DETACHED			367	419	448
	SEMI-DETACHED/ROW		272	353	419	448
	WALKUP	244	279	325	385	421
	ELEVATOR-2-4 Sty	268	307	379		
	5 + Sty	302	341	493		
JOPLIN MO.	DETACHED			356	431	467
	SEMI-DETACHED/ROW		251	305	396	432
	WALKUP	175	205	288	376	414
	ELEVATOR-2-4 Sty	251	287	355		
	5 + Sty	283	322	462		
ST. JOSEPH MO.	DETACHED			349	417	455
	SEMI-DETACHED/ROW		250	336	386	423
	WALKUP	249	288	316	359	392
	ELEVATOR-2-4 Sty	268	306	379		
	5 + Sty	302	344	493		
SEDALIA MO.	DETACHED			340	349	413
	SEMI-DETACHED/ROW		259	305	349	413
	WALKUP	187	214	296	368	404
	ELEVATOR-2-4 Sty	235	268	338		
	5 + Sty	264	306	431		
SPRINGFIELD MO.	DETACHED			331	395	431
	SEMI-DETACHED/ROW		258	326	395	431
	WALKUP	173	202	261	343	380
	ELEVATOR-2-4 Sty	232	266	328		
	5 + Sty	262	307	427		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ST. LOUIS, MO REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ST. LOUIS	DETACHED					
	SEMI-DETACHED/ROW		337	397	479	564
	WALKUP	244	306	373	452	501
	ELEVATOR-2-4 Sty	282	352	425		
	5 + Sty	304	370	518		
COLUMBIA	DETACHED					
	SEMI-DETACHED/ROW		285	365	447	501
	WALKUP	230	273	352	430	477
	ELEVATOR-2-4 Sty	268	318	404		
	5 + Sty					
KIRKSVILLE	DETACHED					
	SEMI-DETACHED/ROW		278	349	441	484
	WALKUP	212	264	331	410	453
	ELEVATOR-2-4 Sty	250	308	382		
	5 + Sty					
ROLLA	DETACHED					
	SEMI-DETACHED/ROW		255	326	415	475
	WALKUP	191	242	313	385	419
	ELEVATOR-2-4 Sty	228	285	363		
	5 + Sty					
CAPE GIRARDEAU	DETACHED					
	SEMI-DETACHED/ROW		259	332	425	475
	WALKUP	197	250	320	391	437
	ELEVATOR-2-4 Sty	234	294	371		
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE OMAHA, NEBRASKA REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
OMAHA	DETACHED			461	514	546
	SEMI-DETACHED/ROW		324	402	477	507
	WALKUP	246	275	335	393	417
	ELEVATOR-2-4 Sty	293	336	426		
	5 + Sty	328	379	488		
GRAND ISLAND	DETACHED			409	457	493
	SEMI-DETACHED/ROW		311	384	454	482
	WALKUP	239	265	321	374	396
	ELEVATOR-2-4 Sty	281	321	406		
	5 + Sty	325	377	487		
LINCOLN	DETACHED			454	507	534
	SEMI-DETACHED/ROW		307	383	456	485
	WALKUP	243	271	330	386	408
	ELEVATOR-2-4 Sty	293	335	423		
	5 + Sty	325	377	487		
NORFOLK	DETACHED			436	487	516
	SEMI-DETACHED/ROW		312	385	456	483
	WALKUP	240	267	323	378	401
	ELEVATOR-2-4 Sty	286	328	414		
	5 + Sty	325	377	487		
NORTH PLATTE	DETACHED			408	457	489
	SEMI-DETACHED/ROW		302	371	434	465
	WALKUP	228	264	319	373	395
	ELEVATOR-2-4 Sty	286	326	412		
	5 + Sty	325	377	487		
SCOTTS BLUFF	DETACHED			406	455	484
	SEMI-DETACHED/ROW		305	374	441	469
	WALKUP	235	262	317	376	404
	ELEVATOR-2-4 Sty	283	323	408		
	5 + Sty	325	377	487		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DENVER COLO.	DETACHED			422	482	534
	SEMI-DETACHED/ROW		330	378	450	482
	WALKUP	255	307	336	437	474
	ELEVATOR-2-4 Sty	256	311	348		
	5 + Sty	269	327	358		
COLO. SPRINGS COLO.	DETACHED			322	405	478
	SEMI-DETACHED/ROW		267	289	350	420
	WALKUP	228	238	269	330	396
	ELEVATOR-2-4 Sty	235	278	298		
	5 + Sty	243	299	322		
DURANGO COLO.	DETACHED			385	454	496
	SEMI-DETACHED/ROW		290	328	409	473
	WALKUP	232	277	307	373	426
	ELEVATOR-2-4 Sty	241	285	316		
	5 + Sty	254	291	324		
GRAND JUNCTION COLO.	DETACHED			412	456	495
	SEMI-DETACHED/ROW		353	379	420	477
	WALKUP	248	289	348	378	424
	ELEVATOR-2-4 Sty	263	299	352		
	5 + Sty	274	311	360		
GREELEY COLO.	DETACHED			385	452	493
	SEMI-DETACHED/ROW		277	331	397	450
	WALKUP	228	254	319	348	406
	ELEVATOR-2-4 Sty	236	263	331		
	5 + Sty	249	274	342		
PUEBLO COLO.	DETACHED			365	412	467
	SEMI-DETACHED/ROW		275	309	348	408
	WALKUP	223	242	277	330	372
	ELEVATOR-2-4 Sty	230	259	292		
	5 + Sty	245	274	313		

AREA OFFICE DENVER, COLO. REGION VIII -DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HELENA	DETACHED			388	453	495
	SEMI-DETACHED/ROW		312	383	445	487
	WALKUP	244	303	374	436	478
	ELEVATOR-2-4 Sty	260	320	389		
	5 + Sty	271	331	400		
BILLINGS	DETACHED			383	436	468
	SEMI-DETACHED/ROW		288	375	429	460
	WALKUP	234	279	365	420	453
	ELEVATOR-2-4 Sty	249	294	379		
	5 + Sty	260	305	390		
BOZEMAN	DETACHED			374	442	474
	SEMI-DETACHED/ROW		301	366	433	465
	WALKUP	248	292	358	424	457
	ELEVATOR-2-4 Sty	264	310	376		
	5 + Sty	275	321	387		
BUTTE	DETACHED			375	442	475
	SEMI-DETACHED/ROW		313	366	434	467
	WALKUP	250	305	358	425	459
	ELEVATOR-2-4 Sty	266	323	377		
	5 + Sty	277	334	388		
GREAT FALLS	DETACHED			372	429	460
	SEMI-DETACHED/ROW		294	365	420	453
	WALKUP	238	286	357	412	445
	ELEVATOR-2-4 Sty	256	298	374		
	5 + Sty	267	309	385		
HAVRE	DETACHED			368	419	457
	SEMI-DETACHED/ROW		279	360	411	448
	WALKUP	233	271	352	402	440
	ELEVATOR-2-4 Sty	254	289	371		
	5 + Sty	265	300	382		

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MILES CITY	DETACHED			368	419	457
	SEMI-DETACHED/ROW		279	360	411	448
	WALKUP	233	271	352	402	440
	ELEVATOR-2-4 Sty	254	289	371		
	5 + Sty	265	300	382		
KALISPELL	DETACHED			375	438	473
	SEMI-DETACHED/ROW		289	366	431	467
	WALKUP	240	281	357	422	458
	ELEVATOR-2-4 Sty	259	297	374		
	5 + Sty	270	308	385		
MISSOULA	DETACHED			374	440	473
	SEMI-DETACHED/ROW		293	366	432	466
	WALKUP	243	286	357	423	456
	ELEVATOR-2-4 Sty	261	302	375		
	5 + Sty	272	313	386		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
FARGO	DETACHED			400	475	502
	SEMI-DETACHED/ROW		327	374	440	484
	WALKUP	269	308	347	429	473
	ELEVATOR-2-4 Sty	282	325	397		
	5 + Sty	308	352	429		
BISMARK	DETACHED			397	471	500
	SEMI-DETACHED/ROW		313	373	439	481
	WALKUP	264	302	346	427	470
	ELEVATOR-2-4 Sty	280	322	395		
	5 + Sty	308	350	425		
DICKINSON	DETACHED			375	450	475
	SEMI-DETACHED/ROW		301	352	418	451
	WALKUP	236	286	335	407	434
	ELEVATOR-2-4 Sty	257	300	353		
	5 + Sty	275	324	390		
GRAND FORKS	DETACHED			400	473	500
	SEMI-DETACHED/ROW		321	380	435	475
	WALKUP	247	305	346	420	456
	ELEVATOR-2-4 Sty	280	324	390		
	5 + Sty	297	341	412		
MINOT	DETACHED			390	460	495
	SEMI-DETACHED/ROW		297	355	422	456
	WALKUP	242	286	335	412	435
	ELEVATOR-2-4 Sty	261	299	355		
	5 + Sty	280	325	385		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SIOUX FALLS	DETACHED			401	424	462
	SEMI-DETACHED/ROW		336	374	407	440
	WALKUP	268	319	355	391	420
	ELEVATOR-2-4 Sty	284	327	365		
	5 + Sty	289	333	369		
ABERDEEN	DETACHED			391	424	462
	SEMI-DETACHED/ROW		330	374	407	440
	WALKUP	257	308	352	391	424
	ELEVATOR-2-4 Sty	268	319	363		
	5 + Sty	278	330	369		
FORT THOMPSON	DETACHED			402	438	480
	SEMI-DETACHED/ROW		342	384	418	463
	WALKUP	277	325	363	399	440
	ELEVATOR-2-4 Sty	286	333	372		
	5 + Sty	290	338	376		
MCLAUGHLIN	DETACHED			402	438	480
	SEMI-DETACHED/ROW		342	383	418	463
	WALKUP	277	325	363	403	440
	ELEVATOR-2-4 Sty	286	333	372		
	5 + Sty	290	338	376		
MISSION	DETACHED			402	437	480
	SEMI-DETACHED/ROW		342	384	418	463
	WALKUP	277	325	363	403	440
	ELEVATOR-2-4 Sty	286	333	372		
	5 + Sty	290	338	376		
PIERRE	DETACHED			402	435	473
	SEMI-DETACHED/ROW		341	385	418	462
	WALKUP	257	313	352	396	440
	ELEVATOR-2-4 Sty	273	325	363		
	5 + Sty	278	330	369		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RAPID CITY	DETACHED			402	435	479
	SEMI-DETACHED/ROW		347	385	418	462
	WALKUP	268	319	363	407	440
	ELEVATOR-2-4 Sty	284	336	374		
	5 + Sty	289	341	379		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SALT LAKE CITY UTAH	DETACHED			371	401	455
	SEMI-DETACHED/ROW		272	302	343	375
	WALKUP	189	264	286	321	355
	ELEVATOR-2-4 Sty	235	310	330		
	5 + Sty	259	330	367		
CEDAR CITY UTAH	DETACHED			322	353	384
	SEMI-DETACHED/ROW		245	289	323	346
	WALKUP	178	241	283	320	334
	ELEVATOR-2-4 Sty	225	270	320		
	5 + Sty	237	300	345		
PROVO UTAH	DETACHED			339	387	447
	SEMI-DETACHED/ROW		269	299	336	384
	WALKUP	210	262	289	329	378
	ELEVATOR-2-4 Sty	237	305	330		
	5 + Sty	260	320	351		
LOGAN UTAH	DETACHED			367	393	450
	SEMI-DETACHED/ROW		270	294	327	358
	WALKUP	193	264	288	321	349
	ELEVATOR-2-4 Sty	230	275	325		
	5 + Sty	255	320	357		
VERNAL UTAH	DETACHED			388	452	498
	SEMI-DETACHED/ROW		317	378	448	495
	WALKUP	194	265	308	365	411
	ELEVATOR-2-4 Sty	237	310	335		
	5 + Sty	265	330	370		
MOAB UTAH	DETACHED			322	356	384
	SEMI-DETACHED/ROW		249	289	323	343
	WALKUP	180	241	283	317	334
	ELEVATOR-2-4 Sty	225	271	320		
	5 + Sty	235	303	345		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CASPER WYO.	DETACHED			461	550	590
	SEMI-DETACHED/ROW		330	428	536	586
	WALKUP	273	317	418	526	576
	ELEVATOR-2-4 Sty	307	347	448		
	5 + Sty	358	418	490		
CHEYENNE WYO.	DETACHED			447	526	575
	SEMI-DETACHED/ROW		330	400	515	565
	WALKUP	266	317	390	512	562
	ELEVATOR-2-4 Sty	300	347	432		
	5 + Sty	332	403	461		
CODY WYO.	DETACHED			450	510	570
	SEMI-DETACHED/ROW		331	415	480	538
	WALKUP	267	324	396	468	526
	ELEVATOR-2-4 Sty	302	351	435		
	5 + Sty	338	396	461		
GILLETTE WYO.	DETACHED			447	541	605
	SEMI-DETACHED/ROW		330	428	533	591
	WALKUP	273	317	418	526	570
	ELEVATOR-2-4 Sty	305	350	440		
	5 + Sty	346	411	480		
JACKSON WYO.	DETACHED			483	576	634
	SEMI-DETACHED/ROW		361	447	541	597
	WALKUP	302	346	432	533	562
	ELEVATOR-2-4 Sty	334	375	461		
	5 + Sty	374	426	497		
LARAMIE WYO.	DETACHED			421	520	569
	SEMI-DETACHED/ROW		332	403	503	540
	WALKUP	266	324	396	497	538
	ELEVATOR-2-4 Sty	295	355	427		
	5 + Sty	324	396	453		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RIVERTON WYO.	DETACHED			450	491	548
	SEMI-DETACHED/ROW		331	415	476	537
	WALKUP	266	324	396	468	526
	ELEVATOR-2-4 Sty	300	351	435		
	5 + Sty	331	396	461		
ROCK SPRINGS WYO.	DETACHED			468	565	605
	SEMI-DETACHED/ROW		331	432	545	590
	WALKUP	281	324	418	533	576
	ELEVATOR-2-4 Sty	312	355	449		
	5 + Sty	367	425	483		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PHOENIX	DETACHED			392	460	515
	SEMI-DETACHED/ROW		328	370	415	460
	WALKUP	235	284	353	415	460
	ELEVATOR-2-4 Sty	275	314	397		
	5 + Sty	360	421	532		
CASA GRANDE	DETACHED			348	426	483
	SEMI-DETACHED/ROW		296	340	426	483
	WALKUP	263	296	339	405	430
	ELEVATOR-2-4 Sty	271	315	358		
	5 + Sty	---	---	---		
FLAGSTAFF	DETACHED			409	513	527
	SEMI-DETACHED/ROW		282	336	381	427
	WALKUP	248	282	336	381	427
	ELEVATOR-2-4 Sty	267	302	355		
	5 + Sty	---	---	---		
KEAMS CANYON	DETACHED			344	383	462
	SEMI-DETACHED/ROW		248	344	372	451
	WALKUP	211	237	278	332	386
	ELEVATOR-2-4 Sty	230	256	297		
	5 + Sty	---	---	---		
TUSCON	DETACHED			410	455	510
	SEMI-DETACHED/ROW		299	366	444	500
	WALKUP	257	275	346	427	474
	ELEVATOR-2-4 Sty	276	294	365		
	5 + Sty	385	416	544		
YUMA	DETACHED			404	453	508
	SEMI-DETACHED/ROW		344	382	429	481
	WALKUP	258	295	363	405	446
	ELEVATOR-2-4 Sty	278	314	382		
	5 + Sty	---	---	---		

AREA OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LOS ANGELES	DETACHED			610	679	774
	SEMI-DETACHED/ROW		531	562	625	708
	WALKUP	340	403	512	544	590
	ELEVATOR-2-4 Sty	357	420	529	561	608
	5 + Sty	450	581	811		
BAKERSFIELD	DETACHED			450	545	649
	SEMI-DETACHED/ROW		309	401	492	531
	WALKUP	257	295	383	472	514
	ELEVATOR-2-4 Sty	273	311	398	488	538
	5 + Sty	392	436	559		
LANCASTER	DETACHED			495	531	576
	SEMI-DETACHED/ROW		320	425	471	509
	WALKUP	267	305	393	451	498
	ELEVATOR-2-4 Sty	283	322	410	454	501
	5 + Sty	409	456	592		
OXNARD/VENTURA	DETACHED			544	579	643
	SEMI-DETACHED/ROW		403	465	553	601
	WALKUP	308	346	394	471	516
	ELEVATOR-2-4 Sty	325	363	411	488	532
	5 + Sty	447	492	576		
SANTA MARIA	DETACHED			437	473	515
	SEMI-DETACHED/ROW		337	399	446	487
	WALKUP	273	311	364	409	455
	ELEVATOR-2-4 Sty	289	328	380	425	471
	5 + Sty	415	463	552		
SANTA BARBARA	DETACHED			642	677	723
	SEMI-DETACHED/ROW		424	523	657	710
	WALKUP	324	364	447	571	619
	ELEVATOR-2-4 Sty	340	381	464	588	636
	5 + Sty	466	515	634		

AREA OFFICE LOS ANGELES, CA REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PASO ROBLES	DETACHED			578	615	659
	SEMI-DETACHED/ROW		372	440	541	590
	WALKUP	278	315	368	460	505
	ELEVATOR-2-4 Sty	294	331	384	476	521
	5 + Sty	417	463	551		
SAN DIEGO/ EL CAJON	DETACHED			470	525	572
	SEMI-DETACHED/ROW		393	454	501	545
	WALKUP	297	352	411	475	515
	ELEVATOR-2-4 Sty	366	422	530		
	5 + Sty	415	511	625		
SANTA ANA	DETACHED			472	530	570
	SEMI-DETACHED/ROW		369	450	502	543
	WALKUP	295	351	417	461	495
	ELEVATOR-2-4 Sty	310	367	435		
	5 + Sty	424	491	592		
SAN BERNARDINO	DETACHED			460	512	568
	SEMI-DETACHED/ROW		348	425	471	535
	WALKUP	262	316	377	409	454
	ELEVATOR-2-4 Sty	280	336	399		
	5 + Sty	387	448	544		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE SACRAMENTO, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SACRAMENTO	DETACHED			425	460	500
	SEMI-DETACHED/ROW		375	415	450	485
	WALKUP	270	310	360	445	480
	ELEVATOR-2-4 Sty	360	405	460		
	5 + Sty	440	495	575		
PLACERVILLE	DETACHED			435	470	510
	SEMI-DETACHED/ROW		380	425	460	495
	WALKUP	275	315	365	455	490
	ELEVATOR-2-4 Sty	365	415	470		
	5 + Sty	---	---	---		
REDDING	DETACHED			435	470	510
	SEMI-DETACHED/ROW		385	425	460	495
	WALKUP	235	270	320	368	415
	ELEVATOR-2-4 Sty	370	415	470		
	5 + Sty	---	---	---		
SO. L. TAHOE	DETACHED			495	540	590
	SEMI-DETACHED/ROW		440	480	530	575
	WALKUP	315	360	420	525	570
	ELEVATOR-2-4 Sty	420	475	540		
	5 + Sty	---	---	---		
YREKA	DETACHED			425	460	500
	SEMI-DETACHED/ROW			415	450	495
	WALKUP	270	310	360	445	485
	ELEVATOR-2-4 Sty	360	405	460		
	5 + Sty	---	---	---		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE San Francisco, Ca. REGION IX - SAN FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
San Francisco	DETACHED			863	1011	1084
	SEMI-DETACHED/ROW		542	737	863	925
	WALKUP	436	477	649	760	815
	ELEVATOR-2-4 Sty	460	511	715		
	5 + Sty	579	649	873		
Fresno	DETACHED			423	483	506
	SEMI-DETACHED/ROW		300	393	453	474
	WALKUP	246	266	354	441	474
	ELEVATOR-2-4 Sty	298	335	431		
	5 + Sty	436	485	627		
Modesto	DETACHED			415	509	534
	SEMI-DETACHED/ROW		320	368	441	473
	WALKUP	286	318	361	439	473
	ELEVATOR-2-4 Sty	323	368	438		
	5 + Sty	477	537	634		
San Jose	DETACHED			469	561	644
	SEMI-DETACHED/ROW		368	462	515	536
	WALKUP	348	368	445	515	536
	ELEVATOR-2-4 Sty	360	401	495		
	5 + Sty	497	550	665		
Oakland/Marin	DETACHED			664	702	719
	SEMI-DETACHED/ROW		566	664	684	710
	WALKUP	331	375	537	636	682
	ELEVATOR-2-4 Sty	342	440	557		
	5 + Sty	480	590	730		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE Honolulu, Hawaii REGION IX - SAN FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
Honolulu	DETACHED			477	573	658
	SEMI-DETACHED/ROW		384	425	506	542
	WALKUP	290	378	417	497	534
	ELEVATOR-2-4 Sty	299	387	426		
	5 + Sty	329	396	446		
Hilo	DETACHED			392	472	509
	SEMI-DETACHED/ROW		327	374	454	491
	WALKUP	259	296	352	437	476
	ELEVATOR-2-4 Sty	268	305	361		
	5 + Sty					
Kauai	DETACHED			500	549	588
	SEMI-DETACHED/ROW		395	473	522	561
	WALKUP	277	315	345	430	469
	ELEVATOR-2-4 Sty	289	325	354		
	5 + Sty					
Kona	DETACHED			427	507	553
	SEMI-DETACHED/ROW		362	409	489	535
	WALKUP	281	319	388	473	512
	ELEVATOR-2-4 Sty	290	328	397		
	5 + Sty					
Maui	DETACHED			445	530	578
	SEMI-DETACHED/ROW		397	427	512	560
	WALKUP	277	315	420	505	544
	ELEVATOR-2-4 Sty	286	324	429		
	5 + Sty					
Guam	DETACHED			474	579	627
	SEMI-DETACHED/ROW		376	430	535	583
	WALKUP	238	303	384	458	
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE San Francisco, Ca. REGION IX - SAN FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
Reno	DETACHED			520	589	624
	SEMI-DETACHED/ROW		423	520	589	611
	WALKUP	329	374	470	546	588
	ELEVATOR-2-4 Sty	351	406	534		
	5 + Sty	470	535	674		
Las Vegas	DETACHED			454	558	643
	SEMI-DETACHED/ROW		354	448	527	569
	WALKUP	320	354	435	527	569
	ELEVATOR-2-4 Sty	342	386	499		
	5 + Sty	461	515	639		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ANCHORAGE, ALASKA REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ANCHORAGE	DETACHED			628	635	705
	SEMI-DETACHED/ROW		540	598	610	678
	WALKUP	360	443	503	535	594
	ELEVATOR-2-4 Sty	491	578	647		
	5 + Sty	500	588	658		
FAIRBANKS	DETACHED			618	674	734
	SEMI-DETACHED/ROW		530	594	667	720
	WALKUP	465	505	571	642	706
	ELEVATOR-2-4 Sty	570	655	729		
	5 + Sty	581	668	743		
JUNEAU	DETACHED			600	655	715
	SEMI-DETACHED/ROW		512	567	624	681
	WALKUP	421	470	527	590	649
	ELEVATOR-2-4 Sty	467	513	570		
	5 + Sty	476	523	581		
KETCHIKAN	DETACHED			503	612	627
	SEMI-DETACHED/ROW		407	480	542	608
	WALKUP	329	381	453	517	579
	ELEVATOR-2-4 Sty	404	493	578		
	5 + Sty	411	503	595		
COASTAL AREA, NORTH OF ALEUTIANS	DETACHED		765	841	925	1018
	SEMI-DETACHED/ROW		743	817	899	989
	WALKUP	656	721	794	873	960
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	---	---	---	---	---
NORTH COASTAL AREA, BARTER ISLAND	DETACHED		765	841	925	1018
	SEMI-DETACHED/ROW		743	817	899	989
	WALKUP	656	721	794	873	960
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	---	---	---	---	---

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BOISE	DETACHED			419	478	507
	SEMI-DETACHED/ROW		311	372	425	462
	WALKUP	243	285	338	397	432
	ELEVATOR-2-4 Sty	297	364	425		
	5 + Sty	312	382	463		
IDAHO FALLS	DETACHED			415	467	511
	SEMI-DETACHED/ROW		320	364	437	461
	WALKUP	259	283	349	422	457
	ELEVATOR-2-4 Sty	303	371	433		
	5 + Sty	318	389	472		
McCALL	DETACHED			306	345	384
	SEMI-DETACHED/ROW		234	273	319	358
	WALKUP	176	215	254	306	345
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	222	273	326		
POCATELLO	DETACHED			428	474	505
	SEMI-DETACHED/ROW		316	371	431	461
	WALKUP	246	289	356	428	451
	ELEVATOR-2-4 Sty	300	367	429		
	5 + Sty	315	386	467		
TWINFALLS	DETACHED			395	448	479
	SEMI-DETACHED/ROW		300	370	410	450
	WALKUP	235	259	329	374	401
	ELEVATOR-2-4 Sty	283	347	405		
	5 + Sty	297	364	441		
LEWISTON	DETACHED			429	472	514
	SEMI-DETACHED/ROW		286	365	423	460
	WALKUP	247	273	329	395	432
	ELEVATOR-2-4 Sty	295	361	422		
	5 + Sty	309	379	459		

AREA OFFICE PORTLAND, ORE REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
COEUR D'ALENE	DETACHED			395	440	489
	SEMI-DETACHED/ROW		280	365	418	446
	WALKUP	220	261	321	380	420
	ELEVATOR-2-4 Sty	281	344	402		
	5 + Sty	295	361	438		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PORTLAND	DETACHED			342	414	450
	SEMI-DETACHED/ROW	237	270	335	396	437
	WALKUP	228	257	315	374	414
	ELEVATOR-2-4 Sty	270	339	392		
	5 + Sty	300	376	436		
BEND	DETACHED			328	410	455
	SEMI-DETACHED/ROW		275	321	397	433
	WALKUP	219	261	305	377	411
	ELEVATOR-2-4 Sty	267	323	375		
	5 + Sty	296	359	417		
COOS BAY	DETACHED			329	366	404
	SEMI-DETACHED/ROW		281	318	356	392
	WALKUP	225	262	300	337	375
	ELEVATOR-2-4 Sty	271	324	370		
	5 + Sty	301	360	411		
EUGENE	DETACHED			342	416	456
	SEMI-DETACHED/ROW		278	315	375	412
	WALKUP	237	264	302	362	398
	ELEVATOR-2-4 Sty	278	321	368		
	5 + Sty	309	357	409		
MEDFORD	DETACHED			331	380	423
	SEMI-DETACHED/ROW		267	315	365	408
	WALKUP	215	251	307	346	381
	ELEVATOR-2-4 Sty	258	310	374		
	5 + Sty	287	345	415		
ONTARIO	DETACHED			336	381	426
	SEMI-DETACHED/ROW		267	312	365	413
	WALKUP	206	251	297	358	404
	ELEVATOR-2-4 Sty	235	288	344		
	5 + Sty	262	320	383		

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PENDLETON	DETACHED			321	370	413
	SEMI-DETACHED/ROW		247	315	357	392
	WALKUP	198	235	296	345	380
	ELEVATOR-2-4 Sty	244	295	362		
	5 + Sty	271	329	402		
WEST SALEM	DETACHED			343	414	449
	SEMI-DETACHED/ROW		286	326	397	431
	WALKUP	238	276	317	382	426
	ELEVATOR-2-4 Sty	288	343	391		
	5 + Sty	320	381	435		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

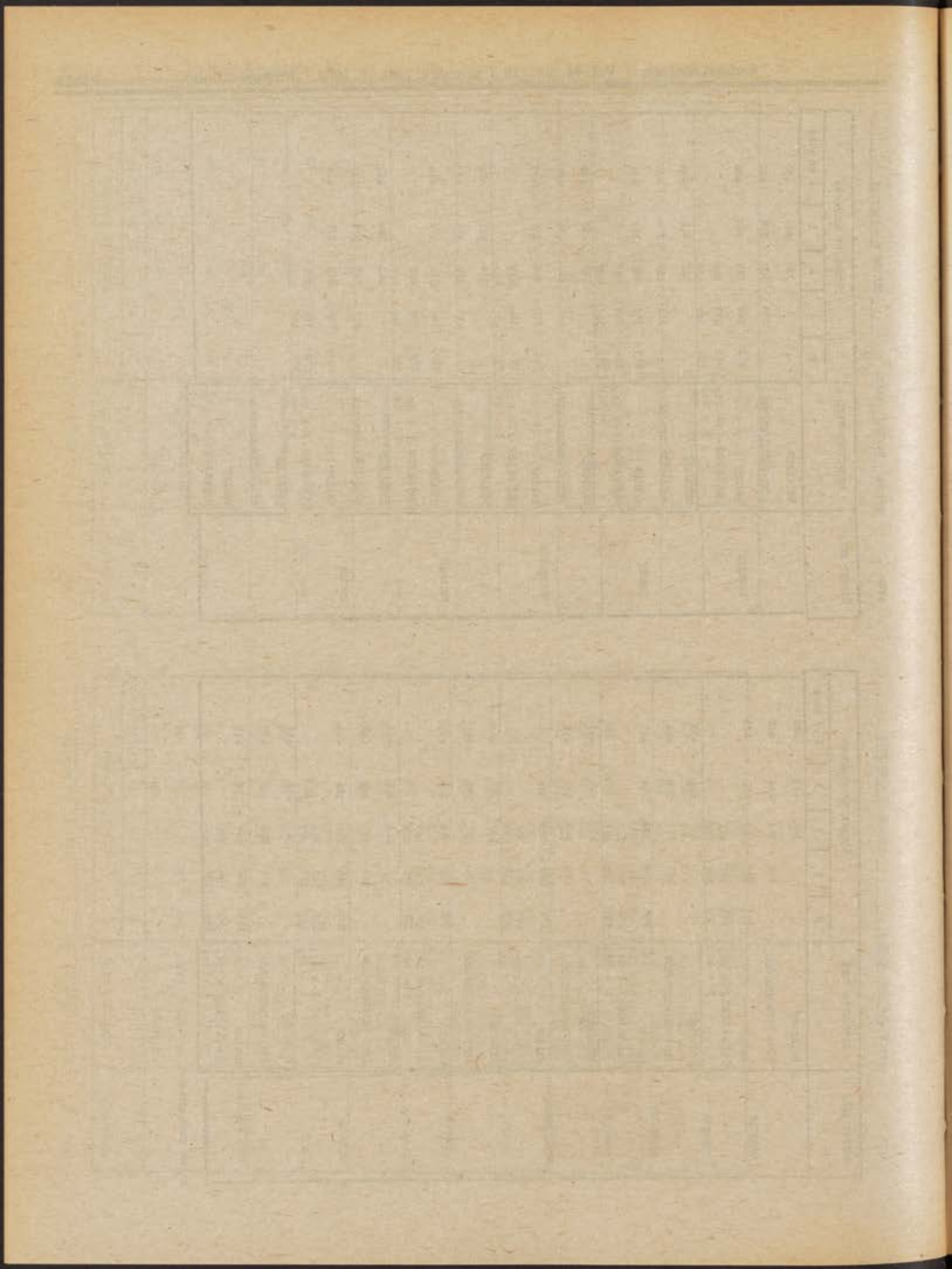
AREA OFFICE SEATTLE, WASH. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SEATTLE	DETACHED			366	463	488
	SEMI-DETACHED/ROW		302	363	434	480
	WALKUP	243	293	361	420	475
	ELEVATOR-2-4 Sty	276	351	411		
	5 + Sty	312	384	445		
ABERDEEN	DETACHED			339	398	455
	SEMI-DETACHED/ROW		282	333	388	444
	WALKUP	246	278	329	374	429
	ELEVATOR-2-4 Sty	273	304	373		
	5 + Sty	300	341	417		
BELLINGHAM	DETACHED			356	445	495
	SEMI-DETACHED/ROW		282	343	420	472
	WALKUP	239	268	326	386	434
	ELEVATOR-2-4 Sty	297	317	378		
	5 + Sty	327	354	423		
LONGVIEW	DETACHED			337	399	465
	SEMI-DETACHED/ROW		282	331	393	464
	WALKUP	229	265	316	379	435
	ELEVATOR-2-4 Sty	274	330	383		
	5 + Sty	301	370	429		
OLYMPIA	DETACHED			353	408	461
	SEMI-DETACHED/ROW		278	325	389	448
	WALKUP	247	264	321	384	443
	ELEVATOR-2-4 Sty	283	345	395		
	5 + Sty	311	387	443		
PORT ANGELES	DETACHED			342	408	452
	SEMI-DETACHED/ROW		278	325	392	440
	WALKUP	213	256	317	378	415
	ELEVATOR-2-4 Sty	253	300	361		
	5 + Sty	279	336	404		

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AREA OFFICE SEATTLE, WASH. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPOKANE	DETACHED			320	392	457
	SEMI-DETACHED/ROW		253	300	378	422
	WALKUP	213	249	288	360	404
	ELEVATOR-2-4 Sty	265	330	388		
	5 + Sty	291	362	426		
CHENEY	DETACHED			323	418	469
	SEMI-DETACHED/ROW		255	289	378	423
	WALKUP	213	250	286	366	411
	ELEVATOR-2-4 Sty	264	329	387		
	5 + Sty	291	362	425		
KENNEWICK	DETACHED			392	465	508
	SEMI-DETACHED/ROW		345	387	456	499
	WALKUP	246	300	378	430	475
	ELEVATOR-2-4 Sty	297	364	412		
	5 + Sty	327	401	453		
PULLMAN	DETACHED			348	421	462
	SEMI-DETACHED/ROW		281	329	386	433
	WALKUP	229	266	320	378	414
	ELEVATOR-2-4 Sty	276	338	408		
	5 + Sty	304	355	417		
YAKIMA	DETACHED			343	389	441
	SEMI-DETACHED/ROW		292	325	385	432
	WALKUP	220	264	311	378	424
	ELEVATOR-2-4 Sty	273	316	377		
	5 + Sty	300	354	422		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					



federal register

Monday
June 18, 1979

Part III

Environmental Protection Agency

Implementation of Procedures on the National Environmental Policy Act

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 6]

[FRL 1227-8]

Implementation of Procedures on the National Environmental Policy Act

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On November 29, 1978, the Council on Environmental Quality (CEQ) promulgated regulations establishing uniform procedures for implementing the procedural provisions of the National Environmental Policy Act. CEQ required Federal agencies to adopt appropriate procedures to supplement their regulations. As a result, EPA is proposing to amend its procedures contained in 40 CFR Part 6 to take into account this initiative.

DATE: Written comments will be received with respect to this proposed regulation. Comments must be received on or before July 18, 1979.

ADDRESS: Comments should be addressed to William N. Hedeman, Jr., Director, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Thomas Sheckells, Office of Environmental Review, EPA, 401 M Street SW., Washington, D.C. 20460; telephone 202/755-0790.

SUPPLEMENTARY INFORMATION:

Introduction

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by Executive Orders 11514 and 11991, and the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508) requires that all agencies of the Federal Government to the fullest extent possible carry out the provisions of NEPA by building into agency decisionmaking appropriate and careful consideration of the environmental effects of proposed actions, and avoiding or minimizing the adverse effects of these actions. The environmental impact statement (EIS) requirement under section 102(2)(C) serves as the most significant mechanism for implementing NEPA.

These regulations set forth the requirements for EPA to carry out its obligations under NEPA. CEQ in its January 19, 1979 Memorandum for NEPA Liaisons set forth strict rules for Federal agencies in developing their implementing regulations.

Specifically, in view of the President's directive to CEQ to establish a single set of regulations for government-wide NEPA implementation, CEQ has directed the Federal agencies to avoid restating or paraphrasing the CEQ Regulations, even though agencies may quote or cross-reference the CEQ regulations in their implementing procedures. Therefore, it must be made clear that EPA is proposing the following regulations with the understanding that the reader has available the policy statements and definitions contained in the CEQ Regulations. In this respect, it is noted that previous nomenclature used by EPA has been adjusted to conform with the CEQ regulations. The term "environmental assessment" as previously used by EPA is now referred to as an "environmental information document"; the term "negative declaration" is now a "finding of no significant impact"; and the term "environmental impact appraisal" is now "environmental assessment."

These regulations amend EPA regulations under 40 CFR Part 6 previously promulgated in Subparts A-H on April 14, 1975 (see 40 FR 16823) and Subpart I on January 11, 1977 (see 42 FR 2450).

Exemptions

Over the past several years there has been much controversy surrounding this Agency's preparation of EISs. Considering that the nature of EPA's activities generally concern actions protective of the environment, the Congress and the Courts have seen fit to exempt numerous EPA activities from EIS applicability.

The Congress has provided major exemptions under the Clean Water Act and the Clean Air Act. Specifically, under section 511(c)(1) of the Clean Water Act (CWA) (Pub. L. 92-500), EPA is exempt from preparing EISs under the CWA except for the issuance of new source National Pollutant Discharge Elimination System (NPDES) permits as authorized under section 402 and the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works under section 201. Under section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319), all activities under the Clean Air Act are exempt from the EIS requirements of NEPA. Further, the courts have found EPA to be exempt from the EIS requirements for regulatory actions under the Clean Air Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Marine Protection, Research and Sanctuaries Act. In addition, the Agency has determined that EPA regulatory activities under the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act of 1976, the Safe Drinking Water Act, and the Noise Control Act are exempt from the EIS requirements of NEPA. Nevertheless, on May 7, 1974, Administrator Russell Train decided that the Agency would voluntarily prepare EISs on certain regulatory activities in spite of the statutory and court exemptions that existed at that time. This revised regulation does not affect those voluntary EIS procedures.

Summary of Regulation

The regulations set forth below are intended to meet the requirements for Federal agency procedures under § 1507.3 of the CEQ regulations.

Subparts A thru I describe procedures for preparing required EISs. Specifically, Subpart E relates to environmental review procedures for the Wastewater Treatment Construction Grants Program of the CWA; Subpart F relates to environmental review procedures for the new source NPDES permit program; Subpart G relates to environmental review procedures for research, and development programs; Subpart H relates to environmental review procedures for solid waste demonstration projects; and Subpart I relates to environmental review procedures for EPA undertakings for construction of special purpose facilities or facility renovations.

Conformity to State Implementation Plans

In 1977, the Congress amended the Clean Air Act (CAA) (Pub. L. 95-95) to provide that no Federal agency shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to an approved or promulgated state air quality implementation plan (SIP). Section 176(c) of the CAA provides that the assurance of conformity for a Federal action to a SIP is the affirmative responsibility of the head of such agency. Subpart C of these regulations sets forth new requirements for EPA to carry out its obligations under section 176(c). The Agency has expanded its notification procedures under Subpart C to provide for increased consultation opportunities between EPA and the designated lead State or local air quality

agency in the determination of an action's conformity to the SIP. These procedures will also establish a process by which the designated lead State or local agency will have an opportunity to concur or nonconcur with the EPA conformity determination. It is believed that the environmental review procedures will provide the most expeditious and complete review of an EPA action's air quality impact and conformity to a SIP.

Monitoring Responsibility

The CEQ Regulations at § 1505.3 require monitoring of grant conditions. One question that is raised by this provision is whether third parties (e.g., citizen groups) may file a lawsuit to enforce compliance with a grant condition after final payment is made for an EPA funded project. Sections 6.508 and 6.509 of this proposed rule presently provide for the imposition and monitoring of grant conditions. In these regulations and the amendments to the EPA Construction Grant Regulations (40 CFR Part 35, Subpart E), which will be proposed in the near future, EPA is considering providing for third party enforcement of such conditions. Public comment on this concept is invited.

Mandatory Hearings

Although the CEQ Regulations under 40 CFR § 1506.6(c) do not require mandatory public hearings attendant to a draft EIS, EPA is contemplating requiring such hearings for all draft EISs. These proposed regulations under § 6.400(c) presently require the responsible official to consider conducting a public hearing on a draft EIS especially when a hearing may facilitate the resolution of conflicts or significant public controversy. Your comments are solicited concerning the possibility of making draft EIS hearings mandatory.

Review Timeframe for Proposed Regulation

In view of the July 30, 1979 effective date imposed by the CEQ Regulations, EPA is allowing only 30 days for public comment on this proposed rule. Commenters are urged to meet this time deadline.

Note.—EPA has determined that because this document does not consitutute a significant regulation within the meaning of Executive Order 12044, preparation of a regulatory analysis is not required.

Dated: June 8, 1979.

Douglas M. Costle,

Administrator.

It is proposed to revise Part 6 to read as follows:

PART 6—PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

Subpart A—General

Sec.
6.100 Purpose and policy.
6.101 Definitions.
6.102 Applicability.
6.103 Responsibilities.
6.104 Early involvement of private parties.
6.105 Synopsis of EIS procedures.
6.106 Deviations.

Subpart B—Content of EISs

6.200 The environmental impact statement.
6.201 Format.
6.202 Cover sheet.
6.203 Summary.
6.204 Body of EIS.
6.205 Incorporation by reference.

Subpart C—Coordination with Other Environmental Review and Consultation Requirements

6.300 General.
6.301 Historical and archeological sites.
6.302 Wetlands, floodplains, agricultural lands, coastal zones, wild and scenic rivers, fish and wildlife, and endangered species.
6.303 Air quality.

Subpart D—Public and Other Federal Agency Involvement

6.400 Initial public involvement.
6.401 Official filing requirements.
6.402 Availability of documents.
6.403 The commenting process.

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

6.500 Purpose.
6.501 Definitions.
6.502 Applicability.
6.503 Public participation.
6.504 Limitations on actions during environmental review process.
6.505 Criteria for preparing EISs.
6.506 Environmental review process.
6.507 Limits on delegation to States.
6.508 Record of decision.
6.509 Monitoring.

Subpart F—Environmental Review Procedures for New Source NPDES Program

6.600 Purpose.
6.601 Definitions.
6.602 Applicability.
6.603 Limitations on actions during environmental review process.
6.604 Environmental review process.
6.605 Criteria for preparing EISs.
6.606 Record of decision.
6.607 Monitoring.

Subpart G—Environmental Review Procedures for Research and Development Programs

6.700 Purpose.
6.701 Definitions.
6.702 Applicability.
6.703 Criteria for preparing EISs.
6.704 Environmental review process.
6.705 Record of decision.

Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects

6.800 Purpose.
6.801 Applicability.
6.802 Criteria for preparing EISs.
6.803 Environmental review process.
6.804 Record of decision.

Subpart I—Environmental Review Procedures for EPA Facility Support Activities

6.900 Purpose.
6.901 Definitions.
6.902 Applicability.
6.903 Criteria for preparing EISs.
6.904 Environmental review process.
6.905 Record of decision.

Subpart A—General

§ 6.100 Purpose and policy.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by Executive Orders 11514 and 11991 and the Council on Environmental Quality (CEQ) Regulations of November 29, 1978 (43 FR 55978) requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives for public understanding and scrutiny, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality as much as possible. The Environmental Protection Agency (EPA) shall integrate these NEPA factors as early in the Agency planning processes as possible. The environmental review process shall be the focal point to assure NEPA considerations are taken into account. To the extent applicable, EPA shall prepare environmental impact statements (EISs) on those major actions determined to have significant impact on the quality of the human environment. This part takes into account the EIS exemptions set forth under section 511(c)(1) of the Clean Water Act (Pub. L. 92–500) and section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93–319).

(b) This Part establishes EPA policy and procedures for the identification and analysis of the environmental impacts of EPA related activities and the preparation and processing of EISs.

§ 6.101 Definitions.

(a) *Terminology.* All terminology used in this part will be consistent with the terms as defined in 40 CFR 1508 (the

CEQ Regulations). Any qualifications will be provided in the definitions set forth in each subpart of this regulation.

(b) The term "CEQ Regulations" means the regulations issued by the Council on Environmental Quality on November 29, 1978 (see 43 FR 55978), which implement Executive Order 11991. The CEQ Regulations will often be referred to throughout this regulation by reference to 40 CFR Part 1500 *et al.*

(c) The term "environmental review" means the process whereby an evaluation is undertaken by EPA to determine whether a proposed Agency action may have a significant impact on the environment and therefore require the preparation of the EIS.

(d) The term "environmental information document" means any preliminary written analysis prepared by an applicant, grantee or contractor describing the environmental impacts of a proposed Agency action.

§ 6.102 Applicability.

(a) *Administrative actions covered.* This part applies to the activities of EPA in accordance with the outline of the subparts set forth below. Each subpart describes the detailed environmental review procedures required for each action.

(1) Subpart A sets forth an overview of the regulation. Section 6.102(b) describes the requirements for EPA legislative proposals.

(2) Subpart B describes the requirements for the content of an EIS prepared pursuant to subparts E, F, G, H, and I.

(3) Subpart C describes the requirements for coordination of all environmental laws during the environmental review undertaken pursuant to subparts E, F, G, H, and I.

(4) Subpart D describes the public information requirements which must be undertaken in conjunction with the environmental review requirements under subparts E, F, G, H, and I.

(5) Subpart E describes the environmental review requirements for the wastewater treatment construction grants program under Title II of the Clean Water Act.

(6) Subpart F describes the environmental review requirements for new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act.

(7) Subpart G describes the environmental review requirements for research and development programs undertaken by the Agency.

(8) Subpart H describes the environmental review requirements for solid waste demonstration projects undertaken by the Agency.

(9) Subpart I describes the environmental review requirements for construction of special purpose facilities and facility renovations by the Agency.

(b) *Legislative proposals.* As required by the CEQ Regulations, legislative EISs are required for any legislative proposal developed by EPA which significantly affects the quality of the human environment. A preliminary draft EIS shall be prepared by the responsible EPA office concurrently with the development of the legislative proposal and contain information required under subpart B. The EIS shall be processed in accordance with the requirements set forth under 40 CFR 1506.8.

§ 6.103 Responsibilities.

(a) *General responsibilities.* (1) The responsible official's duties include:

(i) Requiring applicants, contractors, and grantees to submit environmental information documents and related documents and assuring that environmental reviews are conducted on proposed EPA projects at the earliest possible point in EPA's decision-making process. In this regard, the responsible official shall assure the early involvement and availability of information for private applicants and other non-Federal entities requiring EPA approvals.

(ii) When required, assuring that draft EIS's are prepared and distributed at the earliest possible point in EPA's decision-making process, their internal and external review is coordinated, and final EISs are prepared and distributed.

(iii) When an EIS is not prepared, assuring that findings of no significant impact (FNSIs) and environmental assessments are prepared and distributed for those actions requiring them.

(iv) Consulting with appropriate officials responsible for other environmental laws set forth in subpart C.

(v) Consulting with the Office of Environmental Review (OER) on action involving unresolved conflicts concerning this part or other Federal agencies.

(vi) When required, assuring that public participation requirements are met.

(2) Office of Environmental Review duties include:

(i) Supporting the Administrator in providing EPA policy guidance and assuring that EPA offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of the EPA effort to comply with this part.

(iii) Providing assistance to responsible officials as required, i.e., guidelines describing the scope of environmental information required by private applicants relating to their proposed actions.

(iv) Coordinating the training of personnel involved in the review and preparation of EISs and other associated documents.

(v) Acting as EPA liaison with the Council on Environmental Quality and other Federal and State entities on matters of EPA policy and administrative mechanisms to facilitate external review of EISs, to determine lead agency and to improve the uniformity of the NEPA procedures of Federal agencies.

(vi) Advising the Administrator and Deputy Administrator on projects which involve more than one EPA office, are highly controversial, are nationally significant, or "pioneer" EPA policy, when these projects have had or should have an EIS prepared on them.

(vii) Carrying out administrative duties relating to maintaining status of EISs within EPA, i.e., publication of notices of intent in the **Federal Register** and making available to the public status reports on EISs and other elements of the environmental review process.

(3) Office of an Assistant Administrator duties include:

(i) Providing specific policy guidance to their respective offices and assuring that those offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of their respective office's efforts to comply with this part.

(iii) Acting as liaison between their offices and the OER and between their offices and other Assistant Administrators or Regional Administrators on matters of agencywide policy and procedures.

(iv) Advising the Administrator and Deputy Administrator through the OER on projects or activities within their respective areas of responsibilities which involve more than one EPA office, are highly controversial, are nationally significant, or "pioneer" EPA policy, when these projects will have or should have an EIS prepared on them.

(4) The Office of Planning and Evaluation shall be responsible for coordinating the preparation of EISs required on EPA legislative proposals (see § 6.102(b)).

(b) *Responsibilities for Subpart E.* (1) *Responsible official.* The responsible official for EPA actions covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Office of the Assistant Administrator, as described in § 6.103(a)(3) shall be assumed by the Assistant Administrator for Water and Waste Management for EPA actions covered by this subpart.

(c) *Responsibilities for Subpart F.* (1) *Responsible official.* The responsible official for activities covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Assistant Administrator, as described in § 6.103(a)(3) shall be assumed by the Assistant Administrator for Enforcement for EPA actions covered by this subpart.

(d) *Responsibilities for Subpart G.* The Assistant Administrator for Research and Development will be the responsible official for activities covered by this subpart.

(e) *Responsibilities for Subpart H.* The Deputy Assistant Administrator for Solid Waste will be the responsible official for activities covered by this subpart.

(f) *Responsibilities for Subpart I.* (1) *Responsible official.* The responsible official for new construction and modification of special purpose facilities is as follows:

(i) The Chief, Facilities Management Branch, Facilities and Support Services Division, Office of Management and Agency Services, shall be the responsible official on all new construction of special purpose facilities and on all improvement and modification projects for which the Facilities Management Branch has received a funding allowance.

(ii) The Regional Administrator shall be the responsible official on all improvement and modification projects for which the regional office has received the funding allowance.

(iii) The Center Directors shall be the responsible officials on all improvement and modification projects for which the National Environmental Research Centers have received the funding allowance.

§ 6.104 Early involvement of private parties.

As required by 40 CFR 1501.2(d) and § 6.103(a)(3)(E) of this regulation, responsible officials must ensure early involvement of private applicants or other non-Federal entities in the environmental review process related to EPA grant and permit actions set forth under subparts E, F, G, and H. The responsible official in conjuction with OER shall:

(a) Prepare where practicable generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(b) Provide such guidance on a project-by-project basis to any applicant seeking assistance

(c) Upon receipt of an application for agency approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

§ 6.105 Synopsis of EIS Procedures.

(a) *Responsibile Official.* the responsible official shall utilize a systematic, interdisciplinary approach to integrate natural and social sciences as well as environmental design arts in planning programs and making decisions which are subject to environmental review. The respective staffs may be supplemented by professionals from other agencies (see 40 CFR § 1501.6) or consultants whenever in-house capabilities are insufficiently interdisciplinary.

(b) *Environmental information documents.* Environmental information documents must be prepared by applicants, grantees, or permittees and submitted to EPA as required in subparts E, F, G, H, and I.

(c) *Environmental reviews.* Environmental reviews shall be conducted on the EPA activities outlined in § 6.102 above and set forth under subparts E, F, G, H and I. This process shall consist of a study of the action to identify and evaluate the related environmental impacts. The process shall include a review of any related environmental information document to determine whether any significant impacts are anticipated and whether any changes can be made in the proposed action to eliminate significant adverse impacts; when an EIS is required, EPA has overall responsibility for this review, although grantees, applicants, permittees or contactors will contribute to the review through submission of environmental information documents.

(d) *Environmental assessments.* Environmental assessments (i.e., concise public documents for which EPA is responsible) are prepared to provide sufficient data and analysis to determine whether an EIS or finding of no significant impact is required. Where EPA determines at an early stage that an EIS will be prepared, there is no need to prepare a formal environmental assessment.

(e) *Notice of intent and EISs.* When the environmental review and resulting environmental assessment indicate that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project, a notice of intent to prepare an EIS shall be published in the **Federal Register**, scoping shall be undertaken in accordance with 40 CFR 1501.7, and a draft EIS shall be prepared and distributed. After external coordination and evalution of the comments received, a final EIS shall be prepared and disseminated.

(f) *Finding of no significant impact* (FNSI). When the environmental review indicates no significant impacts are anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The environmental assessment shall be included as a part of the FNSI.

(g) *Record of decision.* At the time of its decision on any action for which a final EIS has been prepared, the responsible official shall prepare a concise public record of the decision.

(h) *Monitoring.* The responsible official shall provide for monitoring to assure that decisions on any action where a final EIS has been prepared are properly implemented. Appropriate mitigation measure shall be included in actions undertaken by EPA.

§ 6.106 Deviations.

(a) *General.* The Director, OER, is authorized to approve deviations from these regulations.

(b) *Requirements.* (1) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the substantive provisions of these regulations or the CEQ Regulations, the responsibile officials shall notify the Director, OER, before taking such action. The responsible official shall consider to the extent possible alternative arrangements; such arrangements will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process. The Director, OER, after consulting CEQ, will inform the responsible official, as expeditiously as possible of the disposition of his request.

(2) Where circumstances make it necessary to take action without observing procedural provisions of these

regulations, the responsible officals shall notify the Director, OER, before taking such action. If the Director, OER, determines such a deviation would be in the best interest of the Government, he shall inform the responsible official, as soon as possible, of his approval.

(3) The Director, OER, shall coordinate his action on a deviation under § 6.106(b)(1) or (2) above with the Director, Grants Administration Division, Office of Planning and Management, for any required grant related deviation under 40 CFR 30.1000.

Subpart B—Content of EISs

§ 6.200 The environmental impact statement.

Preparers of EISs must conform with the requirements of 40 CFR Part 1502 in writing EISs.

§ 6.201 Format.

The format used for EISs shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic and social impacts. The following standard format for EISs should be used unless the responsible official determines that there is a compelling reason to do otherwise:

(a) Cover sheet
(b) Executive Summary
(c) Table of contents
(d) Introduction
(e) Purpose of and need for action
(f) Alternatives including proposed action
(g) Environmental consequences of the alternatives on the affected environment
(h) Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent)
(i) List of preparers
(j) Literature cited
(k) Index (commensurate with complexity of EIS)
(l) Appendices

§ 6.202 Cover sheet.

In addition to the requirements of 40 CFR 1502.11, the cover sheet shall include the name(s) and titles of the persons who were primarily responsible for preparing the EIS.

§ 6.203 Executive summary.

The executive summary shall describe in sufficient detail (10–15 pages) the critical facets of the EIS so that the reader can become familiar with the proposed project or action and its net effects. The executive summary shall focus on:

(a) The existing problem;

(b) A brief description of each alternative evaluated (including the preferred and no action alternatives) along with a listing of the environmental impacts, possible mitigation measures relating to each alternative, and any areas of controversy (including issues raised by governmental agencies and the public); and

(c) Any major conclusions.

A comprehensive summary may be prepared in instances where the EIS is unusually long in nature. In accordance with 40 CFR 1502.19, the comprehensive summary may be circulated in lieu of the EIS; however, both documents shall be distributed to any Federal, State and local agencies who have EIS review responsibilites and also shall be made available to other interested parties with request.

§ 6.204 Body of EIS.

(a) *Purpose and need.* The EIS shall clearly specify the underlying purpose and need to which EPA is responding. If the action is a request for a permit or a grant, the EIS shall clearly specify the goals and objectives of the applicant.

(b) *Alternatives including the proposed action.* In addition to 40 CFR 1502.14, the EIS shall include:

(1) *Alternatives considered by the applicant.* This section shall include a *balanced* description of each alternative considered by the applicant. These discussions shall include size and location of facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules. The alternative of no action shall be discussed and the applicant's preferred alternative(s) shall be identified. For alternatives which were eliminated from detailed study, a brief discussion of the reasons for their having been eliminated shall be included.

(2) *Alternatives available to EPA.* EPA alternatives to be discussed shall include: (i) Taking an action; (ii) taking an action on a modified or alternative project; and (iii) denying the action.

(3) *Alternatives available to other permitting agencies.* When preparing a joint EIS, and if applicable, the alternatives available to other Federal and/or State agencies shall be discussed.

(4) *Other alternatives.* Description of additional reasonable alternatives not within the jurisdiction of the lead agency or any cooperating agency shall be discussed.

(c) *Environmental consequences of the alternatives on the affected environment.* The affected environment on which the evaluation of each alternative shall be based includes for example hydrology, geology, air quality, noise, biology, socioeconomics, energy, land use, and archeology/history. These subject matters shall be adapted to analyze each alternative within a project area. The discussion shall be structured so as to present the impacts of each alternative under each subject heading for easy comparison by the reader. The "no action" alternative should be described first so that the reader may relate the other alternatives to beneficial and adverse impacts related to the applicant doing nothing. Description of environmental setting for the purpose of necessary background shall be included in this discussion of the impacts of the "no action" alternative. The amount of detail in describing the affected environment shall be commensurate with the complexity of the situation and the importance of the anticipated impacts.

(d) *Coordination.* The EIS shall include:

(1) The objections and suggestions made by local, State, and Federal agencies before and during the EIS review process must be given full consideration, along with the issues of public concern expressed by individual citizens and interested environmental groups. The EIS must include discussions of any such comments concerning our actions, and the author of each comment should be identified. If a comment has resulted in a change in the project or the EIS, the EIS should explain the reason.

(2) Public participation through public hearings or scoping meetings shall also be included. If a hearing has been held prior to the publication of the EIS, a summary of the transcript should be included in this section. If one is to be held after the publication of the draft EIS, the date, time, place, and purpose shall be included here. Finally, if no public hearing will be held at any time, it shall be noted.

(3) In the final EIS, a summary of the coordination process, and EPA responses to comments on the draft EIS shall be included.

6.205 Incorporation by reference.

In addition to 40 CFR 1502.21, material incorporated into an EIS by reference shall be organized to the extent possible into a Supplemental Information Document and be made available for review upon request.

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

§ 6.300 General.

Various Federal laws and executive orders protect specific environmental concerns. This subpart presents the central requirements of these laws and executive orders. It refers to the pertinent authority and regulatons or guidance that contain the procedures. These laws and executive orders establish review procedures independent of NEPA requirements. However, the responsible official shall coordinate to the greatest practicable extent the applicable procedures in this subpart during the implementation of the environmental review process.

§ 6.301 Historical and archeological sites.

EPA is subject to the requirements of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, the Archeological and Historic Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and Executive Order 11593, entitled "Protection and Enhancement of the Cultural Environment." These provisions and regulations establish review procedures independent of NEPA requirements.

(a) Under section 106 of the National Historic Preservation Act and Executive Order 11593, if an EPA undertaking affects any property with historic, architectural, archeological or cultural value that is listed on or eligible for listing on the National Register of Historic Places, the responsible official shall comply with the procedures for consultation and comment promulgated by the Advisory Council on Historic Preservation in 36 CFR Part 800. The responsible official must identify properties affected by the undertaking that are potentially eligible for listing on the National Register and shall request a determination of eligibility from the Keeper of the National Register, Department of the Interior, under the procedures in 36 CFR Part 63.

(b) Under the Archeological and Historic Preservation Act, if an EPA activity may cause irreparable loss or destruction of significant scientific, prehistoric, historic or archeological data, the responsible official or the Secretary of the Interior is authorized to undertake data recovery and preservation activities. Applicable procedures are found in 36 CFR Parts 64 and 66.

§ 6.302 Wetlands, floodplains, agricultural lands, coastal zones, wild and scenic rivers, fish and wildlife and endangered species.

The following procedures shall apply to EPA administrative actions in programs to which the pertinent statute or executive order applies.

(a) *Wetlands protection.* Executive Order 11990, Protection of Wetlands, requires Federal agencies conducting certain activities to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (January 5, 1979) requires EPA programs to determine if proposed actions will be in or will affect wetlands. If so, the responsible official shall prepare a floodplains/wetlands assessment, which will be part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative to the action exists.

(b) *Floodplain management.* Executive Order 11988, Floodplain Management, requires Federal agencies to evaluate the potential effects of actions they may take in a floodplain to avoid, to the extent possible, adverse effects associated with direct and indirect development of a floodplain. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (January 5, 1979), requires EPA programs to determine whether an action will be located in or will affect a floodplain. If so, the responsible official shall prepare a floodplain/wetlands assessment. The assessment will become part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative exists.

(c) *Agricultural lands.* It is EPA's policy to consider the protection of the Nation's environmentally significant agricultural lands from irreversible conversion to uses which result in its loss as an environmental or essential food production resource. Before undertaking an action, the responsible official shall determine whether there are significant agricultural lands in the planning area. If significant agricultural lands are identified, direct and indirect effects of the undertaking on the land shall be evaluated and adverse effects avoided or mitigated, to the extent possible, in accordance with EPA's Policy to Protect Environmentally Significant Agricultural Lands (September 8, 1978).

(d) *Coastal Zone Management.* The Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*, requires that all Federal activities in coastal areas be consistent with approved State Coastal Zone Management Programs, to the maximum extent possible. If an EPA action may affect a coastal zone area, the responsible official shall assess the impact of the action on the coastal zone. If the action significantly affects the coastal zone area and the State has an approved coastal zone management program, a consistency determination shall be sought in accordance with procedures promulgated by the Office of Coastal Zone Management in 15 CFR 930.

(e) *Wild and Scenic Rivers.* Under the Wild and Scenic Rivers Act, 16 U.S.C. 1274 *et seq.*, a Federal agency may not assist, through grant, loan, license or otherwise, the construction of a water resources project that would have a direct and adverse effect on rivers designated as wild and scenic under Section 3 of the Act or those designated as having potential for inclusion under Section 5 of the Act. The responsible official shall determine whether there are any designated rivers in the planning area. If so, the responsible official shall consult with the Department of Interior or Department of Agriculture to determine whether the action has a direct and adverse impact on a river or river segment. If the action has a direct and adverse impact, the impact shall be avoided. No action may be taken if the adverse effect cannot be avoided. Applicable consultation procedures are found in Section 7 of the Act.

(f) *Fish and Wildlife Protection.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, requires federal agencies involved in actions that will result in the control or structural modification of any natural stream or body of water for any purpose, to take action to protect the fish and wildlife resources which may be affected by the action. The responsible official shall consult with the Fish and Wildlife Service and the appropriate State agency to ascertain the means and measures necessary to mitigate, prevent and compensate for project-related losses of wildlife resources and to enhance the resources. Reports and recommendations of wildlife agencies should be incorporated into the environmental assessment or environmental impact statement. Consultation procedures are detailed in 16 U.S.C. 662.

(g) *Endangered Species Protection.* Under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, Federal agencies are prohibited from jeopardizing threatened or endangered species or adversely modifying habitats essential to their survival. The responsible official shall identify all designated endangered or threatened species or their habitat that may be affected by an EPA action. If listed species or their habitat may be affected, formal consultation must be undertaken with the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. If the consultation reveals that the EPA activity will adversely affect a listed species or habitat, mitigation measures must be undertaken. Applicable consultation procedures are found in 50 CFR 402.

§ 6.303 Air Quality.

(a) The Clean Air Act, as amended in 1977, 42 U.S.C. 7476(c), requires all Federal projects, licenses, permits, plans, and financial assistance activities to conform to any State Air Quality Implementation Plan (SIP) approved or promulgated under section 110 of the Act. For proposed EPA actions that may significantly affect air quality, the responsible official shall assess the extent of the direct or indirect increases in emissions and the resultant change in air quality.

(b) If the action has a significant direct or indirect adverse impact on air quality, the responsible official shall consult with the State or local agency or agencies, designated by the Governor as having the lead responsibility for SIP development and implementation, to ascertain the conformity of the action to the SIP, including compliance with all applicable emission limitations or standards. The determination of conformity by the responsible official shall certify that the growth of direct and indirect emissions is allowable as a component of the SIP's emission growth increment for areas where national ambient air quality standards have not been attained; or if a case-by-case offset approach is included in the SIP for such areas, that any necessary offsets have been obtained; and that the EPA action complies with all other provisions and requirements of the SIP, whether for attainment or nonattainment areas.

(c) The responsible official shall submit the conformity determination to the designated lead State or local agency for its concurrence. The action shall not be approved by the responsible official if the designated lead State or local agency does not concur with the conformity determination until all objections have been resolved. Lack of response from the designated lead State or local agency within 45 days of the request for a conformity concurrence will be interpreted by the Responsible official to mean that the lead agency concurs with the conformity determination. No action may be taken if it is determined by the responsible official that such action would not be in conformity with an approved SIP.

Subpart D—Public and Other Federal Agency Involvement

§ 6.400 Initial public involvement.

(a) *General.* EPA shall make diligent efforts to involve the public in the environmental review process consistent with program regulations and EPA policies on public participation. The responsible official shall ensure that public notice is provided for, in accordance with, 40 CFR 1506.6(b) and shall ensure that public involvement is carried out in accordance with EPA Public Participation Regulations, 40 CFR Part 25, and other applicable EPA public participation procedures.

(b) *Publication of notices of intent.* As soon as practicable after its decision to prepare an EIS and before the scoping process, the responsible official shall send the notice of intent to interested and affected members of the public and shall request the OER to publish the notice of intent in the **Federal Register.** The scoping process should be initiated as soon as practicable in accordance with the requirements of 40 CFR 1501.7. Participants in the scoping process shall be kept informed of substantial changes which evolve during the EIS drafting process.

(c) *Public meetings or hearings.* Public meetings or hearings shall be conducted consistent with Agency program requirements. There shall be a presumption that a scoping meeting will be conducted whenever a notice of intent has been published. The responsible official shall consider holding a public hearing on a draft EIS especially when a hearing may facilitate the resolution of conflicts or significant public controversy.

(d) *Findings of no significant impact.* The responsible official shall allow for sufficient public review of a FNSI before it becomes final. The FNSI and attendant publication must state that interested persons disagreeing with the decision may submit comments for consideration by EPA. EPA shall not take administrative action on the project for at least thirty (30) calendar days after release of the FNSI and may allow more time for response. The FNSI shall be made available to the public in accordance with the requirements of 40 CFR 1506.6.

§ 6.401 Official filing requirements.

(a) *General.* OER is responsible for the conduct of the official filing system for EISs. This system was established as a central repository for all EISs which serves not only as means of advising the public of the availability of each EIS but provides a uniform method for the computation of minimum time periods for the review of EISs. OER publishes a weekly notice in the **Federal Register** listing all EISs received during a given week. The 45 day and 30 day review periods for draft and final EISs, respectively, are computed from the Friday following a given reporting week. Pursuant to 40 CFR section 1506.9, responsible officials shall comply with the guidelines established by OER on the conduct of the filing system.

(b) *Minimum time periods.* No decision on EPA actions shall be made until the later of the following dates:

(1) Ninety (90) days after the date established in § 6.401(a) above from which the draft EIS review time period is computed.

(2) Thirty (30) days after the date established in § 6.401(a) above from which the final EIS review time period is computed.

(c) *Filing of EISs.* All EISs, including supplements, must be officially filed with OER. Responsible officials shall transmit each EIS in five (5) copies to the Director, Office of Environmental Review, EIS Filing Section (A–104). OER will provide CEQ with one copy of each EIS filed. No EIS will be officially filed by OER unless assurances have been made that the EIS has been made available to the public. OER will not accept unbound copies of EISs for filing.

(d) *Extensions or waivers.* The responsible official may independently extend review periods. In such cases, the responsible official shall notify OER as soon as possible so that adequate notice may be publised in the weekly **Federal Register** report. OER upon a showing of compelling reasons of national policy may reduce the prescribed review periods. Also, OER upon a showing by any other Federal agency of compelling reasons of national policy may extend prescribed review periods, but only after consultation with the responsible official. If the responsible official does not concur with the extension of time, OER may not extend a prescribed review period more than 30 days.

(e) *Recission of filed EISs.* The responsible official shall file EISs with

OER no later than they are transmitted to commenting agencies and made available to the public. The responsible official is required to reproduce an adequate supply of EISs to satisfy these distribution requirements prior to filing an EIS. If the EIS is not made available, OER will consider retraction of the EIS or revision of the prescribed review periods based on the circumstances.

§ 6.402 Availability of documents.

(a) *General.* The responsible official will ensure sufficient copies of the EIS are distributed to interested and affected members of the public and are made available for further public distribution. EISs, comments received, and any underlying documents should be available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552(b)), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed actions. To the extent practicable, materials made available to the public shall be provided without charge; otherwise, a fee may be imposed which is not more than the actual cost of reproducing copies required to be sent to another Federal agency.

(b) *Public information.* Lists of all notices of intent, EISs, and FNSIs prepared by EPA shall be maintained by OER for the public. Each responsible official will maintain a similar monthly status report for all environmental documents prepared. In addition, OER will make available for public inspection copies of EPA EISs; the responsible official shall do the same for any prepared EIS.

§ 6.403 The commenting process.

(a) *Inviting comments.* After preparing a draft EIS and before preparing a final EIS, the responsible official shall obtain the comments of Federal agencies, other governmental entities and the public in accordance with 40 CFR 1503.1. If the OER determines that a draft EIS is so inadequate as to preclude meaningful analysis, the responsible official shall prepare and circulate a revised draft of the appropriate portion.

(b) *Response to comments.* The responsible official shall respond to comments in the final EIS in accordance with 40 CFR 1503.4.

§ 6.404 Supplements.

(a) *General.* The responsible official shall consider preparing supplements to draft and final EISs in accordance with 40 CFR 1502.9(c). A supplement shall be prepared, circulated and filed in the same fashion (exclusive of scoping) as draft and final EISs.

(b) *Alternative procedures.* In the case where the responsible official wants to deviate from existing procedures, OER shall be consulted. OER shall consult with CEQ on any alternative arrangements.

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

§ 6.500 Purpose.

This subpart amplifies the procedures described in Subparts A through D with detailed environmental review procedures for the wastewater treatment works construction grants program under Title II of the Clean Water Act.

§ 6.501 Definitions.

(a) "Step 1 grant" means a project for preparation of a facilities plan as described in 40 CFR 35.930–1.

(b) "Step 2 grant" means a project for preparation of construction drawings and specifications as described in 40 CFR 35.930–1.

(c) "Step 3 grant" means a project for erection and building of a publicly owned treatment works as described in 40 CFR 35.930–1.

(d) "Step 2 plus Step 3 grant" means a project which combines the grants set forth in § 6.501 (b) and (c) above.

§ 6.502 Applicability

(a) *Administrative actions covered.* This subpart applies to the administrative actions listed below (except as provided in § 6.502(c) below):

(1) Approval of a facilities plan; and

(2) Award of grant assistance for a project involving step 2 or step 3 when the responsible official determines that significant change has occurred in the project or its impact from that described in the facilities plan.

(b) *Administrative actions excluded.* The actions listed below are not subject to the requirements of this subpart:

(1) Approval of State priority lists;

(2) Award of a step 1 grant;

(3) Approval or award of a section 208 planning grant;

(4) Award of grant assistance for a step 2 or step 3 project unless the responsible official determines that significant change has occurred in the project or its impact from that described in the facilities plan;

(5) Approval of issuing an invitation for bids or awarding a construction contract;

(6) Actual physical commencement of building or erection;

(7) Award of a section 206 grant for reimbursement;

(8) Award of a grant increases unless the responsible official determines that significant change has occurred in a project or its impact as described in the approved facilities plan; and

(9) Awards of training assistance under section 109(b) the Clean Water Act;

(10) Approval of an ICR system or user charge system.

(c) *Consultation during the environmental review process.* When there are overriding considerations of cost or impaired program effectiveness, the responsible official may award a step 2 or step 3 grant for a discrete segment of the project plans or construction before the environmental review is completed. The project segment must be noncontroversial, necessary to correct water quality or other immediate environmental problems and cannot, by its completion, foreclose any options being considered in the environmental review. The remaining portion of the project shall be evaluated to determine if an EIS is required. In applying the criteria for this determination, the entire project shall be considered, including those parts permitted to proceed. In no case may these types of grant assistance for step 2 or step 3 projects be awarded unless both the OER and CEQ have been consulted, a FNSI has been issued on the segments permitted to proceed at least 30 days prior to grant award, and the grant award contains a specific agreement prohibiting action on the segment of planning or construction for which the environmental review is not complete. The responsible official will consult with OER, who will consult with CEQ.

§ 6.503 Public participation.

(a) *General.* It is EPA policy that optimum public participation be achieved during the environmental review process as deemed appropriate by the responsible official under 40 CFR Part 25 and implementing provisions of Part 35, Subpart E of this Chapter. Compliance with Part 25 and implementing provisions constitutes compliance with public participation requirements under this part.

(b) *Full-scale public participation.* In accordance with 40 CFR 35.917–5, the responsible official shall assure that a full-scale public participation program shall be undertaken where EPA prepares or requires the preparation of

an EIS during the facility planning process.

(c) Public participation activities undertaken in connection with the environmental review process should be coordinated with the facility planning public participation program wherever possible.

(d) The responsible official may institute such additional NEPA-related public participation procedures as he deems necessary during the environmental review process.

§6.504 Limitations on actions during environmental review process.

No administrative action under §6.502(a) shall be taken until the environmental review process has been completed except as provided under §6.502(c) above. The responsible official shall ensure compliance in accordance with 40 CFR 1506.1 and subparts A, C, and D of this regulation, and all policies, guidance and regulations adopted to implement the regulations of the Clean Air Act under 42 U.S.C. 7616.

§6.505 Criteria for preparing EISs.

The responsible official shall assure that an EIS will be issued when he determines that any of the following conditions exists:

(a) The treatment works will induce significant changes (either absolute changes or increases in the rate of change) in industrial, commercial, agricultural, or residential land use concentrations or distributions. Factors that should be considered in determining if these changes are significant include but are not limited to: the vacant land subject to increased development pressure as a result of the treatment works; the increases in population which may be induced; the faster rate of change of population; changes in population density; the potential for overloading sewage treatment works; the extent to which landowners may benefit from the areas subject to increased development; the nature of land use regulations in the affected area and their potential effects on development; and deleterious changes in the availability or demand for energy.

(b) Where the treatment works or collector system will have significant adverse effects on wetlands, including indirect effects, or any major part of the treatment works will be located on wetlands.

(c) Where the treatment works or collector system will significantly affect the habitat of wildlife on the Department of Interior's or a State's threatened and endangered species lists, or the treatment works will be located on the habitat.

(d) Implementation of the treatment works or plan may directly cause or induce changes that significantly:

(1) Displace population;

(2) Deface an existing residential area;

(3) Adversely affect a floodplain; or

(4) Adversely affect significant amounts of prime or unique agricultural land, or agricultural operations on this land as defined in EPA's Policy to Protect Environmentally Significant Agricultural Land.

(e) The treatment works will have significant adverse effects on parklands, other public lands or areas of recognized scenic, recreational, archaeological, or historic value.

(f) The treatment works may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(g) The treated effluent is being discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of these uses.

(h) The environmental impact of the treatment works is likely to be highly controversial.

When full-scale public participation is required under 40 CFR 35.917–5(c), the responsible official shall consider preparing an EIS.

§6.506 Environmental review process.

Consistent with 40 CFR 1501.2, EPA shall integrate the environmental review process throughout the construction grants program facilities planning process (Step 1). Critical decisionmaking points and the scope of review recommended include:

(a) *Award of a facilities planning grant (Step 1).* Prior to award of Step 1 assistance, or within no more than 30 days thereafter, EPA may review, or request that the State review, if the program is delegated under section 205(g) of the Clean Water Act, the existence of environmentally sensitive areas in the facilities planning area. This review is intended to be brief and concise, drawing on existing information and knowledge of EPA, State agencies, regional planning agencies, areawide water quality management agencies, and grantees. This review may be used to determine the scope of the environmental information document prepared by the grantee. It may also be used to make an early determination of the need for an EIS. Whenever possible, this initial review should be discussed at the first conference held with the potential grantee.

(b) *Mid-course reviews.* A review of environmental information developed by the grantee should be conducted whenever meetings are held to assess the progress of facilities plan development. These meetings should ideally be held after completion of the majority of the environmental information document, but before a final alternative is selected. When the program is delegated, the State shall forward to EPA the required environmental information documents as early as possible to enable EPA to make decisions with respect to the need for an EIS. Although the decision whether to prepare an EIS must be made before a facilities plan can be approved, a decision to prepare an EIS is encouraged earlier during the facilities planning process. Following any mid-course review meeting, EPA should inform interested parties as to the following:

(1) The preliminary nature of the agency's position on preparing an EIS;

(2) The relationship between the facilities planning and environment review processes;

(3) The desirability of further public input; and

(4) A contact person for further information.

(c) *Review of completed facilities plan.* EPA, or the State, when the program is delegated, shall review any completed facilities plan with particular attention to the environmental information document and its utilization in the development of alternatives and the selection of a final alternative. An adequate environmental information document must be an integral part of any facilities plan submitted to EPA or to a State. For those States where the review of facilities plans has been delegated, State personnel will be required to prepare a preliminary environmental assessment which serves as an adequate basis for EPA's decision to issue a FNSI or an EIS. The environmental assessment shall cover all potentially significant environmental impacts and related factors. Each of the following subjects shall be critically reviewed to identify potentially significant environmental concerns to be addressed in the environmental assessment:

(1) *Description of the existing environment.* For the delineated facilities planning area, the existing environmental conditions relevant to the analysis of alternatives or

determinations of the environmental impacts (especially indirect) of the proposed action shall be considered. The description may include those environmental factors potentially affected by the alternatives under consideration, such as: surface and groundwater quality; water supply and use; general hydrology; air quality; noise levels, energy production and consumption; land use trends; population projections; wetlands, floodplains, coastal zones and other environmentally sensitive areas; historic and archaeological sites; other related Federal or State projects in the area; plant and animal communities which may be affected, especially those containing threatened or endangered species.

(2) *Description of the future environment without the project.* The relevant future environmental conditions shall be described. The no action alternative must be adequately evaluated.

(3) *Purpose and need.* This should include a summary discussion and demonstration of the need for wastewater treatment in the facilities planning area, with particular emphasis on existing public health or water quality problems and their severity and extent.

(4) *Documentation.* Sources of information used to describe the existing environment and to assess future environmental impacts should be clearly referenced. These sources should include regional, State and Federal agencies with responsibility or interest in the types of impacts listed in section 6.505(a)(1) above and in subpart C.

(5) *Evaluation of alternatives.* This discussion shall include a comparative analysis of feasible alternatives (including the no action alternative) throughout the study area. The alternatives shall be screened with respect to capital and operating costs; significant direct and indirect environmental effects; physical, legal or institutional constraints; and compliance with regulatory requirements. Special attention should be given to long term impacts, irreversible impacts and induced impacts such as development. The reasons for rejecting any alternatives shall be presented in addition to any significant environmental benefits precluded by rejection of an alternative. The analysis should consider, when relevant to the project:

(i) Flow and waste reduction measures, including infiltration/inflow reduction;

(ii) Appropriate water conservation measures;

(iii) Alternative locations, capacities, and construction phasing of facilities;

(iv) Alternative waste management techniques, including treatment and discharge, wastewater reuse, land application, and individual systems;

(v) Alternative methods for management of sludge, other residual materials, including utilitization options such as land application, composting, and conversion of sludge for marketing as a soil conditioner or fertilizer.

(vi) Improving effluent quality through more efficient operation and maintenance;

(vii) Appropriate energy reduction measures;

(viii) Multiple use, including recreation and education.

(6) *Environmental consequences.* Relevant direct and indirect impacts of the proposed action shall be considered, giving special attention to unavoidable impacts, steps to mitigate adverse impacts, any irreversible or irretrievable commitments of resources to the project and the relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity. The significance of land use impacts shall be considered, based on the analysis required under Appendix A to 40 CFR Part 35, Subpart E. Any specific land use controls (including grant conditions and areawide waste treatment management plan requirements) should be identified and referenced. In addition to these items, the responsible official may require that other analyses and data, which are needed to satisfy environmental review requirements, be included with the facilities plan. Such requirements should be discussed during initial conference with potential grantees or mid-course review meetings. The responsible official also may require submission of supplementary information either before or after award of grant assistance for a step 2 project or before a step 3 project if needed for compliance with environmental review requirements. Requests for supplementary information shall be made in writing.

(7) *Steps to minimize adverse effects.* (i) This section shall describe structural and nonstructural measures, if any, in the facilities plan, or additional measures identified during the review, to mitigate or eliminate significant adverse effects on the human and natural environments. Structural provisions include changes in facility design, size, and location; non-structural provisions include staging facilities as well as developing and enforcing land use regulations and environmental protection regulations.

(ii) The responsible official may not award step 2 or step 3 grant assistance if the grantee has not made, or agreed to make, pertinent changes in the project, in accordance with determinations made in a FNSI or EIS. He may condition a grant to ensure that the grantee will comply, or seek to obtain compliance, with such environmental review determinations. The conditions shall address secondary impacts to the extent deemed appropriate by the responsible official.

(d) *Environmental review.* The environmental review shall apply the criteria under § 6.505 above. If deficiencies exist in the environmental information document, the environmental assessment or other supporting documentation, they shall be identified in writing by EPA and must be corrected before the determination whether an EIS is required can be made and the plan approved. This review shall be conducted by the responsible official and based on any of the following:

(1) A complete facilities plan and environmental information document, whenever review of facilities plan has not been delegated;

(2) The grant applicant's environmental information document and the preliminary environmental assessment prepared by the State for a State which has been delegated authority for facilities plan review; or

(3) Other documentation, deemed necessary by the responsible official or submitted by a State with delegated review authority, adequate to make an EIS determination by EPA.

(e) *Finding of no significant impact.* If, after completion of the environmental review, a determination is made that an EIS will not be required, the responsible official shall prepare and distribute a FNSI in accordance with § 6.104 and Subpart D. The FNSI will be based on EPA's independent review and environmental assessment which will either be incorporated into or attached to the FNSI. Once a FNSI and environmental assessment have been prepared for the facilities plan for a certain area, grant awards may proceed without preparation of additional FNSIs, unless the responsible official has determined that the project has changed significantly from that described in the facilities plan.

(f) *Environmental assessment.* A decision not to prepare an EIS must be substantiated by an environmental assessment. It shall as a minimum be a

concise document which provides sufficient data and analysis for determining that the alternative proposed in the facilities plan will not have significant impacts upon the human environment.

(1) In the case where the responsible official reviews the complete facilities plan, the environmental assessment shall be prepared based on that review and the review of the environmental information document and any other data deemed appropriate.

(2) Where EPA has delegated review authority to a State, the EPA environmental assessment may be based on and reference either the State's environmental assessment or the other supporting documentation used by the responsible official.

(g) *Notice of intent.* If, after completion of the environmental review, or subsequent to any of the steps described in § 6.506 (a), (b), or (c) above, a determination is made that an EIS will be required, the responsible official shall prepare and distribute a Notice of Intent in accordance with § 6.104 and Subpart D.

(h) *Scoping.* As soon as possible, but not later than 30 days after the publication of the Notice of Intent, the responsible official will convene a meeting of affected Federal, State and local agencies, the grantee and other interested parties (e.g. Advisory Group members under 40 CFR 25.7) to determine the scope of the EIS. A notice of this scoping meeting will meet the requirements of subpart D. As part of the scoping meeting EPA will as a minimum:

(1) Determine the scope and the significant issues to be analyzed in depth in the EIS;

(2) Identify those issues which are not significant;

(3) Determine what information is needed from cooperating agencies or other parties;

(4) Discuss the method for EIS preparation and the public participation strategy;

(5) Identify consultation requirements of other environmental laws, in accordance with subpart C; and

(6) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(i) *EIS Method.* EPA shall prepare the EIS by any one of the following means:

(1) Directly by its own staff;

(2) By contracting directly with a qualified consulting firm; or

(3) By utilizing a joint EIS process, whereby the grantee contracts directly with a qualified consulting firm. In this instance, the following selection requirements shall be fulfilled:

(i) A Memorandum of Understanding shall be developed between EPA, the grantee, and where possible the State, outlining the responsibilities of each party and their relationship to the EIS consultant.

(ii) EPA shall approve evaluation criteria to be used in the consultant selection process.

(iii) EPA shall review and approve the selection process.

(iv) EPA shall approve the consultant selected for EIS preparation.

(v) The detailed Scope of Work prepared by the EIS consultant must be approved by EPA.

(vi) The EIS consultant shall execute a disclosure statement prepared by EPA indicating that the consultant has no financial or other interest in the outcome of the project.

(4) By adopting after independent evaluation by the responsible official a grantee's facilities plan and NEPA-related information to the extent that the facilities plan and NEPA-related information adequately address relevant environmental issues, when the responsible official determines under § 6.505 that an EIS should be issued. This procedure shall be utilized only when a decision to issue an EIS is made on the basis of the information obtained or circumstances arising after a grantee has substantially completed its facilities plan.

§ 6.507 Limits on deletation to States.

(a) *General.* In cases where the authority for facilities plan review has been delegated to the State under Section 205(g) of the Clean Water Act, EPA shall, as a minimum, retain the following responsibilities:

(1) The determination of whether or not to prepare an EIS shall be solely that of EPA. EPA may consider a State's recommendation, but the ultimate decision under NEPA shall not be delegated.

(2) Findings of No Significant Impact and the environmental assessment shall be approved, finalized and issued by EPA.

(3) Notices of Intent shall be prepared and issued by EPA.

(b) *Elimination of duplication.* The responsible official shall assure that maximum efforts are undertaken to minimize duplication within the limits described under §§ 6.506 and 6.507(a) above. In carrying out requirements under this subpart, maximum consideration should be given to eliminating duplication in accordance with 40 CFR section 1506.2, where there are State or local procedures comparable to NEPA, and entering into Memoranda of Understanding with a State concerning workload distribution and responsibilities for implementing the facilities planning process.

§ 6.508 Record of decision.

(a) *General.* When a final EIS has been issued, the responsible official shall prepare a record of decision in accordance with 40 CFR 1505.2 prior to the approval of the facilities plan.

(b) *Mitigation measures.* The record of decision shall include identification of mitigation measures derived from the EIS process. Prior to the award of step 1 or step 2 grant assistance, the responsible official must ensure that effective mitigation measures are implemented by the grantee. This may be done by revising the facilities plan, initiating other steps to mitigate adverse effects, or agreeing to conditions in grants requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a grant document to assure that the applicant possesses the authority to fulfill the conditions.

§ 6.509 Monitoring.

(a) *General.* The responsible official shall ensure there is adequate monitoring of mitigation measures and other grant conditions which are identified in the final EIS and record of decision.

(b) *Enforcement.* The responsible official may consider taking the following actions consistent with 40 CFR 35.965 if the applicant fails to comply with grant conditions:

(1) Terminating or annulling the grant;

(2) Disallowing project costs related to noncompliance;

(3) Withholding of project payments;

(4) Suspending work;

(5) Finding the grantee to be nonresponsible or ineligible for future Federal assistance or for approval for future contract awards under EPA grants;

(6) Seeking an injunction against the grantee; or

(7) Instituting such other administrative or judicial action as may be legally available and appropriate.

Subpart F—Environmental Review Procedures for the New Source NPDES Program

§ 6.600 Purpose.

(a) *General.* This subpart provides procedures for carrying out the environmental review process for the

issuance of new source National Pollutant Discharge Elimination System (NPDES) discharge permits authorized under section 306, section 402, and section 511(c)(1) of the Clean Water Act.

(b) *Permit regulations.* All references in this subpart to the "permit regulations" shall mean Parts 122, 124, and 125 of Title 40 of the Code of Federal Regulations relating to the NPDES program.

§ 6.601 Definitions.

(a) The term "administrative action" for the sake of this subpart means the issuance by EPA of an NPDES permit to discharge as a new source.

(b) the term "third party" defines a method for preparing both EPA's environmental impact statement and the permit applicant's environmental information document by using one contractor. Through a memorandum of understanding, the responsible official and the new source applicant agree 1) that the responsible official will choose a contractor and manage the contract, 2) that the permit applicant will pay for the contract service and 3) that the document produced will serve as both the environmental information document and the environmental impact statement.

§ 6.602 Applicability.

(a) *General.* The procedures set forth under subparts A, B, C and D, and this subpart shall apply to the issuance of new source NPDES permits, except for the issuance of a new source NPDES permit from any State which has an approved NPDES program in accordance with section 402(b) of the Clean Water Act.

(b) *New source determination.* An NPDES permittee must be determined a "new source" before these procedures apply. New source determinations will be undertaken pursuant to the provisions of the permit regulations under 40 CFR 122.479(a) and (b) and § 124.12.

§ 6.603 Limitations on actions during environmental review process.

(a) *General.* The processing and review of an applicant's NPDES permit application shall proceed concurrently with the procedures within this subpart. Further, no administrative action shall be taken by EPA until the environmental review process is completed and the responsible official has complied with subparts A, C, and D of this regulation.

(b) *Activities of permit applicant.* Consistent with the provisions of 40 CFR 1506.1 and 40 CFR 122.47(c), the responsible official shall ensure that the applicant does not undertake activity which has environmental impact or limits the choice of alternatives before the environmental review process is completed. If activities are begun, the responsible official shall promptly notify the applicant that EPA will take appropriate action to ensure the objectives and procedures of NEPA are achieved.

§ 6.604 Environmental review process.

(a) *New source.* If EPA's initial determination under § 6.604(b) is that the facility is a new source, the responsible official shall evaluate the environmental information to determine if any significant impacts are anticipated and whether an EIS is necessary. If the permit applicant requests, the responsible official shall establish time limits for the completion of the environmental review process consistent with 40 CFR 1501.8.

(b) *Information needs.* If additional information is necessary for a proper environmental review, this information shall be provided by the permit applicant in an environmental information document. The responsible official shall consult with the applicant to determine the scope of an environmental information document. In doing this the responsible official shall consider the size of the new source and the extent to which the applicant is capable of providing the required information. The responsible official shall not require the applicant to gather data or perform analyses which duplicate either existing data or the results of existing analyses available to EPA. The responsible official shall keep requests for data to the minimum consistent with his responsibilities under NEPA.

(c) *Environmental assessment.* The responsible official shall prepare a written environmental assessment based, on an environmental review of either the environmental information document or any other available environmental information.

(d) *EIS determination.* (1) When the environmental assessment indicates that a significant environmental impact may occur and that the significant adverse impacts cannot be eliminated by making changes in the proposed new source project, a notice of intent shall be issued, and a draft EIS prepared and distributed. When the environmental assessment indicates no significant impacts are anticipated or when the proposed project is changed to eliminate the significant adverse impacts, a FNSI shall be issued.

(2) The FNSI together with the environmental assessment that supports the finding shall be distributed in accordance with § 6.400(d) of this regulation.

(e) *Lead agency.* (1) If the environmental review reveals that the preparation of an EIS is required, the responsible official shall determine if other Federal agencies are involved with the project. The responsible official shall contact all other involved agencies and together the agencies shall decide the lead agency based on the criteria set for in the 40 CFR 1501.5.

(2) If, after the meeting of involved agencies, EPA has been determined to be the lead agency, the responsible official may request that other involved agencies be cooperating agencies. Cooperating agencies shall be chosen and shall be involved in the EIS preparation process in the manner prescribed in the 40 CFR 1501.6(a). If EPA has been determined to be a cooperating agency, the responsible official shall be involved in assisting in the preparation of the EIS in the manner prescribed in 40 CFR 1501.6(b).

(f) *Preparation of the EIS.* (1) If EPA is the lead agency for the preparation of an EIS, the responsible official shall arrange through OER for the publication of the Notice of Intent in the **Federal Register**, distribute both the Notice of Intent and the environmental assessment and arrange and conduct a scoping meeting as outlined in 40 CFR 1501.7.

(2) If the responsible official and the permit applicant agree to a third party method of EIS preparation, the responsible official shall insure that a Notice of Intent is published and that a scoping meeting is held before the third party contractor begins work which may influence the scope of the EIS.

(3) Draft and Final EISs may be developed by several methods including preparation of the EIS entirely by EPA personnel or utilization of consultant services either retained by the responsible official or retained through a third party agreement between the responsible official and the applicant.

(i) A third party agreement for the preparation of an EIS may be requested by either the applicant or responsible official. Such an agreement however shall not be initiated unless both the applicant and the responsible official have agreed to its creation. Generally a third party agreement will be established prior to the development of the applicant's environmental information document and serve the purposes of this document as well as the EIS. The responsible official shall select

the consultant and shall base such selection on the consultant's objectivity, financial dependance on the third party contract, ability, and absence of conflicting interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying that they have no financial or other interest in the outcome of the project.

(ii) In all cases when a third party agreement is used to prepare an EIS, the responsible official shall specify the information to be developed and shall supervise the gathering, analysis, and presentation of the information. The responsible official shall restrict requests for information from the applicant to the miminum consistent with his responsibilities under NEPA and shall insure that the applicant has sufficient opportunity to review all material prior to publication.

(4) The responsible official ensure that the final EIS and supplements thereto are introduced into the formal administrative record for any evidentiary hearing conducted relative to a permit application.

§ 6.605 Criteria for preparing EISs.

(a) *General guidelines.* (1) When determining the significance of a proposed new source's impact, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects and beneficial and adverse environmental impacts as defined in 40 CFR 1508.8.

(2) If EPA is proposing to issue a number of new source NPDES permits during a limited time span and in the same general geographic area, the responsible official shall examine the possibility of tiering EISs. If the permits are minor and environmentally insignificant when considered separately, the responsible official may determine that the cumulative impact of the issuance of all these permits may have a significant environmental effect and require an EIS for the area. Each separate decision to issue an NPDES permit shall then be based on the information in this areawide EIS.

(b) *Specific criteria.* An EIS will be prepared when:

(1) The new source will induce or accelerate significant changes in industrial, commercial, agricultural, or residential land use concentrations or distributions which have the potential for significant environmental effects. Factors that should be considered in determining if these changes are environmentally significant include but are not limited to: The nature and extent of the vacant land subjuct to increased development pressure as a result of the new source; the increases in population or population density which may be induced and the ramifications of such changes; the nature of land use regulations in the affected area and their potential effects on develoment and the environment; and the changes in the availability or demand for energy and the resulting environmental consequences.

(2) The new source will directly, or through induced development, have significant adverse effect upon local ambient air quality, local ambient noise levels, floodplains, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(3) Any major part of the new source will have significant adverse effect on the habitat of threatened or endangered species on the Department of Interior's lists of threatened and endangered species.

(4) The environmental impact of the issuance of a new source NPDES permit is likely to be highly controversial.

(5) The environmental impact of the issuance of a new source NPDES permit will have significant direct and adverse effect on a property listed in or eligible for listing in the National Register of Historic Places.

(6) Any major part of the source will have significant adverse effects on parklands, wetlands, wild and scenic rivers, reservoirs or other important bodies of water, navigation projects, or agricultural lands.

§ 6.606 Record of decision.

At the time of permit award, the responsible official shall prepare a record of decision in those cases where a final EIS was issued in accordance with 40 CFR section 1505.2 and pursuant to the provisions of the permit regulations under 40 CFR 124.61 and 124.122.

§ 6.607 Monitoring.

In accordance with 40 CFR 1505.3 and pursuant to 40 CFR 122.47(c) and 122.17 a permit applicant will sign a legally binding written agreement which requires compliance with all EIS-related requirements before construction begins and shall periodically report on the progress of any compliance actions, required by the EIS, which must extend beyond the effective date of the permit.

Subpart G—Environmental Review Procedures for Research and Development Programs

§ 6.700 Purpose.

This subpart amplifies the requirements decribed in subparts A through D by providing more specific environmental review procedures on research and development programs undertaken by the Office of Research and Development (ORD).

§ 6.701 Definitions.

The term "appropriate program official" means the official at each decision level within ORD to whom the Assistant Administrator has delegated responsibility for carrying out the environmental review process.

§ 6.702 Applicability.

The requirements of this subpart apply to administrative actions undertaken to approve intramural and extramural programs under the purview of ORD.

§ 6.703 Criteria for preparing EISs.

(a) An EIS shall be prepared by the appropriate program official when:

(1) The action will have significant adverse impacts on public parks, wetlands, floodplains, coastal zones, agricultural lands, wildlife habitats, or areas of recognized scenic or recreational value.

(2) The action will significantly deface an existing residential area.

(3) The action may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface or groundwater quality and fish, wildlife or their natural habitats.

(4) The project consists of field tests involving the introduction of significant quantities of toxic or polluting agricultural chemicals, animal wastes, pesticides, radioactive materials, or other hazardous substances into the environment by ORD, its grantees or its contractors.

(5) The action involve the introduction of species or subspecies not indigenous to an area.

(6) There is a high probability of an action ultimately being implemented on a large scale, and this implementation may result in significant environmental impacts.

(7) The project involves commitment to a new technology which is significant and may restrict future viable alternatives.

(b) An EIS will not usually be needed when:

(1) The project is conducted completely within any laboratory or other facility, and external environmental effects have been minimized by methods for disposal of laboratory wastes and safeguards to prevent hazardous materials entering the environment accidentally; or

(2) The project is a relatively small experiment or investigation that is part of a non-Federally funded activity of the private sector, and it makes no significant new or additional contribution to existing pollution.

§ 6.704 Environmental review process.

Environmental review activities will be integrated into the decision levels of ORD's research planning system to assure managerial control.

(a) *Environmental information.* (1) Environmental information documents shall be submitted with all grant applications and all unsolicited contract proposals. The documents shall contain the same information required for EISs under Subpart B. Guidance on environmental information documents shall be included in all grant application kits and attached to instructions for the submission of unsolicited proposals.

(2) In the case of competitive contracts, environmental information documents need not be submitted by potential contractors since the environmental review procedures must be completed before a request for proposal (RFP) is issued. If there is a question concerning the need for an environmental information document the potential contractor should contact the official responsible for the contract.

(b) *Environmental review.*

(1) At the start of planning year, an environmental review will be performed for each program plan with its supporting substructures (work plans and projects) before incorporating them into the ORD program planning system, unless they are excluded from review by existing legislation. This review is an evaluation of the potentially adverse environmental effects of the efforts required by the program plan. The criteria in § 6.703 above shall be used in conducting this review. Each program plan with its supporting substructures which does not have significant adverse impacts may be dismissed from further current year environmental considerations with a single FNSI. Any supporting substructures of a program plan which cannot be dismissed with the parent plan shall be reviewed at the appropriate subordinate levels of the planning system.

(i) All continuing program plans and supporting substructures, including those previously dismissed from consideration, will be reevaluated annually. An environmental review will coincide with the annual planning cycle and whenever a major redirection of a parent plan is undertaken. All environmental documents will be updated as appropriate.

(ii) Later plans and/or projects, added to fulfill the mission objectives but not identified at the time program plans were approved, will be subjected to the same environmental review.

(2) The responsible official shall complete the EPA Form 5300–23 for each extramural project subject to an environmental review. For projects where the impact is virtually nonexistent, e.g. literature studies, computer studies, studies in which essentially all work is performed within the confines of the laboratory, completion of the Form 5300–23 constitutes a finding of no significant impact.

(c) *Notice of intent and EIS.* (1) If the reviews conducted according to § 6.704(b) above reveal a potential significant adverse effect on the environment and the adverse impact cannot be eliminated by replanning, the appropriate program official, shall issue a notice of intent and through proper organizational channels, shall request the Regional Administrator to assist him in the preparation and distribution of the EIS.

(2) As soon as possible after release of the notice of intent, the appropriate program official shall prepare a draft EIS in accordance with Subpart B and distribute the draft EIS in accordance with Subpart D.

(3) All draft and final EISs shall be sent through the proper organizational channels to the Assistant Administrator for ORD for approval.

(d) *Finding of no significant impact.* If an environmental review conducted according to § 6.704(b) above reveals that proposed actions will not have significant adverse environmental impacts, the appropriate program official shall prepare a FNSI.

(e) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract be awarded or intramural activity undertaken until the prescribed 30 day review period for a final EIS has elapsed. Similarly, no action shall be taken until the 30 day comment period for a FNSI is completed.

§ 6.705 Record of decision.

The responsible official shall prepare a record of decision in any case where final EIS has been issued in accordance with 40 CFR 1505.2. It shall be prepared at the time of contract or grant award or before the undertaking of the intramural activity.

Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects

§ 6.800 Purpose.

This subpart amplifies the procedures described in subparts A through D by providing more specific environmental review procedures for demonstration projects undertaken by the Office of Solid Waste (OSW).

§ 6.801 Applicability.

The requirements of this subpart apply to solid waste demonstration projects for resource recovery systems and improved solid waste disposal facilities undertaken pursuant to section 8006 of the Resource Conservation and Recovery Act of 1976.

§ 6.802 Criteria for preparing EISs.

The following criteria shall be used when reviewing a proposed EPA action to determine whether an EIS is required:

(a) *Significant environmental effects.* (1) An action with both beneficial and detrimental effects should be classified as having significant effects on the environment, even if EPA believes that the net effect will be beneficial. However, preference should be given to preparing EISs on proposed actions which, on balance, have adverse effects.

(2) When determining the significance of a proposed action's impacts, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects. Particular attention should be given to changes in land use patterns; changes in energy supply and demand; increased development in floodplains; significant changes in ambient air and water quality or noise levels; potential violations of air quality, water quality and noise level standards; significant changes in surface or groundwater quality or quantity; impacts on agricultural lands and encroachments on wetlands, coastal zones, or fish and wildlife habitat, especially when threatened or endangered species may be affected.

(3) Minor actions which may set a precedent for future major actions with significant adverse impacts or a number of actions with individually insignificant but cumulatively significant adverse impacts shall be classified as having significant environmental impacts. If EPA is taking a number of minor, environmentally insignificant actions that are similar in execution and

purpose, during a limited time span and in the same general geographic area, the cumulative environmental impact of all of these actions shall be evaluated.

(4) In determining the significance of a proposed action's impact, the unique characteristics of the project area should be carefully considered. For example, proximity to historic sites, parklands or wild and scenic rivers may make the impact significant. A project discharging into a drinking water aquifer may make the impact significant.

(5) A proposed EPA action which will have direct and significant adverse effects on a property listed in or eligible for listing in the National Register of Historic Places or will cause irreparable loss or destruction of significant scientific, prehistoric, historic or archaeological data shall be classified as having significant environmental impacts.

(b) *Controversial actions.* An EIS shall be prepared when the environmental impact of the proposed EPA action is likely to be highly controversial.

§ 6.803 Environmental review process.

(a) *Environmental information.* (1) Environmental information documents shall be submitted to EPA by grant applicants or contractors. If there is a question concerning the need for a document, the protential contractor or grantee should consult with the appropriate project officer for the grant or contract.

(2) The environmental information document shall contain the same sections specified for EIS's in subpart B. Guidance alerting protential grantees and contractors of the environmental information documents shall be included in all grant application kits, attached to letters concerning the submission of unsolicited proposals, and included with all requests for proposal.

(b) *Environmental review.* An environmental review will be conducted before a grant or contract award is made. This review will include the preparation of an environmental assissment by the responsible official; the appropriate Regional Administrator's input will include his recommendations on the need for an EIS.

(c) *Notice of intent and EIS.* Based on the environmental review if the criteria in section 6.802 above apply, the responsible official will assure that a notice of intent and a draft EIS are prepared. The responsible official may request the appropriate Regional Administrator to assist him in the preparation and distribution of the environmental documents.

(d) *Finding of no significant impact.* If the environmental review indicated no significant environmental impacts, the responsible official will assure that a FNSI is prepared.

(e) *Timing of action.* Pursuant to §6.401(b), in no case shall a contract or grant be awarded until the prescribed 30 day review period for a final EIS has elapsed. Similarly, no action shall be taken until the 30 day comment period for a FNSI is completed.

§ 6.804 Record of decision.

The responsible official shall prepare a record of decision in any case where final EIS has been issued in accordance with 40 CFR 1505.2. It shall be prepared at the time of contract or grant award.

Subpart I—Environmental Review Procedures for EPA Facility Support Activities

§ 6.900 Purpose.

This subpart amplifies the general requirements described in Subparts A through D by providing environmental procedures for the preparation of EISs on construction and renovation of special purpose facilities.

§ 6.901 Definitions.

(a) The term "special purpose facility" means a building or space, including land incidental to its use, which is wholly or predominantly utilized for the special purpose of an agency and not generally suitable for other uses, as determined by the General Services Administration.

(b) The term "program of requirements" means a comprehensive document (booklet) describing program activities to be accomplished in the new special purpose facility or improvement. It includes architectural, mechanical, structural, and space requirements.

(c) The term "scope of work" means a document similar in content to the program of requirements but substantially abbreviated. It is usually prepared for small-scale projects.

§ 6.902 Applicability.

(a) *Actions covered.* These procedures apply to all new special purpose facility construction, activities related to this construction (e.g., site acquisition and clearing), and any improvements or modifications to facilities having potential environmental effects external to the facility, including new construction and improvements undertaken and funded by the Facilities Management Branch, Facilities and Support Services Division, Office of Management and Agency Services; by a regional office; or by a National Environmental Research Center.

(b) *Actions excluded.* This subpart does not apply to those activities of the Facilities Management Branch, Facilities and Support Services Division, for which the branch does not have full fiscal responsibility for the entire project. This includes pilot plant construction, land acquisition, site clearing and access road construction where the Facilities Management Branch's activity is only supporting a project financed by a program office. Responsibility for considering the environmental impacts of such projects rests with the office managing and funding the entire project. Other subparts of this regulation apply depending on the nature of the project.

§ 6.903 Criteria for preparing EISs.

(a) *Preliminary information.* The responsible official shall request an environmental information document from a construction contractor or consulting architect/engineer employed by EPA if he is involved in the planning, construction or modification of special purpose facilities when his activities have potential environmental effects external to the facility. Such modifications include but are not limited to facility additions, changes in central heating systems or wastewater treatment systems, and land clearing for access roads and parking lots.

(b) *EIS preparation criteria.* The responsible official shall conduct an environmental review of all actions involving construction of special purpose facilities and improvements to these facilities. The following general criteria shall be used when reviewing a proposed action to determine if an EIS is required:

(1) *Significant environmental effects.* (i) An action with both beneficial and detrimental effects should be classified as having significant effects on the environment, even if EPA believes that the net effect will be beneficial. However, preference should be given to preparing EISs on proposed actions which, on balance, have adverse effects.

(ii) When determining the significance of a proposed action's impacts, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects.

(iii) In determining the significance of a proposed action's impact, the unique characteristics of the project area should be carefully considered. For example, proximity to historic sites, parklands or wild and scenic rivers may make the impact significant. A project

discharging into a drinking water aquifer may make the impact significant.

(iv) A proposed EPA action which will have direct and significant adverse effects on a property listed in or eligible for listing in the National Register of Historic Places or will cause irreparable loss or destruction of significant environmental impacts.

(v) Controversial actions. An EIS shall be prepared when the environmental impact of a proposed EPA action is likely to be highly controversial.

§6.904 Environmental review process.

(a) *Environmental review.* (1) An environmental review shall be conducted when the program of requirements or scope of work has been completed for the construction, improvement, or modification of special purpose facilities. For special purpose facility construction, the Chief, Facilities Management Branch, shall request the assistance of the appropriate program office and Regional Administrator in the review. For modifications and improvements, the appropriate responsible official shall request assistance in making the review from other cognizant EPA offices.

(2) Any environmental information documents requested shall contain the same sections listed for EISs in Subpart B. Contractors and consultants shall be notified in contractual documents when an environmental information document must be prepared.

(b) *Notice of intent, EIS, and FNSI.* The responsible official shall decide at the completion of the environmental review whether there may be any significant environmental impacts. If there could be significant environmental impacts, a notice of intent and an EIS shall be prepared according to the procedures under Subparts A, B, C and D. If there are not any significant environmental impacts, a FNSI shall be prepared according to the procedures in subparts A and D.

(c) *Timing of action.* Pursuant to §6.401(b), in no case shall a contract be awarded or construction activities begun until the prescribed 30 day wait period for a final EIS has elapsed. Similarly, under §6.400(d), no action shall be taken until the 30 day comment period for FNSIs is completed.

§6.905 Record of decision.

At the time of contract award, the responsible official shall prepare a record of decision in those cases where a final EIS has been issued in accordance with 40 CFR 1505.2.

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Part IV

Environmental Protection Agency

Requirements for Preparation, Adoption and Submittal of Implementation Plans; Intergovernmental Consultation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL 1062-2]

Requirements for Preparation, Adoption and Submittal of Implementation Plans; Intergovernmental Consultation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Clean Air Act, as amended, August 1977 (42 U.S.C. 7401 *et seq.*), includes new requirements for intergovernmental consultation. Section 121 of the Act requires the States to provide a process of consultation with local governments, organizations of local elected officials, and Federal land managers during certain actions under the Act. Section 174 of the Act requires Governors to designate, in consultation with local officials, lead organizations for coordinating State implementation plan (SIP) revisions for areas where carbon monoxide or ozone standards have not been attained. Section 174 also requires that State and local officials jointly determine their respective responsibilities for developing, implementing, and enforcing a SIP for such areas. The Environmental Protection Agency (EPA) is today publishing a final rule to assist States in preparing SIP revisions meeting these new requirements. The rule was proposed in the **Federal Register** on May 18, 1978 (43 FR 21466–21470). The final rule incorporates public comments received during the period May 18 to June 23, 1978, including comments received at a public hearing on June 21, 1978.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Jerry Kurtzweg, Office of Transportation and Land Use Policy (ANR–445), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Telephone: (202) 755–0570.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended, August 1977 (42 U.S.C. 7401 *et seq.*), requires increased coordination and consultation among State and local officials in the achievement of national ambient air quality standards and the prevention of significant deterioration of air quality. On May 18, 1978, EPA published in the **Federal Register** (43 FR 21466–21470) a proposed rule containing requirements for intergovernmental consultation. A public hearing on these requirements was held on June 23, 1978. Public comments were received during the period May 18, 1978 through June 23, 1978.

Section 121 of the amended Act requires States to establish procedures for consulting with officials of local government and Federal land managers. Each SIP must include a satisfactory process of consultation for carrying out provisions of the Act related to requirements, including transportation controls, for nonattainment areas; air quality maintenance; preconstruction review of major stationary sources of air pollution; prevention of significant deterioration; and certain delayed compliance orders. Thus, the consultation requirement applies to both attainment and nonattainment areas and to all pollutants for which national ambient air quality standards have been established. EPA is required by the amended Act to promulgate regulations to assure adequate consultation.

Guidance describing certain consultation procedures related to Clean Air Act requirements for an air quality-transportation planning process and for prevention of significant deterioration has already been issued. In June 1978 EPA and the Department of Transportation (DOT) jointly issued "Transportation—Air Quality Planning Guidelines" that include recommendations for consultation during the development of the transportation related portion of a SIP. Final rules for the prevention of significant deterioration, including consultation requirements, were published in the **Federal Register** on June 19, 1978 (43 FR 26380–26387). These guidelines and regulations should be consulted by agencies affected by the rule being published today in the development of consultation processes.

In nonattainment areas for carbon monoxide or ozone, States are subject to additional consultation requirements under section 174 of the amended Act. States must determine jointly with local governments the division of responsibility for development, implementation, and enforcement of the air quality plans for these areas. Local governments were provided an opportunity to designate by agreement an organization to prepare the SIP revision for these nonattainment areas, if they did so by February 7, 1978. The Governor is required to either certify a locally designated organization or, if no acceptable local designation is made, to certify another state or local organization. On December 14, 1977, EPA and DOT jointly issued "Clean Air Act section 174 Guidelines" describing the process and criteria to be used for such certification. The final rule published today reflects the information contained in those guidelines.

The regulations promulgated below combine existing regulations pertaining to intergovernmental consultation in 40 CFR 51.21 and 51.58 with the new requirements in the Clean Air Act, as amended, under a new Subpart M, entitled "Intergovernmental Consultation," within Part 51. In addition, this regulation amends 40 CFR 51.61 to make the new Subpart M, where appropriate, applicable to air quality maintenance planning.

These regulations are not designed to require the replacement of existing consultation procedures. However, such procedures should be augmented or improved, where necessary, to involve affected organizations or individuals and to provide them with adequate opportunity to express their opinions and concerns during development of a SIP.

Discussion of Major Comments

Agency certification

Major substantive comments were received on the portions of the proposed regulations for agency certification under Section 174. Some commenters identified a need for provisions in the regulations to allow for changing the certified agency, particularly if requested by elected officials of local governments. EPA agrees that, in order to accommodate changes in responsibilities for plan developments, there is a need for procedures to allow a change in the agency certified. In addition, a Governor may initially have certified a State agency as the lead planning agency. Because State agencies will not be eligible for funding under section 175 of the Act, unless local officials maintain control over use of the funds, certification of an organization more directly representing local officials may prove desirable. A new § 51.241(f) has been added to allow changing the certified agency.

One commenter suggested a need for regulations to provide for certification of a lead planning agency where the status of an area changes from attainment to nonattainment for carbon monoxide or ozone. A new § 51.241(e) has been added outlining procedures that shall be used in those situations.

Another commenter suggested that, in order to assure that concerns of all participants in the agency certification

process have been addressed. EPA should circulate a description of concerns raised by participants under § 51.241(d). EPA believes that this issue deserves attention in the regulation. However, we believe that the issue is adequately addressed by making the information submitted by the Governor under § 51.241(d) available for public review in the appropriate EPA Regional Office. Language has been added to § 51.241(d) to enable such review.

Consultation Process—Objectives

Under the approach in the proposed rule, State and local governments would have the responsibility for determining the mechanisms and procedures that should be used to provide for adequate consultation. Objectives for the process were included in the proposal. Most commenters stated that they believed the objectives of the consultation process were appropriate. However, some commenters disagreed with the approach and maintained further, procedural guidance will be needed to insure that the objectives are given adequate and serious consideration. EPA has retained the proposed approach in the final rule. A process of consultation is now more specifically defined in these regulations because a satisfactory process may vary depending upon the program or action affected and upon established channels of communication within each State and local area. However, in response to comments, additional clarifying language has been added to the objectives to indicate that (1) the information and education requirement in § 51.243(a) applies to the revision of all SIP elements listed in § 51.244, and (2) the opportunity for involvement of affected governmental organizations and elected officials must be provided on a regular and frequent basis in the development of all elements of the revised SIP which affect their area.

One commenter requested clarification as to who has final authority under § 51.243(c) to resolve key issues. EPA believes that this decision should be left to the affected State and local governments developing the consultation process. Another commenter requested that requirements be included for providing information and education on such topics as planning alternatives under consideration, groups of measures that form alternative strategies, and the effects of alternatives in local areas. EPA has partially incorporated this suggestion by specifying that information must be provided on all elements listed in § 51.244. EPA believes that the more detailed guidance suggested is unnecessary given the requirements of section 172(b)(9) of the Act and the recommendations in the EPA-DOT "Transportation-Air Quality Planning Guidelines."

A number of comments addressed the scope and extent of the consultation process. One commenter noted that it would be inappropriate to involve local officials in the stationary source control portions of a SIP. Other commenters suggested that the consultation process should apply only to the substantive portions of plan revisions and that the EPA rule should not affect basic procedures and functions of local agencies (e.g., intra-agency preconstruction reviews, local governing or hearing board decisionmaking, or local rule changes). In response to these comments, EPA emphasizes that the consultation requirements do apply to stationary source review procedures, but only to affected governmental agencies and individuals. This intent has been clarified in both §§ 51.243(b) and 51.245.

One commenter suggested that the determination of the proportion of emission reductions to come from stationary and from mobile sources should be included among the key issues to be jointly resolved by State and local officials under § 51.243(c). This suggestion has been incorporated into the final rule. Other examples have also been added to help clarify the type of issues that should be jointly resolved.

Plan Elements Affected

Several commenters requested clarification of the definition of "direct" sources in § 51.244(a). In response to these comments, EPA has substituted the words "major stationary" for "direct." The exact definition of "major stationary source" will depend on the status of the area and type of planning (see, e.g., sections 169(1), 169A(g)(7), and 302(j) of the Act).

Other commenters questioned whether the affected plan elements included all the requirements in section 172, and whether the consultation process applied to all revisions in attainment and nonattainment areas. This has been clarified in a new § 51.244(g) which indicates that consultation is required during development of any measure required under Part C or Part D of the Act. A related comment suggested listing a new plan element, public participation, in § 51.244. This addition would require use of a consultation process in development of programs to adequately inform the public about the air quality planning process and involve them in the process. EPA believes that consultation in the development of public participation aspects of any of the measures or procedures listed under § 51.244 is a legitimate requirement, but that it is unnecessary to list public participation separately.

Organizations and Officials To Be Consulted

A substantial number of comments were received that pointed out that the "intergovernmental consultation" required in sections 121 and 174 of the Act does not include consultation with public interest organizations. These commenters indicated that consultation with special interest groups would be an enormous administrative burden to State and local agencies. Other commenters suggested expanding the involvement of interest groups to include private business entities and major community organizations. EPA has determined that sections 121 and 174 apply only to consultation among governmental organizations and elected officials. However, sections 108(e)(4) and 172(b)(9) of the Act, and the EPA-DOT "Transportation—Air Quality Planning Guidelines" do require public involvement in the SIP revision process. The final rule has been amended by deleting the requirement for public interest group involvement in § 51.245(e), but specifically including these groups, as well as other affected interest groups, in § 51.251(a).

One commentator emphasized the fact that the consultation process is particularly important because different State, local and areawide agencies may be responsible for development, implementation and enforcement of a SIP. Several types of governmental agencies commented that their interests and responsibilities would be affected by the SIP and that they should, therefore, be included in any consultation process established. These comments are reflected in the final regulation which has been expanded to require an opportunity for participation in the consultation process of State, local and areawide agencies with implementation or enforcement responsibilities. Agencies specifically mentioned include health planning agencies, community and economic development agencies, and manpower planning agencies. A related comment indicated that the provision for inclusion of State, local and areawide transportation planning agencies in the consultation process should be expanded to specifically include State

highway and transportation departments, as well as local transit authorities and agencies. EPA believes such specificity is unnecessary. The general reference to "transportation planning" agencies encompasses all these organizations.

Resolution of Disputes

One commenter addressed the need to include procedures to enable local officials to appeal to Federal officials to set aside a plan, or portion thereof, for lack of adequate consultation. Section 121 of the Act specifically provides that local or regional governmental agencies adversely affected by action of the Administrator approving a plan may petition for judicial review of such action on the basis of violation of the consultation requirements. However, EPA believes that procedures should be provided to encourage resolution of disputes out of court. Therefore, a new § 51.247 including such procedures has been added to the continuing consultation process regulations. Subsequent subsections have been renumbered.

Relationship With Other Programs

A major concern raised by some commenters was that the requirement for coordination with other programs is unnecessary and duplicative of existing review procedures required by Circular A-95 of the Office of Management and Budget. EPA intends that, where possible, existing procedures should be used to ensure the necessary coordination. Clarifying language has been added to §§ 51.248 (a) and (b) (§ 51.247(a) and (b) in the proposed rule) to emphasize this intent.

One commenter questioned how conflicts will be resolved under § 51.248(a) (originally § 51.247(a)) if an agency disagrees with another agency as to whether its programs substantially affect or are affected by the SIP. EPA believes State and local governments should establish appropriate mechanisms for resolving such disagreements within the framework of the consultation process (e.g., through memoranda of understanding, as indicated in § 51.248(b)).

Another agency commenting on these regulations pointed out procedural problems associated with coordination with other planning and management programs. Specifically, some transportation, solid waste, and other plans are only updated at multi-year intervals. Thus, existing plans may be outdated and consideration of planning objectives in those plans or determining conformity of those plans with the SIP may be meaningless and futile. EPA recognizes that coordination may present problems in these situations and will certainly consider these problems when reviewing the coordination procedures developed under this regulation. However, EPA believes that, in light of the conformity requirement in section 176(c) of the Act, the requirement is, nervertheless, valid and necessary. State and local government agencies, which are familiar with planning and programming schedules of affected agencies, are in a better position than EPA to develop coordination and conformity determination procedures which account for different planning cycles, yet insure the necessary coordination.

A-95 Clearinghouse Review

The major comments related to the A-95 Clearinghouse Review section of the regulation concerned who has responsibility for insuring this revew and when the review sould occur (e.g., before or after public hearings, as sections of SIP are drafted, or when the entire SIP is complete). In response to the first issue, clarifying language has been added to §51.251 (§ 51.250 in the proposed rule) indicating that the governmental organization responsible for developing the SIP is also responsible for submitting the draft plan the A-95 clearinghouse and considering comments raised during A-95 review. With respect to the timing issue, language has been added indicating that the draft plan (or portions thereof) shall be submitted to the A-95 clearinghouse either prior to or concurrent with announcement of the public hearing on the plan. EPA believes this approach is consistent with existing A-95 review procedures and will best insure timely submittal of SIP Revisions to EPA.

Discussion of Miscellaneous Comments

EPA does not agree that the proposed rule would be improved by the suggestions of some commenters and has rejected the following comments for the reasons noted.

Two commenters questioned the need for the requirements for agency certification because section 174 of the Act does not require EPA to promulgate regulations, and agency certifications have already occurred in most nonattainment areas to which the requirements in section 174 apply. No changes have been made in response to these comments because (1) certifications have not been made for all affected areas, (2) section 301(a)(1) of the Act authorizes the Administrator to prescribe such regulations as may be necessary to carry out his functions in administering the Act and (3) section 172(b)(9) of the Act requires that the SIP Revisions evidence "public, local government and State legislative involvement and consultation in accordance with section 174." The Administrator has determined that the actions and information required by these regulations are necessary in order to insure compliance with sections 172(b)(9) and 174. Furthermore, as indicated above, because of comments received, EPA has determined that the agency certification process may be a continuing one, i.e., there should be provisions for changing certifications and for making new certifications if situations change (e.g., an attainment area becomes a nonattainment area). Therefore, EPA believes these regulations are valid and necessary.

Other comments concerning the agency certification process raised issues which are beyond EPA's legal authority under the Act. For example, one commenter suggested that the regulations for implementing section 174 should apply to all lead planning organizations, and not be limited to lead agencies in carbon monoxide photochemical or oxidant nonattainment areas. Another commenter suggested that EPA set a deadline by when Governors must act on certification of locally designated lead agencies. If the Governor has taken no action by that date, EPA could consider the locally designated agency eligible for funding under section 175.

One commenter suggested that EPA place an affirmative duty on the States to encourage local designation of lead agencies, including a duty to educate local officials so that they can participate meaningfully in the designation process. EPA believes that this suggestion is adequately addressed in both section 174 of the Act and in § 51.241 (a) and (b) of this regulation which give local governments the initial opportunity to act and require the Governor to consult with local governments before certifying a lead agency.

One commenter indicated the consultation is not required under section 113 of the Act and should not be required in this regulation. However, section 121 specifically states that the consultation requirements apply to activities under section 113(d).

One commenter asked for clarification concerning the definition of "Federal land manager," particularly whether the phrase included managers of Federal facilities. This term is defined in section 302(i) of the Act and clearly does not

include Federal facility managers. Another commenter indicated that the Secretary of Agriculture has designated the Chief of the Forest Service as the Federal land manager for Forest Service lands (see 7 CFR, subtitle A, Part 2) and requested that EPA state that the Federal land manager for Forest Service lands is the Regional Forester having authority over the affected lands. EPA believes it is inappropriate to include the suggested specificity in this regulation, but believes affected agencies should be aware of this delegation of authority.

One commenter suggested that the words "and where possible" be deleted from § 51.248(a)(2)–(4) (§ 51.247(a)(2)–(4) in the proposed rule). This provision requires integration of work programs, use of common policy advisory boards, and common public participation and information programs. EPA believes that an absolute requirement would be unreasonable and might in some cases, preclude use of existing procedures for coordinating with other programs. Therefore, EPA has determined that the coordination requirement is sufficient.

One commenter indicated that A–95 review for some matters (e.g., compliance orders and new source review) would be inappropriate. Because other commenters indicated that A–95 review would be quite appropriate for such elements as preconstruction review, no change was made in the final rule.

Some comments disputed EPA's contention that the regulation will not require an appreciable increase in resources and therefore does not meet the minimum criteria for significant regulations requiring a regulatory analysis under Executive Order 12044. EPA disagrees because (1) these regulations are procedural in nature and affect mainly governmental personnel; (2) existing consultation procedures should be used, wherever possible; and (3) funds available under section 175 may be used to develop or modify the required procedures.

Final Action

The following regulations are nationally applicable. Therefore, under section 307(b)(1) of the Act, judicial review may be sought only in the U.S. Court of Appeals for the District of Columbia. Petitions for review must be filed on or before August 17, 1979.

As noted above, these regulations are procedural in nature and affect mainly governmental personnel. Because the required level of effort will not necessitate an appreciable increase in resources, these regulations do not meet the minimum criteria for significant regulations requiring a regulatory analysis as described in Executive Order 12044.

SIP revisions for nonattainment areas must be submitted to EPA by January 1, 1979. The procedures required by these regulations must be included in those plans. Therefore, the Administrator finds good cause for making these regulations effective on the date of publication.

As part of EPA's "sunset" policy, EPA will evaluate this regulation five years after the date of publication. This evaluation will assess the implementation of the regulation in terms of effectiveness, costs and benefits, and alternatives for achieving the same objectives.

Dated: May 25, 1979.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 51, is amended as follows:

1. Sections 51.21 and 51.58 (b)–(h) are revoked and reserved.

2. Section 51.61, paragraph (d) is revised to read as follows:

§ 51.61 AQMA plan: Submittal format.

* * * * *

(d) AQMA plan. Applicable information required under §§ 51.52(b), 51.53, 51.54, 51.55, 51.56, 51.58, 51.59, 51.60 and Subpart M.

* * * * *

3. In § 51.63 paragraph (a) the reference to "51.58(h)" is deleted from the first sentence.

Subparts E–L [Added and Reserved]

4. New subparts E to L are added and reserved.

5. A new Subpart M is added as follows:

Subpart M—Intergovernmental Consultation

Agency Certification

Sec.

51.240 General plan requirements.
51.241 Nonattainment areas for carbon monoxide and ozone.
51.242 (Reserved).

Continuing Consultation Process

51.243 Consultation process objectives.
51.244 Plan elements affected.
51.245 Organizations and officials to be consulted.
51.246 Timing.
51.247 Hearings on consultation process violations.

Relationship of Plan to Other Planning and Management Programs

51.248 Coordination with other programs.
51.249 (Reserved).
51.250 Transmittal of information.
51.251 A–95 clearinghouse review.
51.252 Summary of plan development participation.

Authority: Secs. 110, 121, 174(a), 301(a) Clean Air Act as amended (42 U.S.C. 7410, 7421, 7504, and 7601(a)).

Agency Designation

§ 51.240 General plan requirements.

Each State implementation plan must identify organizations, by official title, that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations. The plan shall include any related agreements or memoranda of understanding among the organizations.

§ 51.241 Nonattainment areas for carbon monoxide and ozone.

(a) For each AQCR or portion of an AQCR in which the national primary standard for carbon monoxide or ozone will not be attained by July 1, 1979, the Governor (or Governors for interstate areas) shall certify, after consultation with local officials, the organization responsible for developing the revised implementation plan or portions thereof for such AQCR. The procedures described in the "Section 174 Guidelines" issued jointly in December 1977 by EPA and the Department of Transportation should be consulted in this process. These guidelines are published as Appendix U to Part 51.

(b) The Governor shall certify an organization of elected officials of local governments designated by agreement of affected general purpose local governments unless no agreement was reached by affected local governments by February 7, 1978, or the locally designated organization does not meet the criteria for a lead planning organization contained in the "Section 174 Guidelines." In making the certification, the Governor shall take into consideration any ongoing process of local designation in existence on February 7, 1978. The certification shall be in accordance with the joint determination of responsibilities for plan development, implementation, and enforcement required by section 174(a) of the Clean Air Act, as amended.

(c) The Governor shall certify, where feasible, the metropolitan planning organization responsible for the continuing, cooperative, and comprehensive transportation planning process required under 23 USC 134 and the Urban Mass Transportation Act; the organization responsible for air quality maintenance planning; or the

organization responsible for both. In determining the feasibility of certifying such an organization, the Governor shall also consider whether the organization gives adequate representation to local elected officials of general purpose governments and has areawide planning responsibilities in other Federal environmental or planning programs which could contribute to integration and consolidation of planning functions. Where possible, preference should be given to organizations with several program responsibilities, such as comprehensive planning or water quality management. Attention is directed to Part IV of the Office of Management and Budget Circular A-95 (41 FR 2050) which encourages the designation of established, substate comprehensive planning agencies as the agencies to carry out Federally assisted or required areawide planning.

(d) The Governor shall submit the following information to the Administrator of the EPA through the appropriate EPA regional office. The information shall be made available for public review at the regional office.

(1) A list of all air quality planning organizations certified pursuant to section 174 within the State.

(2) A description of the geographic jurisdictions of these organizations by AQCR, or portion thereof.

(3) A general description of the responsibilities of the certified organizations.

(4) A brief discussion of the alternatives investigated for consolidation of environmental and other planning functions, and the basis for the selection of the certified organization.

(5) A brief description of the consultative process leading to the selection of a certified organization, including the disposition of significant concerns raised by participants.

(e) Within 60 days following a redesignation, pursuant to section 107(d) of the Clean Air Act, as amended, to nonattainment of any AQCR or portion of an AQCR designated as attainment or unclassifiable for the national primary standard for carbon monoxide or ozone the State and elected officials of affected general purpose local governments shall jointly determine their respective responsibilities in developing, implementing, or enforcing portions of a revised implementation plan. The Governor shall certify, within the 60-day period and after consultation with local officials, the organization responsible for developing the revised plan or portions thereof for such area. The procedures in the "Section 174 Guidelines" should be consulted in the joint determination of responsibilities and in the certification of the organization. The organization certified by the Governor shall be a locally designated organization unless agreement among local officials cannot be achieved in time to make the certification within the 60-day period. If no agreement is reached, the Governor may then, after consultation with local officials, certify an organization of local officials or a State agency. The implementation plan submitted within nine months after an area is designated nonattainment shall include the information listed in § 51.241(d)(1)–(5).

(f) An organization certified under the provisions of this section shall remain certified until the Governor, after consultation with elected officials of local government in a nonattainment area, certifies another organization. Elected officials of local government may make written request to the Governor to change the certified organization for an area. The request shall contain the reasons for the proposed change and the replacement organization proposed for certification. The Governor shall consider such requests and, if he or she finds that the reasons are compelling, shall send a notice of the proposed change to the Regional Administrator, the chief official of the organization to be replaced, and elected officials of major general purpose local governments in the nonattainment area. The notice of proposed change shall include the reasons for the change, the effective date of the change, the effects of the change on development of necessary implementation plan revisions, and a revision of the joint determination of responsibilities developed pursuant to section 174(a) of the Clean Air Act, as amended. The notice of proposed change shall be made available for public review in the affected area for at least 30 days before becoming effective.

§ 51.242 [Reserved]

Continuing Consultation Process

§ 51.243 Consultation process objectives.

Any governmental organization that has the lead responsibility for development of one of the State implementation plan elements listed in § 51.244 shall provide for a continuing intergovernmental consultation process in carrying out those responsibilities. All affected governmental organizations should, to the extent feasible, be involved in the development of the process. Already established consultation processes, such as those established under § 51.241, may be used, and supplemented if necessary, to meet the requirements of this subpart. A satisfactory consultation process must include provisions to meet the following objectives:

(a) Provide for information dissemination to and education of relevant organizations and individuals on, at least, all elements of the State implementation plan identified in § 51.244.

(b) Provide an opportunity for regular and frequent involvement of affected governmental organizations and elected officials in development of all elements of the revised State implementation plan which affect their area.

(c) Provide an opportunity for joint resolution by affected governmental organizations and individuals of key issues in the development of the revised implementation plan. Key issues include determination of the proportion of emission reductions to come from stationary and mobile sources; selection of mobile and stationary source control strategies; and determination of responsibilities among State and local governments for implementation and enforcement, particularly where commitment of local resources will be necessary.

§ 51.244 Plan elements affected.

The consultation process must ensure consultation during preparation of the following measures:

(a) Procedures for preconstruction review of major stationary sources of air pollution. Preparation of such procedures includes the development of allocation programs for allowable emission increments for attainment areas and growth increments or banked emission reductions for nonattainment areas.

(b) Transportation-related planning procedures and control measures.

(c) Procedures and control measures, other than those related to transportation, applicable to nonattainment areas.

(d) Measures for prevention of significant deterioration of air quality, and protection of visibility in Federal Class I areas.

(e) Air quality maintenance measures.

(f) Delayed compliance orders described in section 113(d) of the Clean Air Act, as amended, August 1977.

(g) Any other measures required under Part C or Part D of the Act.

§ 51.245 Organizations and officials to be consulted.

A continuing intergovernmental consultation process established in

accordance with § 51.243 shall ensure the involvement of the following organizations or individuals whenever the interests for which they are responsible are directly or indirectly affected:

(a) State, areawide, and local agencies responsible for air pollution control, health planning, transportation planning, energy planning, manpower planning, economic and community development, housing planning, coastal zone management, solid waste management, and water quality management;

(b) Elected officials of local government.

(c) Federal land managers having authority over lands affected by State implementation plans.

(d) Any other affected governmental organizations that may be responsible for implementing or enforcing the plan element being developed.

§ 51.246 Timing.

The continuing intergovernmental consultation process shall apply to any measure related to the plan elements in § 51.244 adopted after December 18, 1979. The State implementation plan shall be revised to provide an opportunity for Federal, State and local involvement in such a consultation process no later than December 18, 1979.

§ 51.247 Hearings on consultation process violations.

(a) Where a majority of elected officials of any local government affected by a plan element listed in § 51.244 contend that they have been improperly excluded from consultation on that element, they may petition the EPA Regional Administrator to hold a hearing on the matter. Upon receipt of the petition, the Regional Administrator shall request from the responsible State agency a formal response to that petition. After evaluation of the State's response to the petition, the Regional Administrator shall make a determination whether to hold a hearing. If a hearing is held, the transcript and the State's response shall be forwarded to the Administrator for consideration when approving or disapproving the plan elements. If no hearing is held, the Regional Administrator's determination, together with the State's response, shall similarly be forwarded to the Administrator.

(b) The other organizations or individuals involved in preparing the plan element or otherwise affected by it shall be given notice of the hearing and afforded an opportunity to participate in it.

Relationship of Plan to Other Planning and Management Programs

§ 51.248 Coordination with other programs.

(a) A governmental organization that has a major responsibility for developing any of the State implementation plan elements listed in § 51.244 shall coordinate with other planning and management programs substantially affecting or affected by such elements through the development of procedures, or the use of existing procedures, to ensure the following:

(1) Use of common data.

(2) Coordination, and where possible, integration of work programs.

(3) Use, where possible, of common public participation and information programs.

(5) Incorporation of appropriate air quality criteria as a factor in other planning and management programs.

(6) Consideration of other community objectives in development of air pollution control strategies.

(b) The coordination procedures shall include a process for determining conformity between the State implementation plan and other plans and programs, such as those pertaining to transportation, land use, solid waste, water quality, or community development, substantially affecting or affected by the implementation plan. Existing procedures should be used, where feasible. The State implementation plan shall include a list of any memoranda of understanding developed, as part of that process, among the agencies responsible for development, implementation, or enforcement of air quality plans. The provisions of items 3a through d, Part IV of the Office of Management and Budget Circular A–95 shall be considered in the preparation of memoranda of understanding.

§ 51.249 [Reserved]

§ 51.250 Transmittal of information.

Each plan shall provide assurances that the governmental organization having primary responsibility for implementing national ambient air quality standards in any AQCR, or portion thereof, will promptly transmit to other organizations having similar or related responsibility in the same or other States, information on factors (e.g., construction of new industrial plants) which may significantly affect air quality in any portion of such AQCR or in any adjoining AQCR.

§ 51.251 A–95 Clearinghouse review.

The organization responsible for developing the State implementation plan revision shall submit a draft of any major implementation plan revision including any of the six elements listed in § 51.244 to the cognizant State and areawide clearinghouses as established under the Office of Management and Budget Circular A–95, for review and comment for a period of 45 days. The draft plan, or portions thereof, shall be submitted to the A–95 clearinghouse either prior to or concurrent with announcement of public hearings on the plan. Comments received from the clearinghouse within that 45-day period shall be considered. The organization initiating the plan revision shall retain copies of these comments for inspection by the Administrator and the public.

§ 51.252 Summary of plan development participation.

An organization with responsibility for the development of all or a portion of the implementation plan elements listed in § 51.244 shall include in the plan:

(a) A summary of the procedures used to involve the general public, public and special interest groups having a major interest in the program, local and areawide governmental organizations, elected officials of local governments, State agencies and the State legislature, and Federal land managers in the development of the plan revision.

(b) A discussion of any significant comments raised during the consultation process, including those received in the A–95 clearinghouse or in any public hearing held on the plan. The discussion shall include a description of the final disposition of such points.

Clean Air Act Section 174 Guidelines

Guidance on Designation of Lead Planning Organizations for Nonattainment Areas and on Determination of Interagency Responsibilities, December 1977, *Issued Jointly by The U.S. Environmental Protection Agency and The U.S. Department of Transportation Washington, D.C.*

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Appendix A. List of Key Dates.

Appendix B. Section 174.

General questions on any of the material covered by this guideline should be sent to the Office of Transportation and Land Use Policy (AW-445), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Attention: Ms. Martha Burke. Ms. Burke's telephone number is (202) 755-0570. Questions concerning specific state or local areas should be directed to the appropriate EPA regional office.

1. Introduction

1.1 Applicability.

These guidelines are applicable to all metropolitan area regions or portions of regions where the national ambient air quality standards for photochemical oxidants or carbon monoxide will not be attained by July 1, 1979.

1.2 Purposes.

The purposes of these guidelines include:

1. To recommend procedures and criteria for determining a lead agency to be responsible for coordinating the preparation of the implementation plan revisions called for by the 1977 amendments to the Clean Air Act (Pub. L. 95-95) in metropolitan area regions where carbon monoxide or photochemical oxidant standards will not be attained by July 1979.

2. To assist state and local governments in identifying the initial planning, implementation, and enforcement responsibilities for the plan revisions and in establishing a process for further definition of responsibilities as development of the revisions progresses.

3. To encourage further coordination and consolidation of federally sponsored planning programs. This includes the integration of the new transportation related air quality requirements under Pub. L. 95-95 into the transportation planning process required by federal transportation grant statutes.

1.3 Background.

On August 7, 1977, President Carter signed into law the first comprehensive amendments to the Clean Air Act since 1970. Among the more important changes in the Clean Air Act are provisions encouraging local governments and organizations of local elected officials to assume additional responsibilities in the development, implementation, and enforcement of plans to attain national ambient air quality standards. Such plans were first required under the 1970 amendments to the Clean Air Act. The 1977 amendments require plan revisions for areas where standards have not been attained.

The assumption of additional responsibilities by local governments and local officials is specifically encouraged in those areas where photochemical oxidant and carbon monoxide standards will not be attained by July 1, 1979 (section 174(a)). The first identification of nonattainment areas for these and other pollutants under the requirements of the 1977 amendments must have been made by states by December 5, 1977. The Administrator of the Environmental Protection Agency (EPA) must publish a list of these areas, with any modifications he deems necessary, by February 3, 1978.

For areas where standards for photochemical oxidants and carbon monoxide will not be attained by July 1, 1979, state and local elected officials must jointly determine by February 7, 1978, their respective responsibilities for the plan revisions necessary to attain standards by the new deadlines in the 1977 amendments. The plan elements for which responsibilities are to be jointly determined encompass control measures for all pollutants for which standards have not been attained, not just photochemical oxidants and carbon monoxide.

The amendments require that, where possible, the implementation plan revisions be prepared by an organization of local elected officials designated by agreement of local governments. The amendments strongly encourage preparation by the organization now responsible for transportation planning under section 134 of title 23, U.S.C., or for air quality maintenance planning (or for both). The designated organization and its responsibilities must be certified by the state (or states if an interstate area is involved). Where local governments have not reached agreement by February 7, 1978, the governor must, in consultation with the elected officials of local governments in the affected area, designate an organization of local elected officials or a state agency to prepare the plan revisions. The designation by the governor must be in accordance with the joint determination of responsibilites made by state and local elected officials.

The governor must, under regulations which the EPA will propose during December 1977, submit a notice to the EPA certifying the designated agency for each nonattainment area or identifying the organization that he or she has designated. The notice must include a brief summary of the process involved in selecting the designated agency. A more detailed documentation of the selection process shall be included as part of the plan revisions to be submitted to the EPA by January 1, 1979. Evidence of the involvement of state legislatures and local governments is required as part of the plan revision submittal (section 172(b)(9)).

Only organizations of local elected officials of general purpose governments certified by the governor will be eligible for the grants authorized under section 175 of the amendments. In each urban area which is wholly or partially classified as a nonattainment area, only one organization will be eligible to receive a grant. The organization receiving the grant may use the grant funds to support plan revision activities carried out by other governmental organizations, public interest groups, or private consultants.

In addition to further defining the process for implementation of the Clean Air Act amendments, the EPA and the Department of Transportation also encourage in these guidelines further coordination and consolidation of federally sponsored planning programs. Such encouragement is consistent with President Carter's Environmental Message of May 1977 and with subsequent actions taken by the President to eliminate, consolidate, or simplify federal planning requirements. The Environmental Message in part stressed the need for improved implementation of environmental laws through more efficient delivery of federally funded programs. The encouragement for coordination and consolidation does not imply the advocacy of any particular institutional mechanism. A wide variety of mechanisms ranging from concentration of authority or responsibility in a single organization to development of memoranda of understanding among several organizations are available to achieve the same objectives.

2. Selection of a Lead Planning Organization

2.1 Criteria for Selecting an Organization.

These guidelines are intended to assist state and local officials in reaching agreement on the lead planning organization to be responsible for plan revisions called for by the 1977 Clean Air Act amendments. The role of the lead planning organization may vary from developing almost all elements of the plan revision to acting as a forum for decisionmaking by elected officials on elements developed almost entirely by other organizations. In most instances the lead organization will probably develop some elements, coordinate the development of other elements, and serve as a forum for deciding the ultimate nature of the plan revisions.

The amendments require that, where feasible, the organization designated and certified to prepare the plan revisions shall be (1) the metropolitan planning organization (MPO) responsible for the continuing, cooperative, and comprehensive transportation planning process for the affected area; (2) the organization responsible for the air quality maintenance planning process; or (3) an organization responsible for both planning processes. Coordination of the development of a plan revision with the MPO transportation planning process is particularly important in those nonattainment areas where transportation control measures appear necessary to attain standards. Only through the MPO process can the federal funds available under Federal Highway Administration and Urban Mass Transportation Administration programs be used to implement necessary transportation management measures and capital projects.

The Administrator of the EPA also strongly encourages that, in addition to meeting the requirements described above, the designations made pursuant to section 174 contribute to a consolidation within a single organization of responsibilities for air quality planning and for other environmental planning carried out under federal laws administered by the EPA. These laws include the Federal Water Pollution Control Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. The EPA believes that, where properly applied, consolidation of environmental planning efforts is an essential step in the development of comprehensive environmental strategies that are able to take into account the interrelated nature of environmental

problems. Comprehensive strategies can also result in a more efficient and effective use of resources in achieving environmental benefits.

The following criteria should be considered by local elected officials and by the governor when determining the lead planning organization for urban nonattainment regions:

1. The organization should be the forum for cooperative decisionmaking by principal elected officials of general purpose local governments. The principal elected officials of general purpose local governments should have adequate (preferably majority or larger) representation in the organization but membership need not be limited to them or their designees. There should be participation by agencies that may be responsible for implementation of portions of the plan.

2. The organization should have a planning jurisdiction that includes the current urbanized area and the area likely to be urbanized at least over the period to be covered by the revised plan.

3. The organization should have the ability to produce the necessary plan revision for the planning jurisdiction described above by the January 1, 1979 submittal deadline. The organization should have the capability to perform the necessary analysis and planning tasks itself or be able to enter into binding agreements with other organizations to perform such tasks.

4. The organization should have the capability to coordinate the development of the plan revision with other relevant planning processes, if it does not have responsibility for those processes, and with agencies that may have responsibility for implementation or enforcement. Relevant planning processes include the continuing, cooperative, and comprehensive planning process; other environmental planning processes assisted through EPA-administered programs; and comprehensive planning processes established in accordance with Part IV of the Office of Management and Budget Circular A-95 (41 FR 2052).

2.2 The Selection Process.

Local governments within a nonattainment area for photochemical oxidants or carbon monoxide may, by agreement, designate an organization of elected officials of local government to prepare the plan revision for the pollutants for which standards in that area have not been attained. A resolution by the governing body of an organization meeting the criteria in section 2.1 of these guidelines is sufficient to demonstrate agreement of local governments. Such a designation must be submitted to the governor by February 7, 1978. Local governments intending to designate an organization should consult with the state during the designation process.

If local governments agree on an organization by February 7, 1978, the governor shall certify that organization by April 1, 1978, unless he or she finds that the designated organization does not meet the criteria in section 2.1. If local governments have initiated, but have not completed, designation of an organization by February 7, 1978, they should inform the governor that an on-going process exists.

If local governments are unable to agree by February 7 on a single lead organization of local elected officials to be responsible for the coordination of the plan revision, the governor shall, in consultation with local elected officials of general purpose local governments, designate an organization or a state agency by April 1, 1978. If more than one organization meeting the criteria in section 2.1 is self-designated in an area and proposed to the governor for certification, the governor shall certify the organization which, in his or her opinion, is most capable of completing the required plan revisions.

The governor may designate a state, local, or regional agency, but that designation shall be in accordance with the joint determination of responsibilities required by section 174 of the Clean Air Act amendments and discussed in the following section of these guidelines. In making a designation, the governor shall take into consideration any on-going process of local designation in existence on February 7, 1978, even though no formal agreement among local governments has been reached.

The governor shall submit to the Administrator of the EPA by April 1, 1978, through the appropriate EPA regional office, a list of all organizations or agencies certified or designated within the state, a description of the geographic jurisdictions of these organizations and agencies, and a general description of their responsibilities. Regardless of the agency finally designated or certified, the decisions should reflect an examination of all reasonable alternatives for consolidation of environmental and other planning functions. The submission should include a brief discussion of the alternatives investigated and the basis for the ultimate choice. If the organization designated or certified by the governor is not one of the organizations encouraged by the amendments and by the Administrator in these guidelines, the reasons that such an organization should not have the lead responsibility for planning should be specifically addressed. More detailed descriptions, including documentation of the consultation that occurred, shall be submitted by January 1, 1979 with the implementation plan revision.

3. Joint Determination of Responsibilities

3.1 Joint Determination Process.

The determination of responsibilities made jointly by state and local elected officials will necessarily have to be relatively general for many areas. The nature and extent of the air quality problem may not be adequately defined by the February 7, 1978 deadline specified in the amendments. In addition, the planning process guidelines for photochemical oxidant and carbon monoxide nonattainment areas, required to be prepared by the EPA also by February 7, will not be available for consideration in the joint determinations. The nature of the process recommended in the EPA guidelines should influence the ultimate determination of responsibilities.

Because agency responsibilities, especially for plan implementation and enforcement, will undoubtedly change or become more specific by the time a plan revision is actually submitted to the EPA for approval, the determination of responsibilities should be viewed as a process, the first phase of which is to be completed by February 7, 1978. The final product of the joint determination process should be included as part of the plan revision submitted by January 1, 1979. Possible steps in this phased process are set forth below. Because institutional arrangements differ from region to region and from state to state, specification of a generally applicable process for joint state-local determination of agency responsibilities is not possible.

Many state and local governments already have initiated such a process. As long as the approach taken provides for substantial involvement of all parties—local governments, regional agencies, and states—and results in the identification of agencies and responsibilities as described in these guidelines, such an existing process is sufficient to meet the requirements of section 174(a). The activities described in the following section should be completed by February 7, 1978 to comply with the requirements of section 174.

3.2 Notification of Affected Governmental Organizations.

The state should, by correspondence or other established notification procedures, ensure that all affected governmental organizations within the nonattainment region are informed of the purpose and schedule of the joint determination process. In many instances, an entire state may be designated as a nonattainment area for photochemical oxidants. However, many control strategies will still generally focus on urban regions. As a minimum, the following organizations should be notified in each region:

a. General purpose local governments.

b. Organizations of local elected officials (including all metropolitan planning organizations).

c. Air pollution control agencies (including the agency or agencies responsible for air quality maintenance planning).

d. Areawide A-95 clearinghouses.

e. Areawide and statewide water quality planning agencies designated under section 208 of the Federal Water Pollution Control Act.

f. Areawide solid waste management agencies.

g. Areawide comprehensive planning agencies.

h. Coastal management agencies.

i. Interested citizen groups.

3.3 Establishment of a Determination Process.

The state should ensure the establishment of a process for determination of agency responsibilities that will provide state and local elected officials of all major political subdivisions within a region with an opportunity for substantial involvement and that will enable the concerns of these officials to be adequately addressed. This may be done through a variety of mechanisms including the establishment of task forces with state and local government

representatives and the use of public meetings or hearings with elected officials of all major general purpose local governments within the affected regions invited. Where appropriate, existing forums such as meetings of organizations of local elected officials or meetings of air quality maintenance policy advisory groups should be used in the determination process.

All state and local officials participating in the determination of agency responsibilities should have the opportunity to propose agencies and their respective functions. All proposals should be made available to affected agencies and the general public for comment.

3.4 Formal Indentification of Responsibilities.

The initial joint determination of responsibilities shall at a minimum establish which level of government (although not necessarily the specific agency)—the state, local governments, regional agencies or any combination of these—shall be responsible for: (1) the development of an accurate, comprehensive, and current emission inventory; (2) the completion of an air quality analysis, using modeling techniques, to determine the level of control needed to attain standards; and (3) the evaluation and selection of control strategies for mobile sources, point sources, and area sources. An initial assignment of responsibilities for implementation and enforcement must be considered. However, it is expected that the final determination of such responsibilities will occur after the measures to be included in the plan revision have been relatively well defined.

When agreement is reached among the state and the participating local elected officials, memoranda of understanding or other comparable joint acknowledgements of responsibilities should be signed. Because duties and responsibilities for implementation and enforcement of plan revisions may change as development of the plan revisions proceeds, the determination of agency responsibilities need not be incorporated in the state implementation plan until the revisions are submitted for federal approval. The initial determination of responsibilities made by February 7, 1978, to meet the requirements of section 174, should be submitted by April 1, 1978, to the EPA with the certifications of lead planning organizations discussed in section 2 of these guidelines.

Appendix A—List of Key Dates

Date	Action
August 7, 1977	Clean Air Act amendments are signed into law.
December 5, 1977	States identify nonattainment areas.
February 3, 1978	EPA publishes list of nonattainment areas.
February 7, 1978	Local governments designate organizations of local officials. State and local elected officials complete joint determinations of responsibilities.
April 1, 1978	Governors transmit to EPA certification of lead planning organizations and joint determinations of responsibilities.
January 1, 1979	Governors transmit to EPA plan revision for nonattainment areas.

Appendix B—Section 174

Planning procedures

42 USC 7504

Consultation

"Sec. 174. (a) Within six months after the enactment of the Clean Air Act Amendments of 1977, for each region in which the national primary ambient air quality standard for carbon monoxide or photochemical oxidants will not be attained by July 1, 1979, the State and elected officials of affected local governments shall jointly determine which elements of a revised implementation plan will be planned for and implemented or enforced by the State and which such elements will be planned for and implemented or enforced by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. Where possible within the time required under this subsection, the implementation plan required by this part shall be prepared by an organization of elected officials of local governments designated by agreement of the local governments in an affected area, and certified by the State for this purpose. Where such an organization has not been designated by agreement within six months after the enactment of the Clean Air Act Amendments of 1977, the Governor (or, in the case of an interstate area, Governors), after consultation with elected officials of local governments, and in accordance with the determination under the first sentence of this subparagraph, shall designate an organization of elected officials of local governments in the affected area or a State agency to prepare such plan. Where feasible, such organization shall be the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, or the organization responsible for the air quality maintenance planning process under regulations implementing this section, or the organization with both responsibilities.

"(b) The preparation of implementation plan provisions under this part shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23, United States Code, and the air quality maintenance planning process required under section 110, and such planning processes shall take into account the requirements of this part.

Ante, pp. 691–696

[FR Doc. 79-18767 Filed 6-15-79; 8:45 am]

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federal register

Monday
June 18, 1979

Part V

Department of Health, Education, and Welfare

Office of Education

Arts Education Program; Proposed Rulemaking

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 160g, 161c]

Arts Education Program

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commissioner of Education proposes to revise the regulations that govern the Arts Education Program as required by the Education Amendments of 1978.

The proposed regulations—

(a) Respond to the broadened eligibility provision in the legislation, which allows public and private agencies, organizations, and institutions, as well as State educational agencies (SEAs) and local educational agencies (LEAs), to compete for funds;

(b) Define new priorities and funding strategies; and

(c) Establish eligibility requirements and funding criteria for applications.

DATES: Comments must be received on or before August 17, 1979. A public meeting will be held on these proposed regulations in Washington, D.C. on May 30, 1979, from 3:00 to 4:30 p.m.

ADDRESSES: Comments should be addressed to Harold Arberg, Director, Arts and Humanities Staff, U.S. Office of Education, 400 Maryland Avenue, SW. (Room 3728, Donohoe Bldg.), Washington, D.C. 20202. The public meeting will be held in the auditorium, Room 1926, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lonna Jones, Arts Education Coordinator, Office of the Commissioner. (202) 472–5658.

SUPPLEMENTARY INFORMATION:

Background

The Arts Education Program provides the only Federal categorical support for arts education.

This support, at the elementary and secondary education levels, consists of:

(a) Competitive awards to SEAs, LEAs, and other public and private agencies, organizations, and institutions;

(b) Arrangements with the John F. Kennedy Center for the Performing Arts for model projects and programs in the performing arts for children and youth; and

(c) Arrangements with the National Committee/Arts for the Handicapped for model projects and programs for handicapped persons in all the arts.

These regulations address only the competitive grant awards under (a). Program arrangements with the Kennedy Center and the National Committee/Arts for the Handicapped, as well as technical assistance awards, will be funded by procurement contracts and are not part of these regulations.

Basis for Changes in the Regulations

Changes proposed in these regulations are based on the Commissioner's new priorities and funding strategies for the program, as well as the statutory changes.

The program focus, elementary and secondary arts education, is not altered by the amendments. However, the regulations establish new requirements that bring other levels of education, colleges, universities, and other community arts and educational resources, into partnerships with elementary and secondary schools.

Objectives

These regulations: (a) *Reaffirm the concept of the arts as an integral part of elementary and secondary curriculum.* The arts are often isolated from other areas of learning and from regular academic school programs. The law assumes that the arts should be essential and vital components of every student's education; that the arts provide students with useful insights into other areas of learning; and that a Federal program is appropriate to foster the interrelationship of the arts and education.

(b) *Clarify roles of the various applicants.* These proposed regulations establish requirements and criteria for a wide range of applicants.

The regulations establish minimum requirements ("elements") for cooperation to—

(1) Allow community resources, for example, museums, arts centers, artists, performers, parent groups, universities and colleges, to serve as arts resources for the schools;

(2) Strengthen SEA and LEA ties with State and community arts resources;

(3) Bring practicing professional artists into the retraining and development of teachers and administrators; and

(4) Encourage new approaches and initiatives from nonschool resources working cooperatively with SEAs and LEAs.

(c) *Set new funding strategies.* The approach until now has been to provide token or "seed" grants of $10,000 or less to as many States as possible. The new strategy concentrates funds on comparatively few projects, and these proposed regulations contemplate larger awards in fewer States. In order to encourage project commitment, the OE share of funding will be no more than 50 percent of project costs.

Funding priority will be given to those applicants who indicate capability to link together effectively existing school and community resources in support of school arts programs. This coordination will encourage increased interaction between schools and groups, cultural leaders, and others whose major focus is the arts.

(d) *Establish common criteria for all applicants.* The objective is to select projects with the greatest impact on elementary and secondary arts education, whether submitted by school or nonschool agencies.

(e) *Establish links with other Federal agencies.* The Commissioner chairs the Working Group on the Arts in Education, a subcommittee of the Federal Council on the Arts and the Humanities. Member agencies are: The National Endowments for the Arts and the Humanities, the National Institute of Education, the Institute of Museum Services, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the Smithsonian Institution, and the Office of Education.

The eight agencies in the group share a central obligation to promote national goals, and a common interest in reaffirming the centrality of the arts in education and in working together to clarify agency relationships in the field.

As a basis for interagency cooperation, and as a commitment to strengthening combined Federal resources for the arts in education, the Commissioner may convene the Working Group or another committee consisting of Federal Council member agencies to review or comment on applications. Applications may be considered for joint support by the Office of Education and other Federal agencies that are members of the Council.

How the Regulations Are Intended to Work

An application may be submitted in one of three funding categories. However, an applicant may be funded for only one project—whether proposed singly by the applicant or jointly with other applicants.

The funding categories are: (1) State—for statewide projects; (2) urban or large community—for projects in standard metropolitan statistical areas with access to cultural resources; and (3)

rural or small community—for projects in areas isolated from metropolitan environments with limited or no cultural resources.

Each of the three categories has specific application requirements that are addressed in the regulations. All projects must be designed to—

(1) Provide opportunities for all students in the schools served by the project to acquire skills in and through several arts media, including at least dance, music, theater, and the visual arts; and

(2) Integrate these disciplines into the regular eductional program of the schools, rather than to include the peripherally or as extra-curricular activities.

Each applicant shall provide for a project advisory committee broadly representative of State and local arts and educational resources. A State project shall use its official State arts education advisory committee, if one exists. A local applicant shall submit an information copy of its application to the SEA for a 30-day comment period.

The proposed regulations give examples of types of project activities for which an applicant may request support. The Commissioner may approve projects for a maximum of three years; however, renewals are subject to availability of funds and review.

Applications are judged in the following categories: needs assessment; coordination; project administration; and results, end products, or outcome. The Commissioner may add 10 points to the total score of an application to achieve geographic distribution and project diversity.

Requirements in EDGAR

The proposed regulations do not cover certain application requirements and grantee responsibilities that are part of the Education Division's General Administrative Regulations (EDGAR). EDGAR replaces the General Provisions or Office of Education Program Regulations. The following are among the items applicable to this program that will be explained in EDGAR:

How to apply for a grant.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee. Where appropriate, proposed regulations reference other key provisions of EDGAR.

Public Participation

The Office of Education will hold a public meeting on these proposed regulations May 30, 1979, at the U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. as part of the Commissioner's convocation on the Arts in Education, a one-day meeting of the three groups that comprise the Office of Education's Arts in Education Initiative. Participants in the Convocation will be:

(1) The Arts in Education Forum, a group of about 50 arts and educational association executives who serve national constituencies of arts administrators, teachers, principals, parents, community arts organizations, arts specialists, and artists;

(2) The Working Group for the Arts in Education of the Federal Council on the Arts and the Humanities, composed of eight Federal agencies with activities or programs in arts education;

(3) The Interbureau Task Force on the Arts in Education, Office of Education, composed of about 20 program officials from all OE bureaus.

A summary of the meeting transcript will be available after this meeting.

Invitation to Comment

Interested persons are invited to submit comments, suggestions, and recommendations to be considered prior to the issuance of final regulations.

Comments, suggestions, or recommendations may be sent to the address given at the beginning of this notice. All comments received on or before August 17, 1979, will be considered. They will be available for public inspection in Room 3728, Donohoe Building, 400 Sixth Street, SW., Washington, D.C. 20202, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday of each week except on Federal holidays.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance No. 13.566, Arts Education Program)

Dated: May 4, 1979.

Ernest L. Boyer,

Commissioner of Education.

Approved: May 25, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

PART 160g—[REDESIGNATED]

Part 160g, 45 CFR is redesignated as Part 161c and revised to read as follows:

PART 161c—ARTS EDUCATION PROGRAM

Subpart A—General

Sec.

161c.1 Arts Education Program.
161c.2 Eligible parties.
161c.3 Regulations that apply.
161c.4 Definitions.

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

161c.9 Program elements.
161c.10 Elements of cooperation.
161c.11 Eligible activities.
161c.12 Project duration.

Subpart C—How Is an Application Submitted?

161c.21 Limitation on number of applications.
161c.22 Joint application.
161c.23 Application requirements.
161c.24 State review of local applications.

Subpart D—How Is a Grant Made?

161c.31 How the Commissioner judges applications.
161c.32 Criteria for evaluation of applications.

Subpart E—What Conditions Must Be Met by a Grantee?

161c.41 Ongoing evaluation activities.
161c.42 Funding.
161c.43 Ineligible costs.

Authority: Title III, Part C, of the Elementary and Secondary Education Act, as amended by the Education Amendments of 1978, Pub. L. 95-561 (20 U.S.C. 2961).

Subpart A—General

§ 161c.1 Arts Education Program.

The Arts Education Program provides Federal financial assistance for the arts in elementary and secondary education.

(20 U.S.C. 2961)

§ 161c.2 Eligible parties.

(a) State educational agencies (SEAs), local educational agencies (LEAs), and nonprofit agencies, organizations, and institutions may apply for grants.

(b) Nonprofit agencies, organizations, and institutions may include, but are not limited to, libraries, museums, theaters, arts councils and centers, colleges and universities, performing arts groups, and parent, youth, and civic organizations.

(20 U.S.C. 2962)

§ 161c.3 Regulations that apply to the Arts Education Program.

(a) *Regulations for grants.* The following regulations apply to grants under the Arts Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 161c.

(b) *Regulations for procurement contracts.* The Commissioner may award contracts to carry out the purposes of the Act. The regulations in this part, however, do not apply to procurement contracts under the Arts Education Program. These contracts are subject to:

(1) Federal and HEW procurement regulations in 41 CFR Chapters 1 and 3; and

(2) Requirements and criteria in particular requests for proposals (RFPs) published in the *Commerce Business Daily.*

(20 U.S.C. 1221e-3, 2962)

§ 161c.4 Definitions.

(a) The definitions in Part 100c of the Education Division General Administrative Regulations (EDGAR) apply to these regulations, including the following terms:

Commissioner
Equipment
Facilities
Local educational agency
Nonprofit
State
State educational agency

(b) In addition, the following definitions apply in these regulations:

"Act" means the Arts in Education Act of 1978, enacted by Pub. L. 95-561 as Part C of Title III of the Elementary and Secondary Education Act of 1965.

"Arts" includes, but is not limited to, music, dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, televison, radio, and tape and sound recording, the presentation, performance, execution, and exhibition of these art forms, and the study and application of the arts to the human environment. (20 U.S.C. 2961, 952(b), Pub. L. 89-209)

"Arts education program" means a program in which the arts are an integral part of elementary and secondary school education and that complies with § 161c.9 (Program elements).

"Urban or large community," for purposes of these regulations, means a standard metropolitan statistical area, as defined in section 617(9) of the Elementary and Secondary Education Act.

"Rural or small community," for purposes of this regulation, means a geographic area—other than a State—isolated from a metropolitan area. Cultural resources outside the schools are nonexistent or limited.

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

§ 161c.9 Program elements.

The Commissioner awards grants to assist in establishing, conducting, or improving arts education programs. Each arts education program to be assisted under a project must be designed to—

(a) Provide opportunities for all students in the schools served by the project to acquire skills and understanding in and through several arts media, including, at least, dance, music, theater, and the visual arts; and

(b) Integrate these arts disciplines into the regular educational program of the schools served, rather than to include them on an extra-curricular or peripheral basis.

(20 U.S.C. 2961, 2962)

§ 161c.10 Elements of cooperation.

(a) An applicant shall develop—and describe in its application—a strategy to work collaboratively with State and/or local agencies, including SEAs and LEAs, schools, colleges and universities, arts organizations, and other community resource groups in the geographic area to be served by the proposed project.

(b) The applicant or grantee shall involve these groups in planning, conducting, and improving the assisted arts education program.

(c) To be considered for a grant, an arts education project must meet the following minimum elements of cooperation in the funding category under which the applicant applies:

(1) *All projects.* (i) The project must have a project advisory committee consisting of members broadly representative of education, the arts, business, the professions, and parent and youth groups in the project area. A State applicant shall use the State arts education advisory committee (such as the State Alliance for Arts Education Committee) if one exists and if it meets the requirements of a project advisory committee. A local applicant shall have on its project advisory committee some representation from the State arts education advisory committee, if one exists.

(ii) The advisory committee shall provide service to assist with the project, in areas such as—

(A) Planning the project proposal;

(B) Meeting with project staff to review and comment on the progress of the project;

(C) Acquainting the community with the project; and

(D) Disseminating information regarding the project.

(2) *State projects.* The proposed projects shall provide for interagency program planning and implementation with at least the SEA, the State arts education advisory committee, the State arts agency, a minimum of three LEAs in the State, and a variety of other State and local arts resource organizations, agencies, and institutions.

(3) *Urban or large community projects.* Projects cooperation shall include, but not be limited to—

(i) Serving the elementary and secondary students of a minimum of five cooperating schools located in one or more LEAs; and

(ii) Participation of a minimum of three arts and educational organizations, institutions, and agencies.

(4) *Rural or small community projects.* The projects shall utilize available arts and community resources within the project area and may also use resources from outside the area.

(20 U.S.C. 2962)

§ 161c.11 Eligible Activities.

Projects to make the arts an integral part of elementary and secondary curriculums may include, but need not be limited to—

(a) Activities related to program content, including—

(1) Leadership training and staff development;

(2) Community awareness programs;

(3) Technical assistance; and

(4) Material and curriculum development; and

(b) Activities related to program management, including—

(1) Planning and coordination;

(2) Evaluation; and

(3) Documentation and dissemination.

(20 U.S.C. 2962)

§ 161c.12 Project duration.

(a) The Commissioner may approve a project for a miximum of three years in accordance with EDGAR §§ 100a.250 and 100a.251.

(b) Any continuation awards for budget periods after the first budget period of an approved multi-year project are made for decreasing amounts of funds. See EDGAR §§ 100a.253-100a.254 for provisions on continuation awards and extension of a project.

(c) In deciding whether or not to make a continuation award, the Commissioner considers the factors in § 100a.253(a) of EDGAR and the degree to which a project shows school-community

cooperation and direct benefit to elementary and secondary arts education, as evidenced by site visits, reports, project evaluation, and documentation.

(20 U.S.C. 1221e-3, 2962)

Subpart C—How to Apply for a Grant

§ 161c.21 Limitation on number of applications.

The Commissioner approves no more than one project application from an applicant in a fiscal year, whether or not that application is filed jointly with other applicants.

(20 U.S.C. 1221e-3, 2962)

§ 161c.22 Joint application.

A single application may be submitted by a group of eligible parties. Joint applications are subject to §§ 100a.127 through 100a.129 of EDGAR.

(20 U.S.C. 1221e-3, 2962)

§ 161c.23 Application requirements.

(a) *Project requirements.* The Commissioner considers only applications that meet the requirements in the following sections of these regulations:

(1) Limitation on number of applications (§ 161c.21).

(2) Joint application (§ 161c.22).

(3) Program elements (§ 161c.9).

(4) Elements of cooperation (§ 161c.10).

(5) Cost-sharing requirements (§ 161c.42).

(b) *Criteria.* In preparing an application for a grant, an applicant should address each criterion in § 161c.32.

(20 U.S.C. 1221e-3, 2962)

(c) *Special requirements for SEA or LEA applicants.* (1) An application from an LEA shall comply with the requirements in §§ 100a.138 through 100a.141 of EDGAR concerning an open meeting on the application.

(2) A grant to an SEA or LEA is subject to EDGAR requirements in §§ 100a.680 and 100b.650 through 100b.663 concerning participation by private school children.

(20 U.S.C. 887e, 2942(b))

§ 161c.24 State review of local applications.

(a) The SEA, working with the State arts education advisory committee, may review and comment on local applications.

(b) If a State advisory committee does not exist, the SEA may assemble a committee for this purpose, using the elements for a project advisory committee in § 161c.10 as a guide.

(c) The local applicant shall send a copy of its application to the SEA, at the same time it sends the application to the Commissioner. The application must show that a copy was sent to the SEA.

(d) The SEA has 30 days after date of receipt of the application in which to review it.

(20 U.S.C. 1221e-3, 2962)

Subpart D—How is a Grant Made?

§ 161c.31 How the Commissioner judges applications.

(a) General selection procedures for applications are discussed in §§ 100a.216 through 100a.221 of EDGAR.

(b) In selecting new or continuing applications the Commissioner may use the Federal Council on the Arts and the Humanities to review or comment on applications.

(1) The Commissioner may, in conjunction with the Council, identify applications within the priorities of other funding agencies on the Council.

(2) The Commissioner may decline to fund applications within other agencies' priorities.

(3) Applications may be considered for joint support by the Office of Education and other Federal agencies which are members of the Council.

(c) The Commissioner may reserve funds for grants in each of the areas of State projects, urban or large community projects, and rural or small community projects.

(20 U.S.C. 2962)

§ 161c.32 Criteria for evaluation of applications.

The Commissioner evaluates applications within each of the funding areas on the basis of criteria in this section totaling 100 possible points.

(a) *Criteria related to program management.*—(1) *Needs assessment.* The extent to which the application—

(i) Identifies and analyzes, objectively and comprehensively, the elementary and secondary arts education needs in the area to be served. In judging this criterion, the Commissoner considers the application's description of the geographic location to be served by the proposed project, including school populations. (5 points)

(ii) Sets forth clear and measurable objectives that relate to the identified needs. (5 points)

(2) *Coordination.* (i) The quality of the applicant's plan to mobilize and coordinate activities of all agencies, organizations, and institutions involved. In judging this criterion, the Commissioner considers the application's description of how and why each entity is cooperating in the project. (10 points)

(ii) *Quality* of planning and its *consistency* with plans and/or activities previously carried out in the arts. In judging this criterion, the Commissioner considers how the project relates to the objectives of the State plan for the arts in education, if one exists. (5 points).

(iii) Extent of commitment and involvement of the SEA and LEAs in the proposed project. (10 points)

(iv) The extent to which the applicant makes effective use of the facilities and services of State and local agencies, institutions, and organizations, beyond the minimum requirements in § 161c.10. (5 points)

(3) *Project administration.* (i) The Commissioner uses EDGAR criteria worth a total of 30 points to evaluate applications. These criteria in §§ 100a.202 through 100a.205 concern the quality of the applicant's proposed plan of operation (10 points), key personnel (5 points), budget and cost-effectiveness (10 points), and evaluation plan (5 points).

(ii) The adequacy of provisions for disseminating information about the project. (10 points)

(b) *Criteria related to program content.* (1) The extent to which the proposed project is designed to serve the needs of all students in the project area, including the handicapped, gifted, and underprivileged. (5 points)

(2) *Results, end products, or outcome.* The extent to which the proposed project employs or will result in new and innovative approaches, methods, or materials of value in increasing the effectiveness of the arts in education. (15 points)

(c) *Distribution of projects.* (1) The Commissioner considers the extent to which approval of a project will contribute to—

(i) An equitable geographic distribution or arts education programs throughout the United States in both urban and rural areas; and

(ii) A variety in types of projects funded that collectively demonstrate diverse approaches to the arts in elementary and secondary education.

(2) The Commissioner may add up to 10 points to the score of an aplication to help achieve these aims.

(20 U.S.C. 2962)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 161c.41 Ongoing evaluation activities.

(a) Throughout a project period, a grantee is responsible for evaluation activities that provide information for effective management of the project, including—

(1) Documentation of all activities for self-monitoring purposes; and

(2) Collection of statistics and data on students served, student and teacher achievements and attitudes, and relationships between other academic subjects and the arts.

(b) The Commissioner may require that some of the information in paragraph (a) of this section be included in project reports.

(c) Not more than 10 percent of total project costs may be used for outside evaluation of the project.

(20 U.S.C. 2962)

§ 161c.42 Funding.

(a) *OE share.* The Office of Education share is limited to a maximum of 50 percent of the costs of a project.

(b) *Project share.* The project share may include cash or in-kind contributions from the cooperating organizations, agencies, and institutions involved in the project. Salaries of regular full-time instructional personnel may not be included as in-kind contribution.

(20 U.S.C. 2962)

§ 161c.43 Ineligible costs.

Federal funds may not be used for—

(a) Equipment worth more than five percent of the total grant amount;

(b) Direct student financial aid; or

(c) Salaries for regular, full-time instructional personnel.

(20 U.S.C. 2962)

[FR Doc. 79-18736 Filed 6-15-79; 8:45 am]

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federal register

Monday
June 18, 1979

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Permanent Regulatory Program; Clearance of Recordkeeping Requirements by General Accounting Office

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Ch. VII]

Surface Mining Reclamation and Enforcement Permanent Regulatory Program

AGENCY: Office of Surface Mining, Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Notice to confirm clearance of recordkeeping and reporting requirements.

SUMMARY: This notice confirms clearance by the General Accounting Office (GAO) of permanent regulatory program regulations requiring collection, submission or retention of information issued by the Office of Surface Mining Reclamation and Enforcement (OSM). Of the nearly 300 reporting and/or recordkeeping requirements submitted to GAO for clearance, 228 sections were approved and 65 sections were excluded from the clearance process either because they were exempted under 4 CFR 10.6(c) or were not subject to the Federal Reports Act. Three sections were not cleared due to the wording inconsistency and language of the regulations. These sections will be revised by way of an errata sheet to be published in the **Federal Register** at a later date.

EFFECTIVE DATE: May 7, 1979.

ADDRESSES:

Assistant Director, Management and Budget, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, 202–343–4293.

Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Joan Shaw, 202–343–5447.

SUPPLEMENTAL INFORMATION: On March 13, 1979, the Secretary of Interior promulgated regulations at Title 30, Code of Federal Regulations, Chapter VII (44 FR 15312–15463), under the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.* Those regulations which required collection, submission or retention of information were promulgated subject only to review and clearance by the GAO pursuant to 44 U.S.C. 3512. The GAO solicited public comments on these regulations by public notice in the **Federal Register** on March 28, 1979 (44 FR 18467).

GAO clearance for each of the regulations listed at 44 FR 18532–18562 was given on May 7, 1979, except for sections 786.21, 805.14(b) and 807.11(a). Accordingly, all of these regulations, except for these three items, are effective as of May 7, 1979. However, once OSM forwards GAO a copy of the **Federal Register** notice revising these three items not cleared, clearance will be given.

GAO excluded from the clearance process the following:

Sections 741.11(a)(1); 743.11(b); 745.15(a); 745.16, 764.11, 764.15(a)(1), (2), (4), (5), and (6); 764.15(b)(1) and (2); 764.15(c); 764.17(a), (b), (c), and (e); 776.14; 786.12; 786.13; 786.14(a), 786.17(a) and (b); 788.15; 788.17; 805.14(a); 807.11(c); 807.11(f); 807.11(g); 808.12; 840.11(a); 840.11(b); 840.11(c); 842.12(a); 842.14; 842.15(a); 842.15(b); 843.11(a)(2); 843.11(b)(2), 843.11(c), 843.11(f); 843.12(a)(2); 843.12(b) and (e); 843.13(c), (d), and (e); 843.14(a), (b), and (d); 843.15(d) and (f); 845.17(a) and (b); 845.18(d); and 845.19(a).

Sections 745.15(a) and 745.16 were not subject to the Federal Reports Act because they were unlikely to apply to 10 or more respondents over the life of the regulations. Other sections listed above were either (1) not subject to the Federal Reports Act because they do not require reporting to the Federal Government or to a regulatory authority or do not impose recordkeeping requirements, or (2) they were exempt from clearance under 4 CFR 10.6(c)(5) or (c)(6) of GAO regulations.

The reporting requirements contained in 30 CFR 700.12(b) and 700.13 have been approved by the U.S. General Accounting Office under number B–190462 (RO589).

The recordkeeping requirements contained in 30 CFR 707.12 has been approved by the U.S. General Accounting Office under number B–190462 (RO590).

The reporting requirement contained in 30 CFR 730.12(b) has been approved by the U.S. General Accounting Office under number B–190462 (RO591).

The reporting requirements contained in 30 CFR 731.12(a), 731.13 and 731.14 have been approved by the U.S. General Accounting Office under number B–190462 (RO592).

The reporting requirements contained in 30 CFR 732.11(d), 732.13(f), 732.14, 732.16(a), 732.17(b), 732.17(f), 732.17(g), and recordkeeping requirement contained in 30 CFR 732.16(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO593).

The reporting requirements contained in 30 CFR 733.12(a)(2) has been approved by the U.S. General Accounting Office under number B–190462 (RO594).

The reporting requirements contained in 30 CFR 741.11(c)(1), 741.12(c), 741.13(c), 741.15(a)(1), 741.15(b)(1), 741.21(b), 741.24(c), and 741.25(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO595).

The reporting requirements contained in 30 CFR 742.11(a), 742.13(a), 742.18(c), and 742.18(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO596).

The reporting requirements contained in 30 CFR 745.11 (a) and (b) have been approved by the U.S. General Accounting Office under number B–190462 (RO598).

The reporting requirements contained in 30 CFR 761.12(b)(2), 761.12(e), 761.12(f), and the recordkeeping requirement contained in 30 CFR 761.12(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO599).

The reporting requirements contained in 30 CFR 764.13(b), 764.13(c), 764.19(b), and the recordkeeping requirements contained in 30 CFR 764.15(d), 764.21, and 764.25(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO600).

The reporting requirements contained in 30 CFR 769.11 and 769.13 have been approved by the U.S. General Accounting Office under number B–190462 (RO601).

The reporting requirements contained in 30 CFR 771.15(c), 771.21(a)(1), 771.21(b)(2), 771.21(b)(3), and 771.23 have been approved by the U.S. General Accounting Office under number B–190462 (RO602).

The reporting requirements contained in 30 CFR 776.11 and 776.12 have been approved by the U.S. General Accounting Office under number B–190462 (RO603).

The reporting requirements contained in 30 CFR 778.13, 778.14, 778.15, 778.16, 778.17, 778.18, 778.19, 778.20, and 778.21 have been approved by the U.S. General Accounting Office under number B–190462 (RO604).

The reporting requirements contained in 30 CFR 779.11, 779.12, 779.13, 779.14, 779.15, 779.16, 779.17, 779.18, 779.19, 779.20, 779.24, 779.25, and 779.27 have been approved by the U.S. General Accounting Office under number B–190462 (RO605).

The reporting requirements contained in 30 CFR 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.23, 780.25, 780.27, 780.29, 780.31, 780.33, 780.35, and 780.37 have been approved by the U.S. General Accounting Office under number B–190462 (RO606).

The reporting requirements contained in 30 CFR 782.13, 782.14, 782.15, 782.16, 782.17, 782.18, 782.19, 782.20, and 782.21 have been approved by the U.S. General Accounting Office under number B–190462 (RO607).

The reporting requirements contained in 30 CFR 783.11, 783.12, 783.13, 783.14, 783.15, 783.16, 783.17, 783.18, 783.19, 783.20, 783.21, 783.22, 783.24, 783.25, and 783.27 have been approved by the U.S. General Accounting Office under number B–190462 (RO608).

The reporting requirements contained in 30 CFR 784.11, 784.12, 784.13, 784.14, 784.15, 784.16, 784.17, 784.18, 784.19, 784.20, 784.21, 780.22, 784.23, 784.24, and 784.25 have been approved by the U.S. General Accounting Office under number B–190462 (RO609).

The reporting and recordkeeping requirements contained in 30 CFR 785.13 (e), (f), (g), and (h); 785.14; 785.15; 785.16; 785.17(b) (1), (2), (4), (6), and (8); 785.18(c); 785.19; 785.20; 785.21; and 785.22 have been approved by the U.S. General Accounting Office under number B–190462 (RO610).

The reporting and recordkeeping requirements contained in 30 CFR 786.11 (a), (b), (c), and (d); 786.14(b); 786.15; 786.17(c); 786.19; and 786.23 (c) and (d) have been approved by the U.S. General Accounting Office under number B–190462 (RO611).

The reporting requirements contained in 30 CFR 788.12, 788.14, 788.18, and 788.19, and the recordkeeping requirements contained in 30 CFR 788.11 and 788.16 have been approved by the U.S. General Accounting Office under number B–190462 (RO612).

The reporting requirements contained in 30 CFR 800.11 and 800.12 have been approved by the U.S. General Accounting Office under number B–190462 (RO613).

The reporting requirement contained in 30 CFR 806.11(b) has been approved by the U.S. General Accounting Office under number B–190462 (RO615).

The reporting requirement contained in 30 CFR 807.11(e)(4) has been approved by the U.S. General Accounting Office under number B–190462 (RO616).

The reporting and recordkeeping requirements contained in 30 CFR Part 816, subsections 46(c)(4), 46(r), 46(t), 49(h), 52(a)(3), 52(b)(1)(iii), 53(a), 62, 64, 65(a)(2)(iii), 67, 68, 71(j), 82(a)(4), 82(b), 87, 91(b), 117(b)(4), 117(c) (1) and (3), 131(b), 133(c) (1) through (4), 133(c) (8) and (9), 150(d)(1), 152(d)(13), 160(d)(1), and 163(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO618).

The reporting and recordkeeping requirements contained in 30 CFR Part 817, subsections 46(c)(4), 46(r), 46(t), 49(h), 52(a)(3), 52(b)(1)(iii), 53(a), 62, 65(b)(2)(iii), 67, 68, 71(j), 82(a)(4), 82(b), 87, 91(b), 117(b)(4), 117(c) (1) and (3), 131(b), 133(c) (1) through (4), 133(c) (8) and (9), 150(d)(1), 152(d)(13), 160(d)(1), and 163(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO619).

The recordkeeping requirements contained in 30 CFR 822.14 (a) and (d) have been approved by the U.S. General Accounting Office under number B–190462 (RO620).

The reporting requirement contained in 30 CFR 826.12(b) has been approved by the U.S. General Accounting Office under number B–190462 (RO621).

The reporting requirements contained in 30 CFR 840.11(d)(3), 840.14(a), and 840.14(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO622).

The reporting requirement contained in 30 CFR 843.16 has been approved by the U.S. General Accounting Office under number B–190462 (RO624).

The recordkeeping requirement contained in 30 CFR 845.18(c) has been approved by the U.S. General Accounting Office under number B–190462 (RO625).

Because OSM did not have the experience in fullfilling these recordkeeping and reporting requirements, estimating accurately the compliance burden estimates was very difficult. Therefore we are requesting that respondents inform OSM, no later than November 30, 1980, as to how long it took to comply with reporting requirements listed in this clearance notice. This will give OSM an opportunity to reevaluate its burden estimates and revise estimates where necessary.

The following sections may impose reporting requirements which duplicate information already submitted by respondents to other Federal or State agencies:

779.27, 780.14, 780.15, 780.25, 782, 783.25, 784.16, 784.23, 784.26, 816.46, 816.49, 816.81, 816.85, 816.86, 816.91–93, 817.46, 817.49, 817.81, 817.85, 817.91–93, 822.14(a), 822.14(d).

Where these sections, or any other sections, impose reporting requirements which duplicate any information that is required to be submitted to another Federal or a State agency, any person may comply with these regulations by submitting to the appropriate regulatory authority, in lieu of preparing new reports, one copy of such duplicate report. Information which is submitted as duplicative must be identical to the information required by these regulations in all substantive respects including, but not limited to, timeliness and detail of data, time span of data, geographic area, qualification of the preparer and other professional certification, specific maps, time tables, and plans, measurements or monitoring devices, design and construction specifications, required demonstrations and methods of notice.

During GAO's review, commenters and GAO staff identified, and OSM confirmed that the sections below require either reporting or recordkeeping but had not been previously submitted for GAO clearance:

30 CFR 778.13(b)
30 CFR 778.17(b)
30 CFR 779.21
30 CFR 779.22
30 CFR 784.26
30 CFR 785.17(b)(3)
30 CFR 785.17(b)(5)
30 CFR 785.17(b)(7)
30 CFR 786.15(a)(3)
30 CFR 786.25(b)(2)
30 CFR 786.25(b)(4)
30 CFR 807.11(d)
30 CFR 807.11(h)(ii)
30 CFR 816.49(i)
30 CFR 816.52(a)
30 CFR 816.52(b)(1)(ii)
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30 CFR 816.116
30 CFR 817.49(i)
30 CFR 817.52(a)
30 CFR 817.52(b)(1)(ii)
30 CFR 817.95
30 CFR 817.116
30 CFR 843.14(c)

OSM will be submitting these sections to GAO during the week of June 4, 1979. These sections will not be effective until they have been cleared by GAO under the Federal Reports Act.

To determine what water quality and quantity information the Federal Government or organizations have collected and can make available to the public, you can contact:

National Water Data Exchange, Program Office (NAWDEX), U.S. Geological Survey, 421 National Center, Reston, Va. 22092, 703–860–6031.

Dated: June 8, 1979.

Walter N. Heine,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 79-18912 Filed 6-15-79; 8:45 am]

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Federal Register

Vol. 44, No. 118

Monday, June 18, 1979

INFORMATION AND ASSISTANCE

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
DOT/UMTA*	MSPB/OPM		DOT/UMTA*	MSPB/OPM
DOT/FRA*	LABOR		DOT/FRA*	LABOR
CSA	HEW/FDA		CSA	HEW/FDA

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

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

***NOTE: As of June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Departrpent of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

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

Rules Going Into Effect Today

FEDERAL COMMUNICATIONS COMMISSION

27994 5-14-79 / Private land mobile radio service; simplification of certain procedures for filing applications

List of Public Laws

Last Listing June 15, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-375-3030).

S. 7 / Pub. L. 96-22 "Veterans' Health Care Amendments of 1979" (June 13, 1979; 93 Stat. 47) Price $1.10.

S. 709 / Pub. L. 96-23 To authorize appropriations for the Coast Guard for fiscal years 1980 and 1981, and for other purposes. (June 13, 1979; 93 Stat. 68) Price $.60.