

Federal Register

Monday
November 26, 1979

Highlights

- 67615 Iranian Assets Control** Treasury/Foreign Assets Control Office amends regulations concerning payments to block accounts; payments by Iranian entities of obligations to persons within the U.S. and certain judicial proceedings with respect to property of Iran or Iranian entities; effective 11-23-79 (Part VI of this issue)
- 67602 Standby Mandatory Crude Oil Allocation Program** DOE/ERA proposes provisions for full or partial implementation; comments by 12-26-79 (Part V of this issue)
- 67543 American Schools and Hospitals Abroad Program** IDCA/AID issues criteria for screening of applications for grants; effective 11-26-79
- 67384 Emergency School Aid** HEW/OE adopts interim rules governing planning grants and transitional grants
- 67490-67493 Minority Business** Commerce/MBDA solicits applications for grants to serve various States; apply by 12-21-79 (9 documents)
- 67546 Criminal Justice Education and Training** Justice/LEAA discontinues Internship Program for FY 1980
- 67381 Medicare Program** HEW/HCFR issues rules regarding payment for inpatient services of Foreign hospitals; effective with admissions on or after 1-1-80

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Highlights

- 67421 Aid To Families With Dependent Children Program** HEW/SSA issues rules to increase Federal matching payments to States with low error rates; effective 11-26-79
 - 67445 Non-Dominant Communications Common Carriers** FCC proposes to reduce amount of information which certain carriers must include on proposed rate charges; comments by 2-1-80 and 2-29-80, reply comments by 3-14-80 and 3-21-80
 - 67584 Indian Child Custody** Interior/BIA issues guidelines for State courts proceedings (Part III of this Issue)
 - 67440 Mobile Homes** HUD/NVACP proposes to amend rules regarding disqualification and requalification of primary inspection agencies; comments by 1-25-80
 - 67598 Noncompetitive Geothermal Leases** Interior/BLM proposes rules for issuance of leases for the development and utilization; comments by 1-25-80 (Part IV of this issue)
 - 67383 Navajo Tribe** Interior/BLM issues order restoring certain former tribal lands; effective 11-14-79
 - 67578 Flood Plain** DOT/FHWA rules regarding location and hydraulic design of encroachments; effective 11-15-79 (Part II of this issue)
 - 67343-67361 Crop Insurance** USDA/FCIC prescribes procedures for 1980 crop year for insuring flax, rice, sunflower, and corn; effective 11-26-79 (4 documents)
 - 67445 Hazardous Materials** EPA extends comment period on intent to add lead/phenolic sand casting wastes to the proposed list; comments by 1-25-80
 - 67554 Pig Iron From Brazil** Treasury/Customs issues final countervailing duty determination; effective 11-26-79
 - 67438 Pancrelipase** CPSC proposes exemption from child-protection packaging requirements; comments by 1-25-80
 - 67562 Sunshine Act Meetings**
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Federal Register

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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.

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 423

Flax Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for insuring flax crops effective with the 1980 crop year. The rule combines provisions from previous regulations for insuring flax in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the *Federal Register* on July 30, 1979 (44 FR 44505), outlining prescribed procedures for insuring flax crops effective with the 1980 crop year. In the notice, FCIC, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), proposed that a new Part 423 of Chapter IV in Title 7 of the Code of Federal Regulations be established to prescribe procedures for insuring flax crops effective with the 1980 crop year to be known as 7 CFR Part 423 Flax Crop Insurance.

All previous regulations applicable to insuring flax crops, as found in 7 CFR 401.101-401.111, and 401.128, are not

applicable to 1980 and succeeding flax crops but remain in effect for FCIC flax insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring flax crops into one shortened, simplified, and clearer regulation would be more effective administratively.

In addition, 7 CFR Part 423 provides (1) for a Premium Adjustment Table which replaces the current premium discount provisions and includes a maximum 50 percent premium reduction for good insurance experience, as well as premium increases for unfavorable experience, on an individual contract basis, (2) that the production guarantee will now be shown on a harvested basis with a reduction of the lesser of 1.5 bushels or 20 percent of the guarantee for any unharvested acreage, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Actuarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest to the present percent level offered in each county, and (8) for an increase in the limitation from \$5,000 to \$20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 420.5 of these regulations, wherein the Manager of the Corporation is authorized to take action to grant relief.

The Flax Crop Insurance regulations provide a December 31 cancellation date for most flax producing counties. Flax producing counties in Texas have a June 30 cancellation date effective 1980.

These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the earlier of the two cancellation dates, December 31, 1979, in order to afford farmers an opportunity to examine them before the earlier cancellation date of

December 31, 1979, before they become effective for the 1980 crop year.

Under the provisions of Executive Order No. 12044, and the Administrative Procedure Act (5 U.S.C. 553 (b) and (c)), the public was given an opportunity to submit written comments, data, and views on the proposed regulations, but none were received.

Therefore, with the exception of minor and nonsubstantive corrections to language, the regulations as contained in the proposed rule are hereby issued as a final rule to be in effect starting with the 1980 crop year.

In addition, there is hereby added to the final rule an Appendix "B", which lists the counties where flax crop insurance is available in accordance with the provisions of 7 CFR § 423.1 outlined below which state in part that before insurance is offered in any county there shall be published by appendix to this part the names of the counties in which such insurance shall be offered.

Inasmuch as the publication of the list of counties and crops insured by the Federal Crop Insurance Corporation as contained in Appendix "B" merely provides guidance for the general public and has no effect on the provisions of the insurance plan, the Corporation has determined that compliance with the procedure for notice and public participation in the proposed rulemaking process would be impracticable, unnecessary, and contrary to the public interest. Therefore, Appendix "B" is issued without compliance with such procedure.

Final Rule

§ 401.128 [Reserved]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby deletes and reserves 7 CFR 401.128, with the provisions as contained therein remaining in effect for FCIC insurance policies issued for crop years prior to 1980, and issues a new Part 423 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 423) to be known as the Flax Crop Insurance Regulations, which shall remain in effect, until amended or superseded, for the 1980 and succeeding crop years, to read as follows:

PART 423—FLAX CROP INSURANCE**Subpart—Regulations for the 1980 and Succeeding Crop Years**

Sec.

- 423.1 Availability of Flax Insurance.
 423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
 423.3 Public notice of indemnities paid.
 423.4 Creditors.
 423.5 Good faith reliance on misrepresentation.
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 423.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1980 and Succeeding Crop Years**§ 423.1 Availability of flax insurance.**

Insurance shall be offered under the provisions of this subpart on flax in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which flax insurance will be offered.

§ 423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for flax which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 423.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 423.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 423.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the flax insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insurance person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 423.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the flax crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 423.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the flax crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its

determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however*, That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a flax contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Flax Insurance Policy for the 1980 and succeeding crop years, and the Appendix to the Flax Insurance Policy are as follows:

U.S. Department of Agriculture, Federal Crop Insurance Corporation**Application for 19— and Succeeding Crop Years**

Flax

Crop Insurance Contract

—(Contract Number) _____

(Identification Number) _____

(Name and Address) (Zip Code) _____

(County) (State) _____

Type of Entity _____

Applicant is Over 18 Yes—No—

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the flax seeded on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.

Level Election _____ Price Election _____

Example: for the 19— Crop Year (100 percent Share)

Location/Farm No.	Guarantee Per Acre*	Premium Per Acre**	Practice
-------------------	---------------------	--------------------	----------

*Your guarantee will be on a unit basis (acres X per acre guarantee)

**Your premium is subject to adjustment in accordance with section 5(c) of the policy.

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed. AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELLED OR

TERMINATED as provided in the contract. This accepted application, the following flax insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness to Signature)

(Signature of Applicant)

(DATE) ———, 19—

Address of Office for County: _____

Phone _____

Location of Farm Headquarters: _____

Phone _____

Flax Crop Insurance Policy

Terms and Conditions

Subject to the provisions in the attached appendix:

1. Causes of Loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. Crop and Acreage Insured. (a) The crop insured shall be flaxseed (herein called "flax") which is seeded for harvest as seed and which is grown on insured acreage and

for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage seeded to flax on insurable acreage as shown on the actuarial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) seeded with any other crop except perennial grasses or legumes other than vetch, (2) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (3) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (4) which is destroyed and after such destruction it was practical to reseed to flax and such acreage was not reseeded, (5) initially seeded after the date on file in the office for the county which has been established by the Corporation as being too late to initially seed and expect a normal crop to be produced, (6) of volunteer flax, or (7) seeded to a type or variety of flax not established as adapted to the area or shown as noninsurable on the actuarial table.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is seeded for the development or production of hybrid seed or for experimental purposes.

3. Responsibility of Insured to Report Acreage and Share. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of flax seeded in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of seeding. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities. (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by the lesser of 1.5 bushels or 20 percent for any unharvested acreage.

5. Annual Premium. (a) The annual premium is earned and payable at the time of seeding and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of seeding, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

BILLING CODE 3410-08-M

% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio ^{1/} Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE

	Number of Loss Years Through Previous Year ^{2/}															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio ^{1/} Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 - 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 - 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 - 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 - 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 - 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 - 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 - 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 - 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 - 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 - Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

^{1/} Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

^{2/} Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however*, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. Insurance Period. Insurance in insured acreage shall attach at the time the flax is seeded and shall cease upon the earliest of (a) final adjustment of loss, (b) combining, threshing, or removal of the flax from the field, (c) October 31 of the calendar year in which flax is normally harvested, or (d) total destruction of the insured flax crop.

7. Notice of damage or loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the flax on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to reseed to flax. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) October 31 of the crop year, or (3) the date the entire flax crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to

be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Claim for Indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of flax on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation. (b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of flax on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of flax to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) If, due to insurable causes, any flax does not grade No. 2 or better in accordance with the Official U.S. Grain Standards, the production shall be adjusted by (i) dividing the value per bushel of the damaged flax (as determined by the Corporation) by the price per bushel of U.S. No. 2 flax and (ii) multiplying the result by the number of bushels of such flax. The applicable price for U.S. No. 2 flax shall be the local market price on the earlier of: the day the loss is adjusted or the day the damaged flax was sold.

(2) Appraised production to be counted shall include: (i) the greater of the appraised production or 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is seeded before flax harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding any crop(s) maturing for harvest in the following calendar year), (ii) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (iii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iv) only the appraisal in excess of the lesser of 1.5 bushels or 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However*, if consent is given to put acreage to another use and the

Corporation determines that any such acreage (1) is not put to another use before harvest of flax becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. Misrepresentation and fraud. The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of Insured Share. If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. Records and Access to Farm. The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments sale or other disposition of all flax produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of Contract: Cancellation and Termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

States	Cancellation date	Termination date for indebtedness
Texas.....	June 30	Sept. 15
All other States.....	Dec. 31	Mar. 31

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section, and section 7 of the Appendix,

the contract shall continue in force for each succeeding crop year.

Appendix (additional terms and conditions)

1. Meaning of Terms. For the purposes of flax crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding flax insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the flax crop is normally grown and shall be designated by the calendar year in which the flax crop is normally harvested.

(d) "Harvest" means the severance of mature flax from the land for combining or threshing.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the applications accepted by the Corporation.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured flax crop at the time of seeding as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) October 31 of the crop year, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the flax crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of flax in the county on the date of seeding for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the flax crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation

shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. Acreage Insured. (a) The Corporation reserves the right to limit the insured acreage of flax to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the seeding of flax.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero." If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Irrigated Acreage. (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of seeding.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of seeding, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. Annual Premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however*, any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. Claim for and Payment of Indemnity. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured flax acreage.

(d) In the event that any claim for indemnity under the provisions of the

contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However*, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the flax is seeded for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. Termination of the Contract. (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. Coverage Level and Price Election. (a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and price election for any crop year on or before the closing date for submitting applications for that crop year.

9. Assignment of Indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. Contract Changes. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Appendix B

Counties Designated for Flax Crop Insurance—7 CFR 423

In accordance with the provisions of 7 CFR 423.1, the following counties are designated for flax crop insurance:

Minnesota

Becker	Otter Tail
Big Stone	Pennington
Chippewa	Pipestone
Clay	Polk
Grant	Pope
Kittson	Red Lake
Lac qui Parle	Redwood
Lincoln	Roseau
Lyon	Stevens
Mahnomen	Swift
Marshall	Traverse
Murray	Wilkin
Nobles	Yellow Medicine
Norman	

North Dakota

Barnes	Mountrail
Benson	Nelson
Bottineau	Pembina
Burleigh	Pierce
Cass	Ramsey
Cavalier	Ransom
Dickey	Renville
Eddy	Richland
Emmons	Rolette
Foster	Sargent
Grand Forks	Sheridan
Griggs	Steele
Kidder	Stutsman
La Moure	Towner
Logan	Trail
McHenry	Walsh
McIntosh	Ward
McLean	Wells

South Dakota

Brookings	Hamlin
Brown	Kingsbury
Campbell	Lake
Clark	McPherson
Codington	Marshall
Corson	Miner
Day	Moody
Deuel	Roberts
Edmunds	Walworth
Grant	

These regulations have been reviewed under the USDA criteria established to implement Executive Order No. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Peter F.

Cole, Secretary, Federal Crop Insurance Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A-40.

Dated: November 16, 1979.

James D. Deal,
Manager.

[FR Doc. 79-36144 Filed 11-23-79; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 424

Rice Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for insuring rice crops effective with the 1980 crop year. The rule combines provisions from previous regulations for insuring rice in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the Federal Register on July 30, 1979 (44 FR 44511), outlining prescribed procedures for insuring rice crops effective with the 1980 crop year. In the notice, FCIC, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), proposed that a new Part 424 of Chapter IV in Title 7 of the Code of Federal Regulations be established to prescribe procedures for insuring rice crops effective with the 1980 crop year to be known as 7 CFR Part 424 Rice Crop Insurance.

All previous regulations applicable to insuring rice crops, as found in 7 CFR 401.101-401.111, and 401.132, are not applicable to 1980 and succeeding rice crops but remain in effect for FCIC rice insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring rice crops into one shortened, simplified, and

clearer regulation would be more effective administratively.

In addition, 7 CFR Part 424 provides (1) for a Premium Adjustment Table which replaces the current premium discount provisions and includes a maximum 50 percent premium reduction for good insuring experience, as well as premium increases for unfavorable experience, on an individual contract basis, (2) for the consolidation of termination for indebtedness dates to March 31 in all counties, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Actuarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest to the present percent level offered in each county, (8) for an increase, in the limitation from \$5,000 to \$20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 424.5 of these regulations, wherein the Manager of the Corporation is authorized to take action to grant relief, and (9) that the production guarantee will now be shown on a harvested basis with a reduction of the lesser of 5 cwt. or 20 percent of the guarantee for any unharvested acreage.

The Rice Crop Insurance regulations provide a December 31 cancellation date for all rice producing counties. These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the cancellation date, to afford farmers an opportunity to examine them before the cancellation date of December 31, 1979, before they become effective for the 1980 crop year.

Under the provisions of Executive Order No. 12044, and the Administrative Procedure Act (5 U.S.C. 553(b) and (c)), the public was given an opportunity to submit written comments, data, and views on the proposed regulations, but none were received.

Therefore, with the exception of minor and nonsubstantive corrections to language, the regulations as contained in the proposed rule are hereby issued as a final rule to be in effect starting with the 1980 crop year.

In addition, there is hereby added to the final rule an Appendix "B", which lists the counties where rice crop insurance is available in accordance with the provisions of 7 CFR § 424.1 outlined below which state in part that before insurance is offered in any county there shall be published by appendix to this part the names of the counties in which such insurance shall be offered.

Inasmuch as the publication of the list of counties and crops insured by the Federal Crop Insurance Corporation as contained in Appendix "B" merely provides guidance for the general public and has no effect on the provisions of the insurance plan, the Corporation has determined that compliance with the procedure for notice and public participation in the proposed rulemaking process would be impracticable, unnecessary, and contrary to the public interest. Therefore, Appendix "B" is issued without compliance with such procedure.

Final Rule

§ 401.132 [Reserved]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby deletes and reserves 7 CFR 401.132, with the provisions as contained therein remaining in effect for FCIC insurance policies issued for crop years prior to 1980, and issues a new Part 424 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 424) to be known as the Rice Crop Insurance Regulations, which shall remain in effect, until amended or superseded, for the 1980 and succeeding crop years, to read as follows:

PART 424—RICE CROP INSURANCE

Subpart—Regulations for the 1980 and Succeeding Crop Years

Sec.

- 424.1 Availability of Rice Insurance.
- 424.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 424.3 Public notice of indemnities paid.
- 424.4 Creditors.
- 424.5 Good faith reliance on misrepresentation.
- 424.6 The contract.
- 424.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

§ 424.1 Availability of rice insurance.

Insurance shall be offered under the provisions of this subpart on rice in counties within limits prescribed by and in accordance with the provisions of the

Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which rice insurance will be offered.

§ 424.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for rice which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 424.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 424.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 424.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the rice insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other

erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 424.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the rice crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 424.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the rice crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however*, That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a

rice contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Rice Insurance Policy for the 1980 and succeeding crop years, and the Appendix to the Rice Insurance Policy are as follows:

U.S. Department of Agriculture

Application for 19— and Succeeding Crop Years

Rice

Crop Insurance Contract

(Contract Number)

(Identification Number)

(Name and Address) (ZIP Code)

(County) (State)

Type of Entity

Applicant is Over 18 Yes — No —

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the rice seeded on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. **THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.**

Level Election ——— Price Election

Example: For the 19— Crop Year Only (100% Share)

Location/Farm No. ———

Guarantee Per Acre* ———

Premium Per Acre** ———

Practice ———

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELLED OR TERMINATED as provided in the contract. This accepted application, the following rice insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable

acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness to Signature)

(Signature of Applicant)

(Date) ———, 19—

Address of Office for County:

Phone ———

Location of Farm Headquarters:

Phone ———

Rice Crop Insurance Policy

Terms and Conditions

Subject to the provisions in the attached appendix:

1. Causes of Loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions (excluding drought), insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) application of saline water, (2) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (3) failure to follow recognized good farming practices, (4) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (5) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. Crops and Acreage Insured. (a) The crop insured shall be rice which is seeded for harvest as grain and which is grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage seeded to rice on insurable acreage as shown on the actuarial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect. *Provided*, That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) on which the rice was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture, (2) seeded to rice for the two preceding crop years, (3) which is destroyed and after such destruction it was practical to reseed to rice and such acreage was not reseeded, (4) initially seeded after the date on file in the office for the county which has been established by the Corporation as being too late to initially seed

and expect a normal crop to be produced, (5) of a second crop following a rice crop harvested in the same calendar year, or (6) seeded to a type or variety of rice not established as adapted to the area or shown as noninsurable on the actuarial table.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is seeded for the development or production of hybrid seed or for experimental purposes.

3. Responsibility of insured to report acreage and share. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of rice seeded in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of seeding. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. Production guarantees, Coverage Levels and Prices for Computing Indemnities. (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by the lesser of 5 cwt. or 20 percent for any unharvested acreage.

5. Annual Premium. (a) The annual premium is earned and payable at the time of seeding and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of seeding, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

BILLING CODE 3410-08-M

*Your guarantee will be on a unit basis (acres × per acre guarantee × share).

**Your premium is subject to adjustment in accordance with section 5(c) of the policy.

% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio <u>1/</u> Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE

	Number of Loss Years Through Previous Year <u>2/</u>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio <u>1/</u> Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 - 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 - 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 - 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 - 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 - 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 - 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 - 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 - 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 - 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 - Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

1/ Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

2/ Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however*, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. Insurance Period. Insurance on insured acreage shall attach at the time the rice is seeded and shall cease upon the earliest of (a) final adjustment of a loss, (b) combining, threshing, or removal of the rice from the field, (c) October 31 of the calendar year in which rice is normally harvested, or (d) total destruction of the insured rice crop.

7. Notice of Damage or Loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the rice on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to reseed to rice. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire rice crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to

be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Claim for Indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of rice on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of rice on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of rice to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Mature production which grades No. 3 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; and if, due to insurable causes, the rough rice does not grade U.S. No. 3 or better (determined in accordance with Official Grain Standards of the United States) with a milling yield per cwt. of 55 pounds of heads for the short and medium grain varieties and 48 pounds of heads for long grain varieties (whole kernels) and 66 pounds total milling yield (heads, second heads, screenings and brewers), the number of pounds of such rice to be counted shall be adjusted by (i) dividing the value per pound of the damaged rice (as determined by the Corporation) by the market price per pound at the nearest mill center for the same variety of rough rice grading U.S. No. 3 with the milling yields as stated above, and (ii) multiplying the result thus obtained by the number of pounds of production of such damaged rice. The applicable price for No. 3 rice shall be the nearest mill center price on the earlier of: the day the loss is adjusted or the day the damaged rice was sold.

(2) Any production from volunteer rice growing with the seeded rice crop shall be counted as rice on a weight basis.

(3) Appraised production to be counted shall include: (i) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and for poor farming practices, (ii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the

Corporation or damaged solely by an uninsured cause, and (iii) only the appraisal in excess of the lesser of 5 cwt. or 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However*, if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. Misrepresentation and Fraud. The corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of Insured Share. If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. Records and Access to Farm. The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all rice produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of Contract: Cancellation and Termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

Counties	Cancellation date	Termination date for indebtedness
All counties	Dec. 31	Mar. 31

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

Appendix (Additional Terms and Conditions)

1. Meaning of Terms. For the purposes of rice crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding rice insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the rice crop is normally grown and shall be designated by the calendar year in which the rice crop is normally harvested.

(d) "Harvest" means the severance of mature rice from the land for combining or threshing.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Mill center" means any location in which two or more mills are engaged in milling rough rice.

(h) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(i) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(j) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured rice crop at the time of seeding as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(k) "Tenant" means a person who rents land from another person for a share of the rice crop or proceeds therefrom.

(l) "Unit" means all insurable acreage of rice in the county on the date of seeding for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the rice crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. Acreage Insured. (a) The Corporation reserves the right to limit the insured acreage of rice to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the seeding of rice.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Irrigated acreage. (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, as determined by the corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment of facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. Annual Premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; however, any previous unfavorable insurance experience shall be

considered in premium computation following a break in continuity.

5. Claim for and Payment of Indemnity. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured rice acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However*, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the rice is seeded for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. Termination of the Contract. (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. Coverage Level and Price Election. (a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall

be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and price election for any crop year on or before the closing date for submitting applications for that crop year.

9. Assignment of Indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. Contract Changes. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Appendix "B"

Counties Designated for Rice Crop Insurance—7 CFR 424

In accordance with the provisions of 7 CFR 424.1, the following counties are designated for rice crop insurance:

Arkansas

Arkansas	Jackson
Ashley	Jefferson
Chicot	Lonoke
Clay	Monroe
Craighead	Poinsett
Crittenden	Prairie
Cross	St. Francis
Desha	Woodruff
Greene	

California

Colusa	Sutter
Sacramento	Yolo

Louisiana

Acadia	Lafayette
Calcasieu	Morehouse
Evangeline	St. Landry
Jefferson Davis	Vermilion

Mississippi

Bolivar	Washington
Leflore	

Texas

Brazoria	Matagorda
Fort Bend	Wharton

These regulations have been reviewed under the USDA criteria established to implement Executive Order No. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Peter F. Cole, Secretary, Federal Crop Insurance

Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A-40.

Dated: November 16, 1979.

James D. Deal,

Manager.

[FR Doc. 79-36145 Filed 11-23-79; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 428

Sunflower Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for insuring sunflower crops effective with the 1980 crop year. The rule combines provisions from previous regulations for insuring sunflowers in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the *Federal Register* on July 31, 1979 (44 FR 45861), outlining prescribed procedures for insuring sunflower crops effective with the 1980 crop year. In the notice, FCIC, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), proposed that a new Part 428 of Chapter IV in Title 7 of the Code of Federal Regulations be established to prescribe procedures for insuring sunflower crops effective with the 1980 crop year to be known as 7 CFR Part 428 Sunflower Crop Insurance.

All previous regulations applicable to insuring sunflower crops, as found in 7 CFR 401.101-401.111, and 401.152, are not applicable to 1980 and succeeding sunflower crops but remain in effect for FCIC sunflower insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring sunflower crops into one shortened,

simplified, and clearer regulation would be more effective administratively.

In addition, 7 CFR Part 428 provides (1) for a Premium Adjustment Table which replaces the current premium discount provisions and includes a maximum 50 percent reduction for good insurance experience as well as premium increases for unfavorable experience, on an individual contract basis, (2) for a minimum appraisal of 50 percent of the applicable guarantee for acreage released and planted to another insurable crop, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Actuarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest to the present percent level offered in each county, (8) for an increase in the limitation from \$5,000 to \$20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 428.5 of these regulations, wherein the Manager of the Corporation is authorized to take action to grant relief, (9) that the three year rotation requirement for insurability for acreage planted to sunflowers be reduced to two years, and (10) that the production guarantee will now be shown on a harvested basis with a reduction of the lesser of 100 pounds or 20 percent of the guarantee for any unharvested acreage.

The Sunflower Crop Insurance regulations provide a December 31 cancellation date for all sunflower producing counties. These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the cancellation date, in order to afford farmers an opportunity to examine them before the cancellation date of December 31, 1979, before they become effective for the 1980 crop year.

Under the provisions of Executive Order No. 12044, and the Administrative Procedure Act (5 U.S.C. 553(b) and (c)), the public was given an opportunity to submit written comments, data, and views on the proposed regulations, but none were received.

Therefore, with the exception of minor and nonsubstantive corrections to language, the regulations as contained in

the proposed rule are hereby issued as a final rule to be in effect starting with the 1980 crop year.

In addition, there is hereby added to the final rule an Appendix "B", which lists the counties where sunflower crop insurance is available in accordance with the provisions of 7 CFR § 428.1 outlined below which state in part that before insurance is offered in any county there shall be published by appendix to this part the names of the counties in which such insurance shall be offered.

Inasmuch as the publication of the list of counties and crops insured by the Federal Crop Insurance Corporation as contained in Appendix "B" merely provides guidance for the general public and has no effect on the provisions of the insurance plan, the Corporation has determined that compliance with the procedure for notice and public participation in the proposed rulemaking process would be impracticable, unnecessary, and contrary to the public interest. Therefore, Appendix "B" is issued without compliance with such procedure.

Final Rule

§ 401.152 [Reserved]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby deletes and reserves 7 CFR 401.152, with the provisions as contained therein remaining in effect for FCIC insurance policies issued for crop years prior to 1980, and issues a new Part 428 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 428) to be known as the Sunflower Crop Insurance Regulations, which shall remain in effect, until amended or superseded, for the 1980 and succeeding crop years, to read as follows:

PART 428—SUNFLOWER SEED CROP INSURANCE

Subpart—Regulations for the 1980 and Succeeding Crop Years

Sec.

428.1 Availability of Sunflower Seed Insurance.

428.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

428.3 Public notice of indemnities paid.

428.4 Creditors.

428.5 Good faith reliance on misrepresentation.

428.6 The contract.

428.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

§ 428.1 Availability of sunflower seed insurance.

Insurance shall be offered under the provisions of this subpart on sunflower seed in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which sunflower seed insurance will be offered.

§ 428.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sunflower seed which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 428.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 428.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 428.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sunflower seed insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance

contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 428.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the sunflower seed crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 428.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the sunflower seed crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however*, That if adverse conditions should develop during such period, the Corporation will immediately

discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a sunflower contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Sunflower Seed Insurance Policy for the 1980 and succeeding crop years, and the Appendix to the Sunflower Seed Insurance Policy are as follows:

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Application for 19— and Succeeding Crop
Years
Sunflower
Crop Insurance Contract

(Contract Number)

(Identification Number)

(Name and Address) (Zip Code)

(County) (State)

Type of Entity

Applicant Is Over 18 Yes— No—

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the sunflowers planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR. LEVEL ELECTION—PRICE ELECTION—

Example: for the 19— Crop Year Only (100 Percent Share)

Location/ farm No.	Guarantee per acre*	Premium per acre**	Practice
.....
.....
.....

*Your guarantee will be on a unit basis (acres x per acre guarantee x share).

**Your premium is subject to adjustment in accordance with section 5(c) of the policy.

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the crop year

specified above, unless the time for submitting applications has passed at the time this application is filed, AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED as provided in the contract. This accepted application, the following sunflower insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, and insurable and uninsurable acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness to Signature)

(Signature of Applicant)

(Date) _____, 19—

Address of Office for County:

Phone—

Location of Farm Headquarters:

Phone—

Sunflower Crop Insurance Policy

Terms and Conditions

Subject to the provisions in the attached appendix:

1. Causes of Loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. Crop and Acreage Insured. (a) The crop insured shall be sunflower seed (hereinafter referred to as "sunflowers") which is initially planted for harvest as sunflowers and which is grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage planted to sunflowers on insurable acreage as shown on the actuarial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That

insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (2) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (3) which is destroyed and after such destruction it was practical to replant to sunflowers and such acreage was not replanted, (4) which are not planted in rows far enough apart to permit cultivation with a row cultivator as determined by the Corporation, (5) initially planted after the date on file in the office for the county which has been established by the Corporation as being too late to initially plant and expect a normal crop to be produced, (6) of volunteer sunflowers, (7) planted to a type or variety of sunflowers not established as adapted to the area or shown as noninsurable on the actuarial table, or (8) on which sunflowers, potatoes, dry beans, soybeans, rape, or mustard have been grown on the preceding crop year.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is planted for the development or production of hybrid seed or for experimental purposes.

3. Responsibility of Insured to Report Acreage and Share. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of sunflowers planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of planting. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities. (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by the lesser of 100 pounds or 20 percent for any unharvested acreage.

5. Annual Premium. (a) The annual premium is earned and payable at the time of planting and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

BILLING CODE 3410-08-M

% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio ^{1/} Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE

	Number of Loss Years Through Previous Year ^{2/}															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio ^{1/} Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 - 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 - 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 - 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 - 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 - 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 - 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 - 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 - 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 - 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 - Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

^{1/} Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned..

^{2/} Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however*, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. Insurance Period. Insurance on insured acreage shall attach at the time the sunflowers are planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) combining, threshing, or removal of the sunflowers from the field, (c) November 30 of the calendar year in which sunflowers are normally harvested, or (d) total destruction of the insured sunflower crop.

7. Notice of Damage or Loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the sunflowers on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to replant to sunflowers. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire sunflower crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to

be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Claim for Indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of sunflowers on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of sunflowers on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of sunflowers to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Mature production which grades No. 2 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 12.0 percent; and if, due to insurable causes, any sunflowers do not grade No. 2 or better, as defined by the North Dakota Grain Inspection Service Incorporated, on the basis of test weight or seed damage, the production shall be adjusted by (i) dividing the value per pound of the damaged sunflowers (as determined by the Corporation) by the price per pound of No. 2 sunflowers and (ii) multiplying the result by the number of pounds of such sunflowers. The applicable price for No. 2 sunflowers shall be the local market price on the earlier of: the day the loss is adjusted or the day the damaged sunflowers were sold.

(2) Any harvested production from volunteer crops growing with the planted sunflower crop on acreage which the Corporation has not given consent to be put to another use shall be counted as sunflowers on a weight basis.

(3) Appraised production to be counted shall include: (i) greater of the appraised production or 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is planted before sunflower harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding any crop(s) maturing for harvest in the following calendar year), (ii) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (iii) not less than

the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iv) only the appraisal in excess of the lesser of 100 pounds per acre or 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However*, if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of sunflowers becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. Misrepresentation and Fraud. The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of Insured Share. If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. Records and Access to Farm. The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all sunflowers produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of Contract: Cancellation and Termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State	Cancellation date	Termination date for indebtedness
All States	Dec. 31	Mar. 31

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b) and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

Appendix—Additional Terms and Conditions

1. Meaning of Terms. For the purposes of sunflower crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding sunflower insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the sunflower crop is normally grown and shall be designated by the calendar year in which the sunflower crop is normally harvested.

(d) "Harvest" means the severance of mature sunflowers from the land for combining or threshing.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the corporation.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured sunflower crop at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the sunflower crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of sunflowers in the county on the date of planting for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sunflower crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. Acreage Insured. (a) The Corporation reserves the right to limit the insured acreage of sunflowers to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of sunflowers.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Irrigated Acreage. (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. Annual Premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however*, any previous unfavorable insurance experience shall be

considered in premium computation following a break in continuity.

5. Claim for and Payment of Indemnity. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured sunflower acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However*, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the sunflowers are planted for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. Termination of the Contract. (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. Coverage Level and Price Election. (a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the

coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and price election for any crop year on or before the closing date for submitting applications for that crop year.

9. Assignment of Indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. Contract Changes. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Appendix "B"

Counties Designated for Sunflower Crop Insurance—7 CFR 428

In accordance with the provisions of 7 CFR 428.1, the following counties are designated for sunflower crop insurance:

Minnesota

Becker	Norman
Big Stone	Otter Tail
Clay	Pennington
Grant	Polk
Kittson	Red Lake
Mahnomen	Traverse
Marshall	Wilkin

North Dakota

Barnes	Pembina
Cass	Ransom
Dickey	Richland
Eddy	Sargent
Foster	Steele
Grand Forks	Stutsman
Griggs	Trails
La Moure	Walsh
Nelson	Wells

South Dakota

Roberts

These regulations have been reviewed under the USDA criteria established to implement Executive Order No. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A-40.

Dated: November 16, 1979.

James D. Deal,
Manager.

(FR Doc. 79-36146 Filed 11-23-79; 8:45 am)

BILLING CODE 3410-08-M

7 CFR Part 432

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for insuring corn crops effective with the 1980 crop year. The rule combines provisions from previous regulations for insuring corn in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the *Federal Register* on August 16, 1979 (44 FR 47944), outlining prescribed procedures for insuring corn crops effective with the 1980 crop year. In the notice, FCIC, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), proposed that a new Part 432 of Chapter IV in Title 7 of the Code of Federal Regulations be established to prescribe procedures for insuring corn crops effective with the 1980 crop year to be known as 7 CFR Part 432 Corn Crop Insurance.

All previous regulations applicable to insuring corn crops, as found in 7 CFR 401.101-401.111, and 401.154, are not applicable to 1980 and succeeding corn crops but remain in effect for FCIC corn insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring corn crops into one shortened, simplified, and clearer regulation would be more effective administratively.

In addition, 7 CFR Part 432 provides (1) for a Premium Adjustment Table which replaces the current premium

discount provisions and includes a maximum 50 percent premium reduction for good insurance experience, as well as premium increases for unfavorable experience, on an individual contract basis, (2) that, when appraisals for unharvested acreage are made (except appraisals for abandoned acreage, other use without consent, uninsured causes, poor farming practices, and substitute crops) only the appraisals in excess of the lesser of 6 bushels or 20 percent of the guarantee will be included in the production to count, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Actuarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest to the present percent level offered in each county, and (8) for an increase in the limitation from \$5,000 to \$20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 432.5 of these proposed regulations, wherein the Manager of the Corporation is authorized to take action to grant relief.

The Corn Crop Insurance regulations provide a December 31 cancellation date for all counties. These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the cancellation date, in order to afford farmers an opportunity to examine them before the cancellation date of December 31, 1979, before they become effective for the 1980 crop year.

Under the provisions of Executive Order No. 12044, and the Administrative Procedure Act (5 U.S.C. 553(b) and (c)), the public was given an opportunity to submit written comments, data, and views on the proposed regulations, but none were received.

Therefore, with the exception of minor and nonsubstantive corrections to language, the regulations as contained in the proposed rule are hereby issued as a final rule to be in effect starting with the 1980 crop year.

In addition, there is hereby added to the final rule an Appendix "B", which lists the counties where corn crop insurance is available in accordance with the provisions of 7 CFR § 432.1

outlined below which state in part that before insurance is offered in any county there shall be published by appendix to this part the names of the counties in which such insurance shall be offered.

Inasmuch as the publication of the list of counties and crops insured by the Federal Crop Insurance Corporation as contained in Appendix "B" merely provides guidance for the general public and has no effect on the provisions of the insurance plan, the Corporation has determined that compliance with the procedure for notice and public participation in the proposed rulemaking process would be impracticable, unnecessary, and contrary to the public interest. Therefore, Appendix "B" is issued without compliance with such procedure.

Final Rule

§ 401.154 [Reserved]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby deletes and reserves 7 CFR 401.154, with the provisions as contained therein remaining in effect for FCIC insurance policies issued for crop years prior to 1980, and issues a new Part 432 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 432) to be known as the Corn Crop Insurance Regulations, which shall remain in effect, until amended or superseded, for the 1980 and succeeding crop years, to read as follows:

PART 432—CORN CROP INSURANCE

Subpart—Regulations for the 1980 and Succeeding Crop Years

Sec.

- 432.1 Availability of Corn Insurance.
- 432.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 432.3 Public notice of indemnities paid.
- 432.4 Creditors.
- 432.5 Good faith reliance on misrepresentation.
- 432.6 The contract.
- 432.7 The application and policy.

Authority.—Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516)

§ 432.1 Availability of Corn Insurance.

Insurance shall be offered under the provisions of this subpart on corn in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the

Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which corn insurance will be offered.

§ 432.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for corn which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 432.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 432.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 432.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the corn insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that

to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 432.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the corn crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 432.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the *Federal Register* upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however*, That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a corn contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Corn Insurance Policy for the 1980 and succeeding crop years, and the Appendix to the Corn Insurance Policy are as follows:

U.S. Department of Agriculture—Federal Crop Insurance Corporation

Application for 19— and Succeeding Crop Years: Corn

Crop Insurance Contract

Contract Number _____
Identification No. _____
Name and Address, ZIP Code _____
County and State _____
Type of Entity _____
Applicant is over 18 Yes ☐ No ☐

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the corn planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. **THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.**

Level Election _____
Price Election _____

Example: For the 19— Crop Year Only (100% Share)

Location/Farm No. _____
Guarantee Per Acre* _____
Premium Per Acre** _____
Practice _____

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed. **AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED** as provided in the contract. This accepted application, the following corn insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, and insurable and uninsurable acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

Code No./Witness To Signature _____

Signature of Applicant _____

_____, 19____
Address of Office for County: _____

* Your guarantee will be on a unit basis (acres × per acre guarantee × share).

** Your premium is subject to adjustment in accordance with section 5(c) of the policy.

Phone _____
Location of Farm Headquarters: _____

Phone _____

Corn Crop Insurance Policy

Terms and Conditions

Subject to the provisions in the attached appendix:

1. **Causes of Loss.** (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. **Crop and Acreage Insured.** (a) The crop insured shall be field corn which is planted for harvest as grain or silage and *silage-type* corn only where a silage guarantee is shown on the actuarial table and which is grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage planted to corn on insurable acreage as shown on the actuarial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (2) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (3) which is destroyed and after such destruction it was practical to replant to corn and such acreage was not replanted, (4) initially planted after the date on file in the office for the county which has been established by the Corporation as being too late to initially plant and expect a normal crop to be produced, (5) of volunteer corn, (6) planted to a type or variety of corn not established as adapted to the area or shown as non-insurable on the actuarial table, or (7) planted with another crop, except as otherwise provided herein.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is planted for the development or production of hybrid seed or for experimental purposes.

3. **Responsibility of Insured To Report Acreage and Share.** The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of corn planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of planting. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. **Production Guarantees, Coverage Levels, and Prices For Computing Indemnities.** (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The grain production guarantee per acre shall be reduced by the lesser of 6 bushels or 20 percent for any unharvested acreage; where the insured crop is *silage-type* corn, the silage guarantee per acre shall be reduced by the lesser of 1 ton or 20 percent for any unharvested acreage.

5. **Annual Premium.** (a) The annual premium is earned and payable at the time of planting and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

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% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE

	Number of Loss Years Through Previous Year ^{2/}															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio ^{1/} Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 – 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 – 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 – 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 – 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 – 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 – 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 – 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 – 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 – 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 – Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

^{1/} Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

^{2/} Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity: *however*, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. *Insurance Period.* Insurance on insured acreage shall attach at the time the corn is planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) harvest, (c) December 10 of the calendar year in which corn is normally harvested in all states except North Dakota (where insurance ceases October 31), or (d) total destruction of the insured corn crop: *Provided*, That where the actuarial table shows both a grain and a silage guarantee, insurance shall remain in effect no later than September 30 on any acreage of *silage-type* corn or any acreage of *field* corn harvested for silage, and any loss of production of such corn occurring thereafter shall be regarded as lost from an uninsured cause.

7. *Notice of Damage or Loss.* (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the corn on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to replant to corn. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if any acreage intended for harvest as silage has been damaged to the extent that a loss is probable, the insured shall give written notice to the Corporation as follows (1) where the

actuarial table shows only a grain guarantee, and the insured desires to harvest any acreage for silage, notice shall be given before the start of harvest of such acreage, or (2) where the actuarial table shows both a grain and a silage guarantee, notice shall be given prior to harvest if the harvested production will not be able to be determined, or by September 30 for unharvested acreage of *silage-type* corn or *field* corn intended for silage.

(d) In addition to the notices required in subsections (b) and (c) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire corn crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(e) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(f) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. *Claim for Indemnity.* (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of corn on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of corn on the unit by the applicable guarantee per acre, and multiplying such result by the applicable price for computing indemnities, which product shall be the dollar amount of insurance for the unit, (2) subtracting therefrom the dollar amount obtained by multiplying the total production to be counted for the unit by the applicable price for computing indemnities, and (3) multiplying the result obtained in step (2) by the insured share. Where the actuarial table shows only a grain guarantee, all production and appraisals shall be determined in bushels. Where the actuarial table shows both a grain and a silage guarantee, the production and appraisals shall be determined in bushels or tons, depending upon whether the acreage is harvested for grain or silage, except that the production and appraisals of *silage-type* corn shall be in tons. Where a unit contains acreage to which both a grain and a silage guarantee apply, the dollar amount of insurance and dollar amount of the production to be counted shall be determined separately for each portion and then added together to determine the total amount for the unit: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported

acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Mature grain production shall be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent. If the moisture is over 40 percent, or the test weight is below 40 pounds per bushel, the percent of the production to be counted shall be that agreed upon by the Corporation and the insured, or in the absence of agreement, as determined by the Corporation: *Provided, however*, That for harvested production, such percent shall not be less than 25.

(3) Appraised production to be counted shall include: (i) the greater of the appraised production or 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is planted before corn harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding any crop(s) maturing for harvest in the following calendar year), (ii) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (iii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iv) only the appraisal in excess of; the lesser of 6 bushels or 20 percent of the production guarantee for grain or the lesser of 1 ton or 20 percent of the production guarantee for silage, for all other unharvested acreage.

(d) If the insured intends to harvest any acreage for silage and gives notice pursuant to section 7 of this policy: (1) where the actuarial table shows only a grain guarantee, the Corporation will appraise the production in bushels of grain, (2) where the actuarial table shows both a grain and a silage guarantee, the Corporation will appraise the production in tons of silage only if the harvested production could not be determined and such appraisal of *field* corn will be used in computing the amount of loss only if such corn is actually harvested for silage. When an appraisal of production is required, the Corporation will make such appraisal before harvest starts; but, if unable to do so, the insured may harvest the acreage provided that representative areas are left unharvested for a Corporation appraisal.

(e) Where the actuarial table shows both a grain and a silage guarantee, the Corporation has the right to increase the silage production or tonnage appraisals of corn which is harvested for silage after the normal silage-harvesting period to reflect the normal moisture content of silage.

(f) The Corporation reserves the right to determine the amount of production of unharvested corn on the basis of field appraisals immediately after the end of the insurance period.

(g) The appraised potential production for acreage for which consent has been given to

be put to another use shall be counted as production in determining the amount of loss under the contract. However, if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of corn becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. *Misrepresentation and Fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. *Transfer of Insured Share.* If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. *Records and Access to Farm.* The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all corn produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. *Life of Contract: Cancellation and Termination.* (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

County: All counties. Cancellation date: December 31. Termination date for indebtedness: March 31.

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

Appendix—Additional Terms and Conditions

1. *Meaning of Terms.* For the purposes of corn crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding corn insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the corn crop is normally grown and shall be designated by the calendar year in which the corn crop is normally harvested.

(d) "Harvest" means removing the grain from the stalk either by hand or machine or cutting the corn for the purpose of livestock feed.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured corn crop at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Silage" means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

(k) "Tenant" means a person who rents land from another person for a share of the corn crop or proceeds therefrom.

(l) "Unit" means all insurable acreage of corn in the county on the date of planting for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the corn crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable

guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Acreage Insured.* (a) The Corporation reserves the right to limit the insured acreage of corn to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of corn.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. *Irrigated Acreage.* (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. *Annual Premium.* (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; however, any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. *Claim for and Payment of Indemnity.* (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured corn acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the corn is planted for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. *Subrogation*. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. *Termination of the Contract*. (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. *Coverage Level and Price Election*. (a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and price election for any crop year on or before the closing date for submitting applications for that crop year.

9. *Assignment of Indemnity*. Upon approval of a form prescribed by the Corporation, the

insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. *Contract Changes*. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Appendix "B"

Counties Designated for Corn Crop Insurance—7 CFR 432

In accordance with the provisions of 7 CFR 432.1, the following counties are designated for corn crop insurance:

Alabama

DeKalb
Jackson
Lawrence

Marshall
Pike

Colorado

Adams
Baca
Boulder
Cheyenne
Kit Carson
Larimer
Logan

Morgan
Phillips
Prowers
Sedgwick
Washington
Weid
Yuma

Delaware

Kent
New Castle

Sussex

Florida

Suwannee

Georgia

Colquitt
Houston

Mitchell

Illinois

Adams
Bond
Boone
Brown
Bureau
Carroll
Cass
Champaign
Christian
Clark
Clay
Clinton
Coles
Crawford
Cumberland
De Kalb
De Witt
Douglas
Edgar
Effingham
Fayette
Ford
Fulton
Greene
Grundy
Hamilton
Hancock

Henderson
Henry
Iroquois
Jasper
Jefferson
Jersey
Jo Daviess
Kane
Kankakee
Kendall
Knox
LaSalle
Lawrence
Lee
Livingston
Logan
McDonough
McHenry
McLean
Macon
Macoupin
Madison
Marion
Marshall
Mason
Menard
Mercer

Monroe
Montgomery
Morgan
Moultrie
Ogle
Peoria
Piatt
Perry
Pike
Putnam
Randolph
Richland
Rock Island
St. Clair
Sangamon

Indiana

Adams
Allen
Bartholomew
Benton
Blackford
Boone
Carroll
Cass
Clay
Clinton
Daviess
Decatur
De Kalb
Delaware
Elkhart
Fayette
Fountain
Franklin
Fulton
Gibson
Grant
Greene
Hamilton
Hancock
Hendricks
Henry
Howard
Huntington
Jackson
Jasper
Jay
Johnson

Schuyler
Scott
Shelby
Stark
Stephenson
Tazewell
Vermilion
Warren
Washington
Wayne
White
Whiteside
Will
Winnebago
Woodford

Iowa

Adair
Adams
Allamakee
Appanoose
Audubon
Benton
Black Hawk
Boone
Bremer
Buchanan
Buena Vista
Butler
Calhoun
Carroll
Cass
Cedar
Cerro Gordo
Cherokee
Chickasaw
Clarke
Clay
Clayton
Clinton
Crawford
Dallas
Davis
Decatur
Delaware
Des Moines
Dickinson
Dubuque
Emmet
Fayette
Floyd

Franklin
Fremont
Greene
Grundy
Guthrie
Hamilton
Hancock
Hardin
Harrison
Henry
Howard
Humboldt
Ida
Iowa
Jackson
Jasper
Jefferson
Johnson
Jones
Keokuk
Kossuth
Lee
Linn
Louisa
Lucas
Lyon
Madison
Mahaska
Marion
Marshall
Mills
Mitchell
Monona
Monroe

Montgomery	Story	Lyon	Scott	Sherman	Washington
Muscatine	Tama	McLeod	Sherburne	Stanton	Wayne
O'Brien	Taylor	Martin	Sibley	Thayer	York
Osceola	Union	Meeker	Stearns	Thurston	
Page	Van Buren	Mille Lacs	Steele		
Palo Alto	Wapello	Morrison	Stevens	New York	
Plymouth	Warren	Mower	Swift	Chautauqua	Ontario
Pocahontas	Washington	Murray	Todd	Niagara	Yates
Polk	Wayne	Nicollet	Traverse		
Pottawattamie	Webster	Nobles	Wabasha	North Carolina	
Powashiek	Winnebago	Olmsted	Wadena	Anson	Pamlico
Ringgold	Winneshieik	Otter Tail	Waseca	Beaufort	Pitt
Sac	Woodbury	Pipestone	Washington	Brunswick	Robeson
Scott	Worth	Pope	Watsonwan	Columbus	Rowan
Shelby	Wright	Redwood	Winona	Hyde	Scotland
Sioux		Renville	Wright	Nash	Union
		Rice	Yellow Medicine	Northampton	Washington
Kansas		Rock			
Atchison	Linn	Mississippi		North Dakota	
Bourbon	Logan	Calhoun	Tippah	Cass	Sargent
Brown	Lyon			Ransom	Trail
Cheyenne	Marshall	Missouri		Richland	
Crawford	Meade	Adair	Lafayette	Ohio	
Decatur	Miami	Andrew	Lawrence	Allen	Logan
Doniphan	Morton	Atchison	Lewis	Ashland	Lucas
Douglas	Nemaha	Audrain	Lincoln	Auglaize	Madison
Edwards	Osage	Barton	Linn	Butler	Marion
Finney	Pawnee	Bates	Livingston	Champaign	Medina
Ford	Pottawatomie	Boone	Macon	Clark	Mercer
Franklin	Pratt	Buchanan	Marion	Clinton	Miami
Gove	Rawlins	Butler	Mercer	Crawford	Montgomery
Grant	Republic	Caldwell	Mississippi	Darke	Morrow
Gray	Scott	Callaway	Monroe	Defiance	Ottawa
Greeley	Seward	Cape Girardeau	Montgomery	Delaware	Paulding
Hamilton	Shawnee	Carroll	New Madrid	Erie	Pickaway
Haskell	Sheridan	Cass	Nodaway	Fairfield	Preble
Hodgeman	Sherman	Chariton	Pemiscot	Fayette	Putnam
Jackson	Stanton	Clark	Perry	Franklin	Richland
Jefferson	Stevens	Clay	Pettis	Fulton	Sandusky
Jewell	Thomas	Clinton	Pike	Greene	Seneca
Johnson	Wallace	Cooper	Platte	Hancock	Shelby
Kearny	Washington	Daviess	Putnam	Hardin	Union
Lane	Wichita	De Kalb	Ralls	Henry	Van Wert
Leavenworth		Dunklin	Randolph	Highland	Wayne
Kentucky		Franklin	Ray	Huron	Williams
Christian	McLean	Gentry	St. Charles	Knox	Wood
Daviess	Todd	Grundy	Saline	Licking	Wyandot
Henderson	Union	Harrison	Schuyler		
Hopkins		Henry	Scotland	Oklahoma	
		Holt	Scott	Cimarron	Texas
Louisiana		Howard	Shelby		
Pointe Coupee		Jackson	Stoddard	Pennsylvania	
		Jasper	Sullivan	Adams	Franklin
Maryland		Johnson	Vernon	Chester	Lancaster
Caroline	Queen Annes	Knox	Worth	Cumberland	Lebanon
Kent	Talbot	Nebraska		Dauphin	Perry
		Adams	Harlan	Erie	York
Michigan		Antelope	Hitchcock		
Branch	Kalamazoo	Boone	Holt	South Carolina	
Calhoun	Lenawee	Buffalo	Howard	Calhoun	Orangeburg
Cass	Livingston	Burt	Johnson		
Clinton	Monroe	Butler	Kearney	South Dakota	
Eaton	Saginaw	Cass	Knox	Aurora	Hanson
Genesee	St. Clair	Cedar	Lancaster	Beadle	Hutchinson
Gratiot	St. Joseph	Chase	Lincoln	Bon Homme	Jerauld
Hillsdale	Shiawassee	Clay	Madison	Brookings	Kingsbury
Ingham	Tuscola	Colfax	Merrick	Brule	Lake
Ionian	Washtenaw	Cuming	Nance	Charles Mix	Lincoln
Jackson		Custer	Nemaha	Clark	McCook
		Dakota	Nuckolls	Clay	Miner
Minnesota		Dawson	Otoe	Codington	Minnehaha
Anoka	Faribault	Dixon	Pawnee	Davison	Moody
Benton	Fillmore	Dodge	Phelps	Day	Roberts
Big Stone	Freeborn	Douglas	Pierce	Deuel	Sanborn
Blue Earth	Goodhue	Dundy	Platte	Douglas	Turner
Brown	Grant	Fillmore	Polk	Grant	Union
Carver	Houston	Franklin	Red Willow	Gregory	Yankton
Chippewa	Isanti	Frontier	Richardson	Hamlin	
Chisago	Jackson	Furnas	Saline	Tennessee	
Cottonwood	Kandiyohi	Gage	Sarpy	Crockett	Obion
Dakota	Lac qui Parle	Gosper	Saunders	Franklin	
Dodge	Le Sueur	Hall	Scotts Bluff		
Douglas	Lincoln	Hamilton	Seward		

Texas

Bailey	Hansford
Castro	Lamb
Dallam	Moore
Deaf Smith	Parmer
Hale	Williamson

Virginia

Southampton	Suffolk City
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Wisconsin

Barron	Lafayette
Brown	Manitowoc
Buffalo	Marathon
Calumet	Monroe
Chippewa	Outagamie
Clark	Pepin
Columbia	Pierce
Crawford	Polk
Dane	Portage
Dodge	Racine
Dunn	Richland
Eau Claire	Rock
Fond du Lac	St. Croix
Grant	Sauk
Green	Sheboygan
Iowa	Trempealeau
Jackson	Vernon
Jefferson	Walworth
Kenosha	Waukesha
Kewaunee	Winnebago
La Crosse	Wood

Wyoming

Goshen

These regulations have been reviewed under the USDA criteria established to implement Executive Order No. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A-40.

Dated: November 16, 1979.

James D. Deal,
Manager.

[FR Doc. 79-36142 Filed 11-23-79 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 79-SO-71; Amdt. No. 39-3619]

**Airworthiness Directives; EMBRAER
EMB-110P1 and EMB-110P2**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection for cracks in the flap supports on EMBRAER Models EMB-110P1 and EMB-110P2 airplanes. The AD is needed to prevent failure of the flap supports which could result in loss of the flaps from the airplanes.

DATES: Effective November 21, 1979.

Compliance is required within the next 50 hours time in service, after the effective date of this AD, and thereafter at intervals not to exceed 250 hours time in service.

FOR FURTHER INFORMATION CONTACT: Jack Bentley, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: There have been reports of cracks in the flap supports on EMBRAER Models EMB-110P1 and EMB-110P2 airplanes which could result in loss of the flaps from the airplane. Since this condition is likely to exist or develop on other airplanes of the same type design, an Airworthiness Directive is being issued which requires inspection for cracks in the flap supports and replacement as necessary on EMBRAER Models EMB-110P1 and EMB-110P2 airplanes.

Since a situation exists that requires the 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 Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive (AD):

EMBRAER: Models EMB-110P1 and EMB-110P2, certificated in all categories.

Compliance is required within the next 50 hours time in service, unless already accomplished, and thereafter at intervals not to exceed 250 hours time in service. To prevent failure of the flap supports and possible loss of the flaps, accomplish the following:

A. With the wing flaps extended, using a 10-power magnifying glass or dye-penetrant method, conduct an inspection of all the flap supports; part numbers listed below, installed on the wing and on the flaps, for cracks in the components near the attachment bolts.

Flap Support Part Numbers

4A-2611.46.01
4A-2621.46.01
4A-2611.47.01
4A-2611.48.01
4A-2621.48.01

4A-2116.01.01
4A-2116.02.01 or 4A-2116.02.01N
4A-2216.02.01 or 4A-2216.02.01N
4A-2116.03.01
4A-2216.03.01

If any cracks are found, replace the component before further flight.

B. Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, Southern Region, may adjust the inspection interval if the request contains substantiating data to justify the increase for that operator.

C. Compliance with the provisions of this AD may be accomplished in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, Southern Region.

This amendment is effective November 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)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in East Point, Ga., on November 9, 1979.

Louis J. Cardinali,
Director, Southern Region.

[FR Doc. 79-36315 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-NW-18-AD; Amend. 39-3613]

**Airworthiness Directive; Bell Model
47G Series Helicopters, Soly Turbine
Conversions**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On August 21, 1979, an airmail letter Airworthiness Directive (AD) was issued and made effective upon receipt to all operators of Bell 47G series helicopters that have been converted to turbine power by Soly Conversions, LTD., under Supplemental Type Certificate (STC) SH657NW.

The AD required a one-time inspection of the turbine engine mount rod ends to determine if certain non-aircraft quality rod ends had been installed, replacement of the rod ends if necessary, and returning of the replaced rod ends to Soly Conversion, LTD., for accountability. Compliance with the AD will result in detection of the non-aircraft quality rod ends which are subject to unreliable strength and fatigue characteristics. Failure of these

rod ends would result in binding of the engine drive shaft and possible catastrophic structural damage. This condition still exists and the AD is hereby published in the *Federal Register* to make it effective as to all persons.

DATES: The effective date is November 26, 1979, except for recipients of the airmail letter of August 21, 1979, which contained this Amendment. Initial compliance required before 25 hours time-in-service after receipt of this AD.

FOR FURTHER INFORMATION, CONTACT: Mr. James R. Haynes, Airframe Section, ANW-212, Engineering and Manufacturing Branch, Northwest Region, 9010 East Marginal Way South, Seattle, Washington, 98108. Telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: These suspect rod ends were discovered to have been installed on several Bell 47G series helicopters at the time of conversion to turbine power by Soloy Conversion, LTD., under Supplemental Type Certificate (STC) SH657NW. The manufacturer of these rod ends has indicated that they are not aircraft quality and have unreliable strength and fatigue characteristics. The rod ends are the primary mounting devices for the turbine engine. A failure of one of these rod ends could cause a shift in the engine alignment and binding of the engine drive shaft. In addition to possible loss of engine power, the engine drive shaft could fail and cause severe structural damage in the helicopter. A known number of these rod ends have been installed, but it is not known which particular helicopters they have been installed on. Consequently, the AD requires a one-time inspection to determine if any of these type rod ends have been installed, replacement with approved rod ends, if necessary, and return of the suspect rod ends to Soloy Conversion, LTD., for accountability. Since a situation existed that required immediate adoption of this regulation, it was found that notice and public procedure thereon were impracticable and good cause existed at the time of issuance, and still 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 the Federal Aviation Regulations (13 CFR 39.13), is amended by adding the following new Airworthiness Directive:

Bell Helicopter Textron: Applies to Bell 47G series helicopters certificated in all categories that have been converted to turbine power by Soloy Conversions,

LTD., Supplemental Type Certificate SH657NW.

A. Within the next 25 hours time-in-service, after the effective date of this AD, inspect the turbine engine mount rod ends with a magnet to determine if the NMB Inc. P/N AH FTL5, or Soloy P/N 100-2205-2B rod ends are installed. These suspect stainless steel rod ends are identified by the fact that they are non-magnetic.

B. If the non-magnetic stainless steel rod ends are found to be installed, replace the rod ends with Heim P/N HFL-5M or Soloy P/N 100-2205-1B in accordance with Soloy Conversions, LTD., Service Bulletin 03-660 Dated July 16, 1979, within 25 hours time-in-service after the effective date of this AD.

C. Return the suspect stainless steel rod ends to Soloy Conversions, LTD., for disposal within 30 days after removal.

D. Alternate replacements which provide an equivalent level of safety may be used when approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to Soloy Conversions, LTD., P.O. Box 60, Chehalis, Washington 98532. These documents may also be examined at FAA Northwest Region, 9010 East Marginal South, Seattle, Washington 98108.

"This Amendment is effective November 26, 1979 and was effective earlier, for all recipients of the airmail letter dated August 21, 1979, which contained this Amendment." (Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Wash., on November 6, 1979.

C. B. Walk, Jr.,

Director, Northwest Region.

Note.—The incorporation by reference provisions in the document were approved by the Director of the *Federal Register* on June 19, 1967.

[FR Doc. 79-36316 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ASW-40]

Designation of Transition Area: Danbury, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Danbury, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Garrett Ranch Airport. The circumstance which created the need for the action is the establishment of a special instrument approach procedure to the Garrett Ranch Airport using the Scholes VORTAC. Coincident with this action the airport is changed from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This is a new airport as circularized under Study Number 79-ASW-26-NRA dated February 27, 1979.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On October 1, 1979, a notice of proposed rulemaking was published in the *Federal Register* (44 FR 56374) stating that the Federal Aviation Administration proposed to designate the Danbury, Tex., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates the Danbury, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Garrett Ranch Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.m.t., January 24, 1980, by adding the Danbury, Tex., transition area, as follows.

In Subpart G, § 71.181 (44 FR 442), the following transition area is added:

Danbury, Tex.

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Garrett Ranch Airport, Danbury, Tex. (latitude 29°17'13" N., longitude 95°21'34" W.).

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

Note.—The FAA has determined that this document 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 Fort Worth, Tex., on November 14, 1979.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-36317 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ASW-41]

Designation of Transition Area: Eastland, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Eastland, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Eastland Municipal Airport. The circumstance which created the need for the action is the establishment of a nondirectional radio beacon (NDB) 3,500 feet south of Runway 35. Coincident with this action, the airport is changed from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On October 1, 1979, a notice of proposed rule making was published in the *Federal Register* (44 FR 56374) stating that the Federal Aviation

Administration proposed to designate the Eastland, Tex., transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received and one commentator objected to the proposal.

Discussion of Comments

The Department of the Air Force representative commented negatively to the proposed rule. The commenter objected because of the possible effect the proposal may have on the Military Training Route, IR153. The main concern is that the instrument approach procedure associated with the proposal could cause limitations or restrictions on use of the route. Additionally, the commenter recommended that the instrument approach procedure be made from the north to Runway 17 instead of Runway 35. The instrument approach procedure was developed to Runway 35 rather than Runway 17 due to high antenna structures north of the airport and a lower minimum descent altitude (MDA) could be obtained by developing the procedure to Runway 35. Instrument Flight Rules (IFR) traffic in controlled airspace will be separated by the appropriate air traffic control facility. The low volume of traffic that will be generated from the Eastland Municipal Airport and the IFR traffic on IR153 shall not conflict to any significant degree. Consequently, the Federal Aviation Administration has determined that any effect will be minimal. Except for editorial changes, this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates the Eastland, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Eastland Municipal Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.m.t., January 24, 1980, as follows.

In Subpart G, § 71.181 (44 FR 442), the following transition area is added:

Eastland, Tex.

That airspace extending upward from 700 feet above the surface within a 6.5-mile

radius of Eastland Municipal Airport (latitude 32°25'00" N., longitude 98°48'45" W.) and within 3.5 miles each side of the 180° bearing from the NDB (latitude 32°23'55" N., longitude 98°48'35.18" W.) extending from the 6.5-mile radius area to a point 8.5 miles south of the NDB.

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

Note.—The FAA has determined that this document 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).

Note.—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 Fort Worth, Tex., on November 14, 1979.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-36318 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ASW-35]

Designation of Transition Area: Center, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Center, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Center Municipal Airport. The circumstance which created the need for the action is the establishment of a nondirectional radio beacon (NDB) located on the airport. Coincident with this action, the airport is changed from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1979, a notice of proposed rulemaking was published in the *Federal Register* (44 FR 55595) stating that the Federal Aviation

Administration proposed to designate the Center, Tex., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received and one commentator objected to the proposal.

Discussion of Comments

The Department of the Air Force representative commented negatively to the proposed rule. The commentator objected because of the possible effect the proposal might have on a Military Training Route, IR-127. The main concern is that the transition area and the instrument approach procedure associated with the proposal could infringe upon IR-127. The commentator stated that the Twelfth Air Force would have no objection if IR-127 was not impacted. Instrument Flight Rules (IFR) traffic in controlled airspace will be separated by the appropriate air traffic control facility. Since the anticipated IFR traffic operating to or from the Center Municipal Airport will not be of sufficient numbers to impact other IFR operations, the Federal Aviation Administration has determined that there will be no significant impact on IR-127. Except for editorial changes, this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates the Center, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Center Municipal Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.m.t., January 24, 1980, as follows:

In Subpart G, § 71.181 (44 FR 442), the following transition area is added:

Center, Tex.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Center Municipal Airport, Center, Tex. (latitude 31°50'00" N., longitude 94°09'00" W.), and within 3.5 miles each side of the 321° bearing from the NDB (latitude 31°50'10" N., longitude 94°08'59" W.), extending from the 6-mile radius area to 8.5 miles northwest of the NDB.

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

Note.—The FAA has determined that this document 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 Fort Worth, Tex., on November 9, 1979.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-36319 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ASW-36]

Designation of Transition Area: Winters, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Winters, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Winters Municipal Airport. The circumstance which created the need for the action is the establishment of a nondirectional radio beacon (NDB) located on the airport. Coincident with this action, the airport is changed from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1979, a notice of proposed rule making was published in the Federal Register (44 FR 55595) stating that the Federal Aviation Administration proposed to designate a transition area at Winters, Tex. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments

were received without objections. Except for editorial changes this amendment is the proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates the Winters, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Winters Municipal Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.m.t., January 24, 1980, by adding the Winters, Tex., transition area as follows:

Winters, Tex.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Winters Municipal Airport (latitude 31°56'45"N., longitude 99°59'08"W.) and within 3.5 miles each side of the 187° bearing from the NDB (latitude 31°57'12"N., longitude 99°59'00"W.) extending from the 7-mile radius area to 8.5 miles south of the NDB.

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

Note.—The FAA has determined that this document 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 Fort Worth, Tex., on November 9, 1979.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-36320 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-EA-25]

Alteration of Transition Area: Tri-City, Tenn.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Tri-City, Tenn., transition area. A new

NDB-A instrument approach procedure at Virginia Highlands Airport, Abingdon, Va., is in development. To provide controlled airspace for this procedure will require alteration of the 700-foot floor transition area. This alteration will provide protection to aircraft executing the new and revised instrument approaches by increasing the controlled airspace. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

EFFECTIVE DATE: 0901 G.m.t. November 29, 1979.

FOR FURTHER INFORMATION CONTACT: Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter a transition area. On page 38569 of the Federal Register for July 2, 1979, the FAA published a proposed amendment to alter the subject transition area. Interested parties were given time in which to submit comments. No objections were received.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. November 29, 1979, as published.

(Sec. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Issued in Jamaica, New York, on November 8, 1979.

Martin J. White,

Acting Director, Eastern Region.

1. Amend § 71.181 of the Federal Aviation Regulations so as to amend the description of the Tri-City, Tenn., 700-foot floor transition area as follows:

In the text delete, "including the airspace within 2 miles each side of Virginia Highlands Airport Runway 6 extended centerline, extending from the arc of a 30-mile radius circle centered on Tri-City Airport to 7.5 miles northeast of Virginia Highlands Airport;" and substitute therefore, "including the airspace within 3 miles each side of the Abingdon, Va. NDB 36°42'35"N., 81°59'15"W., 059° bearing, extending from the arc of a 30-mile radius circle

centered on Tri-City Airport to 8.5 miles northeast of the Abingdon NDB;"

[FR Doc. 79-36321 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ASW-32]

Alteration of Transition Area: Port Lavaca, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to alter the transition area at Port Lavaca, Tex. The intended effect of the action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Calhoun County Airport. The circumstance which created the need for the action is the establishment of a nondirectional radio beacon (NDB) on the airport.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On September 20, 1979, a notice of proposed rule making was published in the Federal Register (44 FR 54492) stating that the Federal Aviation Administration proposed to alter the Port Lavaca, Tex., transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the Port Lavaca, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing established and proposed instrument approach procedures to Calhoun County Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal

Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.m.t., January 24, 1980, as follows.

In Subpart G, § 71.181 (44 FR 442), the Port Lavaca transition area is altered as follows:

Port Lavaca, Tex.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Calhoun County Airport (Latitude 28°39'12"N., Longitude 96°40'56"W.) and within 2.5 miles each side of the Palacios VORTAC 250° radial extending from the 5-mile radius area to 16 miles southwest of the VORTAC; within 3 miles each side of the 330° bearing from the NDB (Latitude 28°39'01"N., Longitude 96°40'52"W.), extending from the 5-mile radius area to 8.5 miles northwest of the NDB.

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

Note.—The FAA has determined that this document 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 Fort Worth, Tex., on November 9, 1979.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-36322 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ASW-34]

Alteration of Transition Area: Sulphur Springs, Tex.

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to alter the transition area at Sulphur Springs, Tex. The intended effect of the action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Sulphur Springs Municipal Airport. The circumstance which created the need for the action is the establishment of a nondirectional radio beacon (NDB) located on the airport.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air

Traffic Division, Southwest Region,
Federal Aviation Administration, P.O.
Box 1689, Fort Worth, Texas 76101;
telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1979, a notice of proposed rule making was published in the Federal Register (44 FR 55596) stating that the Federal Aviation Administration proposed to alter the Sulphur Springs, Tex., transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the Sulphur Springs, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing established and proposed instrument approach procedures to the Sulphur Springs Municipal Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.m.t., January 24, 1980, as follows:

In Subpart G, § 71.181 (44 FR 442), the following transition area is altered by adding the following:

Sulphur Springs, Tex.

* * * and within 3 miles each side of the 002° bearing from the NDB (latitude 33°09'30"N., longitude 95°37'05"W.) extending from the 5-mile radius area to 8.5 miles north of the NDB.

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

Note.—The FAA has determined that this document 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 Fort Worth, Tex., on November 9, 1979.

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

[FR Doc. 79-36323 Filed 11-23-79; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

15 CFR Part 369

Restrictive Trade Practices or Boycotts; Interpretation

AGENCY: Industry and Trade Administration, Department of Commerce.

ACTION: Interpretation.

SUMMARY: This document sets forth the views of the Department of Commerce with respect to the application of the final regulations on restrictive trade practices or boycotts (15 CFR Part 369) to certain shipping and insurance certifications which some United States persons are being or may be asked to provide.

EFFECTIVE DATE: November 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Howard Fenton, Antiboycott Compliance Staff, U.S. Department of Commerce, Telephone (202) 377-5914.

The following Appendix is added to Part 369 as Supplement 2.

Appendix—Interpretations

In the Federal Register of April 21, 1978 (43 FR 16969), the Department set forth its views on whether the furnishing of certain shipping and insurance certificates in compliance with boycotting country requirements violated the provisions of Title II of the Export Administration Amendments of 1977 (50 U.S.C. app. 2401-2413) (1976 & Supp. I 1977) and the regulations on restrictive trade practices or boycotts (15 CFR Part 369 (1979)). In that context, the Department stated its position that (i) "the owner, charterer or master of a vessel may certify that the vessel is 'eligible' or 'otherwise eligible' to enter into the ports of a boycotting country in conformity with its laws and regulations," and (ii) "the insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative."

Under its April 21, 1978 Interpretation, the Department also stated that furnishing such certifications by anyone other than (i) the owner, charterer or master of a vessel or (ii) the insurer would fall within the prohibition set forth in 15 CFR 369.2(d), "unless it is clear from all the facts and circumstances that these certifications are not required for a boycott reason." See 15 CFR 369.2(d) (3) and (4).

Since the publication of that Interpretation, the Department has received from the

Kingdom of Saudi Arabia a clarification that the shipping and insurance certifications are required by Saudi Arabia in order to (i) demonstrate that there are no applicable restrictions under Saudi laws or regulations pertaining to maritime matters such as the age of the ship, the condition of the ship, and similar matters that would bar entry of the vessel into Saudi ports; and (ii) facilitate dealings with insurers by Saudi Arabian importers whose ability to secure expeditious payments in the event of damage to insured goods may be adversely affected by the absence of a qualified agent or representative of the insurer in Saudi Arabia. In the Department's judgment, this clarification constitutes sufficient facts and circumstances to demonstrate that the certifications are not required by Saudi Arabia for boycott reasons.

On the basis of this clarification, it is the Department's position that any United States person may furnish such shipping insurance certificates required by Saudi Arabia without violating 15 CFR 369.2(d). Moreover, under these circumstances, receipt of requests for such shipping and insurance certificates from Saudi Arabia is not reportable.

It is still the Department's position that furnishing such a certificate pertaining to one's own eligibility offends no prohibition under Part 369. See 15 CFR 369.2(f), example (xiv). However, absent facts and circumstances clearly indicating that the certifications are required for ordinary commercial reasons as demonstrated by the Saudi clarification, furnishing certifications about the eligibility or blacklist status of any other person would fall within the prohibition set forth in § 369.2(d), and receipt of requests for such certifications is reportable.

It also remains the Department's position that where a United States person asks an insurer or carrier of the exporter's goods to self-certify, such request offends no prohibition under this Part. However, where a United States person asks anyone other than an insurer or carrier of the exporter's goods to self-certify, such requests will be considered by the Department as evidence of the requesting person's refusal to do business with those persons who cannot or will not furnish such a self-certification. For example, if an exporter-beneficiary of a letter of credit asks his component suppliers to self-certify, such a request will be considered as evidence of his refusal to do business with those component suppliers who cannot or will not furnish such a self-certification.

The Department wishes to emphasize that notwithstanding the fact that self-certifications are permissible, it will closely scrutinize the activities of all United States persons who provide such self-certifications, including insurers and carriers, to determine that such persons have not taken any prohibited actions or entered into any prohibited agreements in order to be able to furnish such certifications.

Dated: November 20, 1979.

Stanley J. Marcuss,
Acting Assistant Secretary for Industry and Trade.

[FR Doc. 79-36326 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter II

Mortgage Insurance Sections; Identification of Incorporated by Reference Materials

Editorial Note: In response to an office of the Federal Register request to identify incorporated material, and to comply with current terminology and practice, the Department of Housing and Urban Development changes those section headings in 24 CFR Chapter II which now read "Incorporation by reference" to read "Cross reference."

BILLING CODE 6820-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1365-3]

Approval and Promulgation of Implementation Plans; Alabama: 1979 Plan Revisions

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of portions of the implementation plan revisions which the Alabama Air Pollution Control Commission submitted pursuant to the requirements of Part D of Title I of the Clean Air Act, as amended 1977, with regard to nonattainment areas.

Other portions of the State's 1979 revisions are given conditional approval. These portions contain minor deficiencies which the State has agreed to correct by February 15, 1980. After receipt of the supplementary submittal, they will be the subject of another notice of proposed rulemaking. The specific portions of the Alabama implementation plan revisions that EPA proposes to take final action on are described below in detail in the General Discussion.

DATE: These actions are effective November 26, 1979.

ADDRESSES: Copies of the materials submitted by Alabama and the comments received in response to the proposal notice of July 19, 1979 (44 FR 42242), may be examined during normal business hours at the following locations: Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Library, Environmental Protection

Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia, 30308.

FOR FURTHER INFORMATION CONTACT: Raymond Gregory, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia, 30308, 404/881-3286 (FTS 257-3286).

SUPPLEMENTAL INFORMATION:

Background

In the July 19, 1979, Federal Register (44 FR 42242), EPA proposed approval of the Alabama SIP revisions for the following designated nonattainment areas:

Total Suspended Particulate Matter (TSP) ((P) Primary, (S) Secondary Standards)

A. That portion of Jackson County surrounding the Tennessee Valley Authority's Widows Creek Plant (P)(S).

B. That portion of Mobile County within a section of downtown Mobile (P)(S).

C. A portion of Morgan County including portions of the City of Decatur (S).

Photochemical Oxidants (Ozone)

A. Jefferson County;

B. Mobile County;

C. Madison County;

D. Morgan County;

E. Russell County.

Implementation plan revisions under Part D of Title I of the Clean Air Act were developed by the State for all the foregoing areas. These revisions were submitted for EPA's approval on April 19, 1979; additional information requested by EPA was submitted on August 10, 1979. The materials submitted concerned clarification of issues addressed in the proposed conditional approval of July 19, 1979. In addition, the State requested in a separate letter on August 10, 1979, redesignation of the TSP nonattainment area in Morgan County to "unknown" (cannot be classified) based on four quarters of attainment data. This request will be dealt with in a separate Federal Register notice.

Receipt of the Alabama revisions was first announced in the Federal Register of May 9, 1979 (44 FR 27183). The Alabama revisions have been reviewed by EPA in light of the Clean Air Act of 1977, EPA regulations, and additional guidance materials. The criteria utilized in this review were detailed in the Federal Register on April 4, 1979 (44 FR 20372), and need not be repeated in detail here.

General Discussion

The notice of proposed rulemaking discussed each of the provisions of Section 172(b) of the Clean Air Act of 1977. This notice discusses the substantive issues addressed in the proposal notice of July 19, 1979, and the

public comments which were received as a result of that notice, and responses to comments made on a national basis.

A Reasonable Further Progress (RFP) demonstration for the Morgan County TSP nonattainment area was requested. The State has made a request for redesignation of this area to unclassifiable based on four quarters of attainment air quality data and the installation of more efficient controls under existing regulations on two sources of TSP influencing the monitor. This request is in accordance with EPA policy. The conditional approval proposed for this section of the State submittal is no longer appropriate. The change in the attainment status will be addressed in a separate Federal Register notice.

The State was requested to certify that the 1972 inventory for TSP sources in the Mobile nonattainment area was identical to the 1976 inventory. As an alternative, the State has submitted a 1977 inventory. With this submittal, the conditional approval concerning the control strategy demonstration for the Mobile TSP revision is changed to full approval.

A commitment to an annual updating of the inventories for the nonattainment area was requested. The commitment by the State to annual reports concerning RFP is in effect also a commitment to an annual updating of the emission inventories, since the annual reports concerning RFP must be based on annually updated emissions inventories. The conditional approval which required a commitment to an annual updating of the emission inventories is therefore being changed to full approval.

The State has submitted a written certification that the definition of LAER (Lowest Achievable Emission Rate) which contains the phrase "or can reasonably be expected to occur in practice" is not any less stringent than the definition contained in the Clean Air Act. With this certification the conditional approval of the definition of LAER is changed to full approval.

A suggestion was made that the State make their definitions of "source" and "facility" consistent with present EPA definitions. Because the State prefers their definitions of the terms "source" and "facility" rather than the EPA definitions, and because the EPA definitions are proposed to be changed in the same manner (see 44 FR 51931 September 5, 1979), no change will be required in the State definitions.

The State has agreed to revise the permitting requirements to include those sources significantly impacting the primary and secondary nonattainment areas. Conditional approval is given

with the stipulation that the State must revise the regulation accordingly.

The State has submitted a written concurrence with EPA's interpretation of the term "acceptable schedule" as being "intended to mean one which is consistent with the requirements of the Clean Air Act including Section 113(d)." With this concurrence by the State, EPA approves subparagraph 16.3.2(c)(2) of the State's plan.

EPA has determined that removal of the phrases "increase in" and "(or sources)" in subparagraph 16.3.2(d)(1)(i) is not required in order for this provision to be approvable. EPA has concluded that the State's definition of "source" and "major modification" eliminate the possibility that emission reductions at the source (as presently defined by EPA) would exempt new sources or modifications from substantive permitting requirements.

The State has used the phrase "maximum expected production rate", instead of the EPA phrase "maximum allowable production rate" in its regulation governing calculation of offsets. The State agency has certified that the phrase "maximum expected production rate" used in subparagraph 16.3.2(g)(5) of its regulations is not intended to allow credit for a calculated value greater than that which would be allowed under the applicable source emission limitation in the approved SIP. With the above certification by the State, the conditional approval concerning subparagraph 16.3.2(g)(5) is changed to full approval.

EPA has obtained assurances from the State that emission reduction offsets will be made legally enforceable under the SIP by means of requirements in the Part D permits for the sources providing the offsets. Since this mechanism is legally enforceable, EPA has determined that the State has satisfied the requirement concerning the specific mechanisms for implementing offsets.

The State permitting requirements intended to meet Clean Air Act Part D permitting requirements mandate offsets of "emissions" from proposed new or modified sources before construction of said sources can be approved. "Emissions" are defined in section 1.2.1 of the State regulations to include "a release into the outdoor atmosphere of air contaminants". This of course includes the EPA concept of emissions referred to as "fugitive process emissions". This will necessitate the State requiring a quantification of the "fugitive process emissions" for each affected source and the source applying for construction approval to obtain appropriate offsets. Therefore, with this understanding, a State definition of

"fugitive process emissions" is not necessary. The conditional approval requiring adoption of a definition of "fugitive process" emissions is changed to full approval.

Upon reconsideration, EPA has determined that the control requirements specified in the document referenced in section 4.2.4 of the State regulations, for the Mobile TSP nonattainment area (Appendix E of the "Support Document, SIP Revision, Mobile TSP Nonattainment Area", November 14, 1978), do meet the requirements for emission limitations and legally enforceable procedures in that each individual "source" or "process" requiring Reasonably Available Control Technology (RACT) is identified and appropriate control measures are specified for each source in Mobile. The SIP revision process must be adhered to for any future revision of that Appendix. Based on this determination, the conditional approval for this section is changed to full approval.

The State regulations section 4.11.1(c) concerning control of cement plants indicates applicability to "new plants". The State regulation for Standards of Performance for New Stationary Sources (section 12.1(b)) states that "the regulations of Chapter 12 will take precedence for standards of performance for new stationary sources unless the existing regulations are more stringent." Since the Chapter 12 regulations represent full New Source Performance Standards for new cement plants, it takes precedence. The conditional approval for this section is changed to full approval based on the nonapplicability of section 4.11.1(c) to new cement plants, as confirmed by the State.

EPA has determined that the VOC Control Techniques Guideline concerning control of petroleum storage vessels prior to lease custody transfer supports an exemption of crude oil and condensate storage vessels smaller than 1,600,000 liters. Therefore, the conditional approval concerning the Alabama exemption is changed to full approval.

The conditional approval for the State Director-approved alternative VOC control (6.14.2) which uses a plantwide weekly weighted average is changed to full approval. It is EPA's interpretation of the Clean Air Act and relevant regulations that if alternative control strategies are allowed which were not part of the SIP approval process, then these individual alternative control strategies must undergo the full SIP revision process. EPA will soon place in

the Federal Register a general notice concerning this subject.

Public Comments

1. The following comments concerned Reasonably Available Control Technology (RACT) for sources of Volatile Organic Compounds (VOC).

Comment: The VOC RACT regulations should be limited to the designated nonattainment areas. The commenter doubts that EPA will allow (based on written EPA policy and regulations) exemptions from either pre-construction monitoring or emission offset requirements for new VOC sources when a State has adopted statewide RACT regulations for VOC sources.

Agency Response: Statewide RACT regulations for VOC sources are a necessary requirement for a Statewide "accommodative SIP" approach for new VOC sources. An accommodative SIP eliminates requirements for offsets for new VOC sources locating in or near nonattainment areas. In addition, under this approach a new source locating in a rural area which is unclassifiable for ozone can assume nonattainment, install LAER control, and perform the required monitoring after the start of construction. Otherwise, monitoring would be required before issuance of the permit to start construction.

Comment: The compliance schedule deadlines for the VOC RACT regulation should be extended as long as possible while still meeting reasonable further progress requirements. The commenter is concerned that the time frame for ordering, retrofitting or installing, and testing control equipment will exceed the time allowed on the compliance schedules.

Agency Response: The State has adopted regulations allowing alternative compliance schedules. EPA will allow alternative compliance schedules which are approved by states under regulations which meet EPA requirements.

2. The following comments addressed questions concerning the control strategy demonstration and adopted regulations.

Comment: (Ozone-Jefferson County and Mobile County) Air quality and emissions data for photochemical oxidants (ozone) and the compliance modeling (linear rollback technique) are based more on wishful thinking than factual information and reliable analysis.

Agency Response: The air quality data has been collected in accordance with approved reliable sampling methods. The emissions data were collected using standardized methods

and thus constitute reliable factual information. The use of the linear rollback method determining the level of control required to attain the national ambient air quality standards is acceptable. While EPA recognizes that other models exist which involve a more complex investigation of the ozone-hydrocarbon reaction cycle, the rollback method is still deemed reliable by EPA.

Comment: Without clearly stated authority and additional resources to effectively supervise local programs, Alabama will inevitably fail in its efforts to attain compliance in Birmingham and Mobile.

Agency Response: The local agencies in Jefferson and Mobile Counties have adequate resources to accomplish effective control of air pollution sources. The Alabama Air Pollution Control Commission (AAPCC) oversees work conducted by those programs by means of terms in the agreement delegating primary responsibility to the local programs. The resources committed by the AAPCC to work effectively in conjunction with the local agencies are adequate.

Comment: Alabama's "bubble" provision simply states that "approval * * * shall not be granted unless it is consistent with the requirements of Federal and State law." This general prohibition does not set forth important standards and guidelines with sufficient specificity.

Agency Response: The use of the "bubble" provision by the State will be under the source permitting regulations including Prevention of Significant Deterioration (PSD) and nonattainment area offset requirements. The specific requirements under the source permitting regulations require that there be no interference with the attainment and maintenance of primary and secondary ambient air quality standards, in addition to application of a specific degree of control technology.

Comment: The inventories should be updated on an annual basis. The inventories are unorganized and poorly cross-referenced. The Mobile TSP emission inventory should be updated.

Agency Response: An annual updating of the emission inventories has been addressed in the General Discussion portion of this notice. Alabama has submitted a table of contents for the emission inventories which is being made available for public inspection along with other additional information supplied. The State has submitted a 1977 TSP emission inventory for the Mobile nonattainment area, which is acceptable under EPA guidance.

Comment: The commenter has been unable to inspect all relevant documents relating to the proposed Alabama SIP as of August 16, 1979. Certain proposed or approved amendments to Alabama regulations were not available or were not identified as approval by Alabama. The complete "reorganized" regulations were not available for review.

Agency Response: The SIP revisions submitted by the Alabama Air Pollution Control Commission were forwarded to the library files at the locations listed in the proposal notice. Within the material forwarded to the library files was a section identified as "Chapter 8 Amendments to Rules and Regulations." This section contained the revised rules and regulations which the AAPCC adopted and submitted as necessary to meet the NAAQS for the TSP and ozone nonattainment areas. There is a statement in the revised regulations (Chapter 16, "Permits") which may have caused confusion concerning a "reorganization" of the regulations. This statement reads: "The requirements contained in Section 16.1.1 through Section 16.3.1 are a reorganization of existing regulations presently contained in Part 1.12 of the Alabama Air Pollution Control Commission Rules and Regulations." Part 1.12 contained the regulations governing permits. The "reorganization" consisted of a rearrangement and renumbering consistent with the numbering in Chapter 16. There have been no substantive changes in these regulations. There is no impact from the reorganization on the Part D (nonattainment) SIP revisions.

Comment: An extension of the public comment period to and including September 20, 1979, should be granted in order to allow review of all materials that should be on file.

Agency Response: Those revised portions of the SIP submitted by the State for approval have been on file during the public availability and comment periods (May 9, 1979 through August 20, 1979). The present version of the approved Alabama SIP, including past revisions, is maintained on file (EPA Washington Library and EPA Region IV Library). There is no reason for extending the public comment period.

3. National Comment Responses.

Comment and Response: One commenter submitted extensive comments which it requested be considered part of the record for each state plan. Each of the points raised by the commenter and EPA's response follow. Although some of the issues raised are not relevant to provisions in Alabama's submission, EPA is notifying

the public of its response to these comments at this time.

1. The commenter asked that comments it has previously submitted on the Emission Offset Interpretative Ruling as revised on January 16, 1979 (44 FR 3274), be incorporated by reference as part of their comments on each state plan. EPA will respond to those comments in its response to comments on the Offset Ruling.

2. The commenter objected to general policy guidance issued by EPA, on grounds that EPA's guidance is more stringent than required by the Act. Such a general comment concerning EPA's guidance is not relevant to EPA's decision to approve or disapprove a SIP revision since that decision rests on whether the revision satisfies the requirements of Section 110(a)(2). However, EPA has considered the comment and concluded that its guidance conforms to the statutory requirements.

3. The commenter noted that the recent court decision on EPA's regulations for prevention of significant deterioration (PSD) of air quality affects EPA's new source review (NSR) requirements for Part D plans as well. (The decision is *Alabama Power Co. v. Costle*, 13 ERC 1225 (D.C. Cir., June 18, 1979). In the commenter's view, the court's rulings on the definition of "source," "modification," and "potential to emit" should apply to Part D as well as PSD programs. In addition, the commenter believes that the court decision precludes EPA from requiring Part D review of sources located in designated clean areas.

The preamble to the Emission Offset Interpretative Ruling, as revised January 16, 1979, explains that the interpretations in the Ruling of the terms "source," "major modification," and "potential to emit," and the areas in which NSR applies, govern State plans under Part D. (44 FR 3275 col. 3 through 3276 col. 1, January 16, 1979.) In proposed rules published in the Federal Register on September 5, 1979, (44 FR 51924), EPA explained its views on how the *Alabama Power* decision affects NSR requirements for State Part D plans. The September 5, 1979 proposal addressed some of the issues raised by the commenter. To the extent necessary, EPA will respond in greater detail to the commenters' concerns in its response to comments on the September 5, 1979, proposal and/or its response to comments on the Offset Ruling.

As part of the September 5, 1979 proposal, EPA proposed regulations for Part D plans in section 40 CFR 51.18(j). EPA also proposed, for now, to approve a SIP revision if it satisfies either

existing EPA requirements, or the proposed regulations. Prior to promulgation of final regulations, EPA proposed to approve State-submitted relaxations of previously-submitted SIPs, so long as the revised SIP meets all proposed EPA requirements. To the extent EPA's final regulations are more stringent than the existing or proposed requirements, States will have nine months, as provided in Section 406(d) of the Act, to submit revisions after EPA promulgates the final regulations. Since the Alabama NSR program satisfies existing requirements for Part D, it is now being approved.

In some instances, EPA's approval of a State's NSR provisions, as revised to be consistent with EPA's proposed or final regulations, may create the need for the State to revise its growth projections and provide for additional emission reductions. States will be allowed additional time for such revisions after the new NSR provisions are approved by EPA.

4. The commenter questioned EPA's alternative emission reduction options policy (the "bubble" policy). As the commenter noted, EPA has set forth its proposed bubble policy in a separate *Federal Register* publication. 44 FR 3720 (January 18, 1979). EPA will respond to the comments on the "bubble" approach in the final "bubble" policy statement.

5. The commenter questioned EPA's requirement for a demonstration that application of all reasonably available control measures (RACM) would not result in attainment any faster than application of less than all RACM. In EPA's view, the statutory deadline is that date by which attainment can be achieved as expeditiously as practicable. If application of all RACM results in attainment more expeditiously than application of less than all RACM, the statutory deadline is the earlier date. While there is no requirement to apply more RACM than is necessary for attainment, there is a requirement to apply controls which will ensure attainment as soon as possible. Consequently, the State must select the mix of control measures that will achieve the standards most expeditiously, as well as assure reasonable further progress.

The commenter also suggested that all RACM may not be "practicable." By definition, RACM are only those measures which are reasonable. If a measure is impracticable, it would not constitute a reasonably available control measure.

6. The commenter found the discussion in the General Preamble of reasonably available control technology (RACT) for VOC sources covered by

Control Technique Guidelines (CTGs) to be confusing in that it appeared to equate RACT with the guidance in the CTGs. EPA did not intend to equate RACT with the CTGs. The CTGs provide recommendations to the States for determining RACT, and serve as a "presumptive norm" for RACT, but are not intended to define RACT. Although EPA believes its earlier guidance was clear on this point, the Agency has issued a supplement to the General Preamble clarifying the role of the CTGs in plan development. See 44 FR 53761 (September 17, 1979).

7. The commenter suggested that the revision of the ozone standard justified an extension of the schedule for submission of Part D plans. This issue has been addressed in the General Preamble, 44 FR 20377 (April 4, 1979).

8. The commenter questioned EPA's authority to require States to consider transfers of technology from one source type to another as part of LAER determinations. EPA's response to this comment will be included in its response to comments on the revised Emission Offset Interpretative Ruling.

9. The commenter suggested that if a State fails to submit a Part D plan, or the submitted plan is disapproved, EPA must promulgate a plan under Section 110(c), which may include restrictions on construction as provided in Section 110(a)(2)(I). In the commenter's view, the Section 110(a)(2)(I) restrictions cannot be imposed without such a federal promulgation. EPA has promulgated regulations which impose restrictions on construction on any nonattainment area for which a State fails to submit an approvable Part D plan. See 44 FR 38583 (July 2, 1979). Section 110(a)(2)(I) does not require a complete federally-promulgated SIP before the restrictions may go into effect.

Comment: Another commenter, a national environmental group, stated that the requirements for an adequate permit fee system (Section 110(a)(2)(K) of the Act), and proper composition of State boards (Section 110(a)(2)(F)(vi) and 128 of the Act) must be satisfied to assure that permit programs for nonattainment areas are implemented successfully. Therefore, while expressing support for the concept of conditional approval, the commenters argued that EPA must secure a State commitment to satisfy the permit fee and State board requirements before conditionally approving a plan under Part D. In those States that fail to correct the omission within the required time, the commenters urged that restrictions on construction under Section 110(a)(2)(I) of the Act must apply.

Response: To be fully approved under Section 110(a)(2) of the Act, a State plan must satisfy the requirements for State boards and permit fees for all areas, including nonattainment areas. Several States have adopted provisions satisfying these requirements, and EPA is working with other States to assist them in developing the required programs. However, EPA does not believe these programs are needed to satisfy the requirements of Part D. Congress placed neither the permit fee nor the State board provision in Part D. While legislative history states that these provisions should apply in nonattainment areas, there is no legislative history indicating that they should be treated as Part D requirements. Therefore, EPA does not believe that failure to satisfy these requirements is grounds for conditional approval under Part D, or for application of the construction restriction under Section 110(a)(2)(I) of the Act.

Attainment Dates

The 1978 edition of 40 CFR Part 52 lists in the subpart for Alabama the applicable deadlines for attaining ambient standards (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadlines required by section 172(a) of the Act, the new deadlines are substituted on Alabama's attainment date chart in 40 CFR Part 52. The earlier attainment dates under Section 110(a)(2)(A) will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part

D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under part D.

(123 Cong. Rec. H 11958, daily ed. November 1, 1977).

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977

Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.*

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a Section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

Conditional Approval

EPA is taking final action to conditionally approve certain elements of the Alabama plan. A discussion of conditional approval and its practical effect appears in a supplement to the General Preamble, 44 FR 38583 (July 2, 1979). The conditional approval requires the State to submit additional materials by the deadlines specified in today's notice. There will be no extensions of conditional approval deadlines which are being promulgated today. EPA will follow the procedures described below when determining if the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the *Federal Register* announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the condition is fully met. After review is complete, a *Federal Register* notice will be published proposing or taking final action either to find the condition has been met and

approve the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to timely submit the required materials needed to meet a condition, EPA will publish a *Federal Register* notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110(a)(2)(I) restrictions on growth are in effect.

Certain deadlines for satisfying conditions are being promulgated today without prior notice and comment. EPA finds that, for good cause, notice and comment on these deadlines are unnecessary and contrary to the public interest. See 5 U.S.C. Section 553(b)(B) (The Administrative Procedures Act). The State is the party responsible for meeting the deadlines and the State has requested this extension of the deadlines from December 15, 1979, to February 15, 1980. This is because the State must have the additional time in the complete SIP revision process. In addition, the public has had an opportunity to comment generally on the concept of conditional approval and on what deadlines should apply for these conditions (44 FR 38583 (July 12, 1979), 44 FR 42242 (July 19, 1979)).

EPA finds good cause to make this conditional approval immediately effective, because the Clean Air Act restricts new construction where plans are not approved after June 30, 1979, and making the conditional approval immediately effective will terminate the restriction as soon as possible.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." EPA has reviewed these regulations and determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

(Sections 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: November 16, 1979.

Barbara Blum,
Acting Administrator.

This notice incorporates by reference provisions approved by the Director of the Federal Register on May 18, 1972.

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

Subpart B—Alabama

1. In § 52.50 paragraph (c) is amended by adding subparagraph (20) as follows:

§ 52.50 Identification of plan.

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

(20) 1979 implementation plan revisions for nonattainment areas (TSP and ozone), submitted on April 19, 1979, (as clarified by a letter of August 10, 1979), by the Alabama Air Pollution Control Commission. Conditional approval is given to the following portions of the revisions: Permitting requirements of Section 173 of the Clean Air Act.

2. Section 52.53 is revised to read as follows:

§ 52.53 Approval status.

With the exceptions set forth in this subpart, the Administrator approves Alabama's plans for the attainment and maintenance of the national standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977, except as noted below.

3. Section 52.54 is revised to read as follows:

§ 52.54 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained.*

*Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.24 (1978).

Air quality control region	Pollutant					
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide
	Primary	Secondary	Primary	Secondary		Ozone
Alabama and Tombigbee Rivers—Intrastate .. Columbus (Georgia)—Phenix City (Alabama) Interstate:	(*)	(*)	(*)	(*)	(*)	(*)
a. Russell County.....	(*)	(*)	(*)	(*)	(*)	(*)
b. Rest of AQCR.....	(*)	(*)	(*)	(*)	(*)	(*)

* See General Preamble for Proposed Rulemaking, 44 FR 20373-74 (April 4, 1979).

Air quality control region	Pollutant					
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide
	Primary	Secondary	Primary	Secondary		Ozone
East Alabama Intrastate	(*)	(*)	(*)	(*)	(*)	(*)
Metropolitan Birmingham Intrastate:						
a. Jefferson County*	(*)	(*)	(*)	(*)	(*)	May 31, 1975.
b. Rest of AQCR	(*)	(*)	(*)	(*)	(*)	May 31, 1975.
Mobile (Alabama)-Pensacola-Panama City (Florida)-Southern Mississippi Interstate:						
a. Mobile County*	(*)	(*)	(*)	(*)	(*)	May 31, 1975.
b. Rest of AQCR	(*)	(*)	(*)	(*)	(*)	May 31, 1975.
Southeast Alabama Intrastate	(*)	(*)	(*)	(*)	(*)	(*)
Tennessee River Valley (Alabama)-Cumberland Mountains (Tennessee) Interstate:						
a. Colbert County*	(*)	(*)	(*)	(*)	(*)	(*)
b. Jackson County*	(*)	(*)	(*)	(*)	(*)	(*)
c. Lauderdale County*	(*)	(*)	(*)	(*)	(*)	(*)
d. Madison County	(*)	(*)	(*)	(*)	(*)	(*)
e. Morgan County	(*)	(*)	(*)	(*)	(*)	(*)
f. Rest of AQCR	(*)	(*)	(*)	(*)	(*)	(*)

* For more precise delineation, see § 81.301 of this chapter.

* July 1975.

* 5 years from plan approval or promulgation.

* Air quality levels presently below primary standards or area is unclassifiable.

* Air quality levels presently below secondary standards or area is unclassifiable.

* December 31, 1982.

* June 1987.

4. A new § 52.58 is added as follows:

§ 52.58 Rules and regulations.

(a) Part D conditional approval. The permitting requirements submitted pursuant to Part D of Title I are approved on Condition that the State accomplish and submit to EPA the following by February 15, 1980:

(1) The State will revise the applicability section of the permit requirements (16.3.2(c)) to apply to those sources significantly impacting a nonattainment area.

(2) The State will remove the exemption under subparagraph 16.3.2(d)(5) which exempts those sources impacting a secondary nonattainment area from certain permitting requirements specified in Section 173 of the Clean Air Act.

[FR Doc. 79-36051 Filed 11-23-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 81

[FRL 1355-1]

Designation of Areas for Air Quality Planning Purposes; Section 107—Attainment Status Designations—Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rulemaking changes the attainment status of the El Paso (Colorado Springs), Larimer (Fort Collins) and Weld (Greeley) Counties. These counties are redesignated to "cannot be classified" for the primary and secondary ozone standard.

DATES: Effective November 26, 1979.

FOR FURTHER INFORMATION: Contact Robert R. DeSpain, Chief, Air Programs Branch, Region VIII. (303) 837-3471.

SUPPLEMENTARY INFORMATION: These counties are presently designated as nonattainment for the ozone ambient air quality standard. This designation was

based on the old standard of 0.08 parts per million (ppm). On February 8, 1979, EPA revised the standard to 0.12 ppm. Review of the air quality monitoring data showed no violations of this revised standard.

The Colorado Air Pollution Control Commission redesignated these counties to "cannot be classified" rather than attainment for the following reasons: (1) The Fort Collins monitored data was just within the standard. (2) The Greeley monitored data showed an upward trend. (3) The Colorado Springs monitor was not located at the point of expected maximum concentration.

In the interim, the Colorado Air Pollution Control Division will: (1) install an additional monitor in Colorado Springs to record the downwind concentration of ozone; (2) continue operation of the Greeley and Fort Collins monitors; and (3) investigate downwind transport of ozone from Denver to Larimer and Weld counties.

On August 17, 1979, EPA proposed in the Federal Register this change in

attainment status and requested comments. One comment was received which suggested revising the boundaries of the El Paso County designated area so that the problem can be isolated to a specific area.

EPA's countywide designation is based on the fact that the geographic extent of ozone violations cannot be precisely defined. In addition, since ozone levels in excess of the standard have been shown to exist many miles downwind of urban areas, the areas designated as nonattainment should reflect this phenomenon through at least a countywide designation.

The August 17, 1979, proposal contained a statement regarding EPA's policy for redesignating areas under Section 107 of the Act which could be misconstrued. In general, EPA will support redesignation of an area from nonattainment under two circumstances. First, if sufficient data becomes available to demonstrate attainment, the area may be redesignated to attainment. Second, if the data used for the original designation is determined to be inadequate and the actual status of the area is unknown, the designation may be changed to "cannot be classified".

In this case, the original designations were based upon measured violations of the previous ozone standard of .08 ppm. However, since violations of the new standard of .12 ppm have not been measured in any of the areas in question, there is not adequate data to support the original nonattainment designation. Unfortunately, there is still uncertainty as to whether the areas should be designated as attainment. Thus, as discussed above, the State has elected to designate the areas to "cannot be classified" until more data is available.

This notice of final rulemaking is issued under the authority of Section 107 of the Clean Air Act as amended.

Dated: November 16, 1979.

Barbara Blum,
Acting Administrator.

Title 40, Part 81 of the Code of Federal Regulations is amended as follows:

In Section 81.306 the designated areas in the attainment status designation table for ozone are revised to read as follows:

§ 81.306 Colorado.

Designated area	Colorado—0 ₃	
	Does not meet the primary standards	Cannot be classified or better than national standard
AQCR 2—L.....		X
AQCR 4—El Paso County.....		X

Colorado—0₁—Continued

Designated area	Does not meet the primary standards	Cannot be classified or better than national standard
Remainder of AQCR 4.....		X

* * * * *

[FR Doc. 79-30212 Filed 11-23-79; 8:45 am]
BILLING CODE 5560-01-M

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Payment for
Inpatient Services of Foreign Hospitals

AGENCY: Health Care Financing
Administration, (HCFA), HEW.

ACTION: Final rule.

SUMMARY: These regulations provide for payment based on 100 percent of customary charges for covered inpatient hospital services furnished by foreign hospitals that elect to receive payment directly from the Medicare program. If the foreign hospital does not elect to receive payment directly, the Medicare beneficiary will be reimbursed based upon the hospital's reasonable charges, upon submitting an itemized bill to the program. The purpose of the amendments is to encourage foreign hospitals to bill the Medicare program directly for services furnished to Medicare beneficiaries. The amendments also will simplify the administrative requirements for processing claims for reimbursement from foreign hospitals.

EFFECTIVE DATE: These amendments shall be effective with admissions on or after January 1, 1980.

FOR FURTHER INFORMATION CONTACT:
Mr. Hugh McConville (301) 594-9682.

SUPPLEMENTARY INFORMATION:**Background**

Section 1814(f) of the Social Security Act provides Medicare payment for covered care furnished by foreign hospitals in two specific instances:

1. Emergency inpatient hospital services, if the beneficiary is inside the United States (or the beneficiary is in Canada while traveling to or from Alaska, without unreasonable delay, by the most direct route) when the medical necessity occurs, and the foreign hospital is closer or substantially more accessible to the site of the emergency

than the nearest United States hospital which is adequately equipped and available to treat the emergency; and
2. Inpatient hospital services, if the foreign hospital is closer or substantially more accessible to the beneficiary's United States residence than the nearest United States hospital which is equipped and available to treat the beneficiary's illness or injury.

The restrictions imposed by section 1814(f) regarding the foreign hospital being closer to, or substantially more accessible than, the nearest hospital in the United States, mean that services furnished in any foreign country other than Canada or Mexico could not qualify for reimbursement.

The Medicare program presently pays foreign hospitals, subject to deductible and coinsurance amounts, the lesser of (1) 90 percent of the hospital's average inpatient per diem cost of services to all patients as determined by third-party nongovernmental payers, or (2) 85 percent of the hospital's customary charge for the services furnished to Medicare beneficiaries. (See Foreign Hospital Supplement HIM-37).

Canadian hospitals are reluctant to accept reimbursement from the Medicare program on less than 100 percent of their average per diem charges. Based on information furnished by officials of the Canadian Department of Health and Welfare, we determined that the average per diem rate charged by Canadian hospitals is, in fact, the same as their average per diem costs. We also determined that their per diem costs are less than the costs reimbursable by the Medicare program since their costs do not include certain items, such as mortgage interest and medical education salaries, which are included by Medicare in the determination of "reimbursable cost" for domestic providers. Canadian officials state that acceptance of payments based on less than 100 percent of their average per diem charges would constitute a Canadian subsidy of hospital services furnished to U.S. residents. The officials also object to the submission of cost reports in order to receive full reimbursement from the Medicare program for their costs, because the time and cost necessary to prepare these reports would not be justified for the relatively few services furnished to Medicare beneficiaries.

The two methods for reimbursing foreign hospitals provided by section 1814(f) are essentially the same as those applicable to payments for domestic emergency hospital services. If the foreign hospital elects to claim payment from the Medicare program for all covered services furnished during a

calendar year, and agrees to comply with certain payment procedures prescribed in section 1866(a) of the Act, it may be reimbursed on the basis of its reasonable cost or customary charges, whichever is less. If the foreign hospital does not elect to claim payment from the Medicare program directly, beneficiaries submitting an itemized bill are reimbursed based upon the hospital's reasonable charges.

A hospital's reasonable cost is determined in accordance with section 1861(v)(1)(A) of the Act, which authorizes the Secretary to develop regulations that "may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs."

Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking was published on January 12, 1979 (44 FR 2618). The proposed rule provided that "reasonable costs," as applied to foreign hospitals which qualify for payment under these provisions would be 100 percent of their customary charges. We based that proposal on the fact that the charges imposed by Canadian hospitals (which provide the vast majority of services described in section 1814(f) of the Act) and Mexican hospitals are, in fact, equal to their costs in the efficient delivery of needed health services. Further, costs as determined in Canadian hospitals are less than the costs reimbursable for the Medicare program to domestic providers and charges imposed and the costs incurred by Mexican hospitals are also less than those of domestic providers. (Medicare payments are rarely made for services furnished by Mexican hospitals because the criteria in the law for establishing the proximity of Mexican hospitals to the site of any emergency that occurred in the United States or to the Medicare beneficiary's residence are seldom met.)

The only comment received on the proposed rule supported its adoption. Accordingly, we have adopted the rule as proposed, except for some language and editorial changes intended only for clarification purposes.

Final Rule

Under the authority of section 1861(v)(1)(A), these amendments provide that, beginning with admissions after December 31, 1979, payment to foreign hospitals that elect to receive direct Medicare payments will be based on 100 percent of the hospitals' customary charges, subject to applicable deductible and coinsurance amounts, for covered hospital services furnished to Medicare beneficiaries. The hospital must establish its customary charges for

the services by submitting an itemized bill with each claim it files. This precludes the necessity of foreign hospitals filing cost reports to receive full reimbursement of their costs. If the foreign hospital does not elect to claim payment, beneficiaries submitting an itemized bill may be reimbursed based on the hospital's reasonable charges in accordance with 42 CFR 405.153(c)(2), of the regulations.

Since the objective of these amendments is to encourage foreign hospitals to elect to bill the Medicare program directly, we have also simplified the administrative requirements for processing claims for reimbursement from foreign hospitals. This is accomplished, for example, by the adoption of a single reimbursement procedure and the opportunity for HCFA to deal directly with each electing hospital.

Additionally, by encouraging foreign hospitals to bill the Medicare program directly, the regulation will be advantageous to Medicare beneficiaries in two ways: (1) The beneficiary will not have to submit a bill; and (2) the beneficiary will be liable only for the applicable deductible and coinsurance amounts. If the beneficiary submits a bill, the beneficiary is statutorily liable for the applicable deductible and coinsurance amounts and 40 percent of the hospital's reasonable charges for routine services and 20 percent of reasonable charges for ancillary services, if the hospital makes separate charges for these services. If the hospital does not make separate charges for routine or ancillary services, the beneficiary would be liable for one-third of the hospital's reasonable charges for all covered services. (See § 405.153(c)(2) of the amendments, and section 1814(d)(3) and (f)(4) of the Act.)

42 CFR Part 405 is amended as set forth below:

1. The table of contents is amended by adding a new § 405.456 to Subpart D and by changing the titles of §§ 405.658 and 405.659 in Subpart F to read as follows:

Subpart D—Principles of Reimbursement for Provider Costs and for Services of Hospital-Based Physicians

* * *

Sec.
405.456 Payment to a foreign hospital.

* * *

Subpart F—Agreements, Elections, Contracts, Nominations, and Notices

* * *

405.658 Hospital election to receive health insurance payments.

Sec.

405.659 Reinstatement of hospital after notice of failure to continue to comply.

* * *

2. Section 405.153(c) is revised to read as follows:

§ 405.153 Payment for services; hospital outside the United States.

* * *

(c) *Payments.* (1) Payment to a Canadian or Mexican hospital for inpatient services specified in paragraphs (a) and (b) of this section and furnished either directly by the hospital, or under arrangements made by the hospital, shall be made in the amount specified in § 405.456, if:

(i) Payment would be made if a provider agreement were in effect with the hospital;

(ii) The hospital files a statement of election to claim payment for all covered services furnished during a calendar year (see § 405.658); and

(iii) The hospital agrees to comply with those terms of a provider agreement that relate to charges and refunds to patients, as specified in § 405.607.

(2) If the foreign hospital does not file an election to claim direct payment from the Medicare program for covered inpatient services furnished to a Medicare beneficiary, payment will be made to the beneficiary based on an itemized bill of the hospital. In accordance with sections 1814(d)(3) and 1814(f)(4) of the Act, the payment amount, which is subject to the applicable deductible and coinsurance amounts, shall be equal to the following:

(i) If the hospital makes separate charges for routine and ancillary services, 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the Medicare beneficiary or in semiprivate accommodations, whichever is less, and 80 percent of the reasonable charges for ancillary services for covered days in the benefit period.

(ii) If the hospital does not make separate charges for routine and ancillary services, two-thirds of the hospital's reasonable charges for all covered services furnished in the benefit period, but not to exceed charges based on semiprivate accommodations.

3. A new § 405.456 is added to read as follows:

§ 405.456 Payment to a foreign hospital.

(a) Section 1814(f) of the Act provides for the payment of emergency and nonemergency inpatient hospital services furnished by foreign hospitals to Medicare beneficiaries. Section 405.153, together with this section,

specifies the conditions for payment. These conditions can result in payments only to Canadian and Mexican hospitals.

(b) *Amount of payment.* Effective with admissions on or after January 1, 1980, the reasonable cost for services covered under the Medicare program furnished to beneficiaries by a foreign hospital shall be equal to 100 percent of the hospital's customary charges (as defined in § 405.455(b)) for the services.

(c) *Submission of claims.* The hospital must establish its customary charges for the services by submitting an itemized bill with each claim it files in accordance with its election under § 405.658.

(d) *Exchange rate.* Payment to the hospital will be subject to the official exchange rate on the date the patient is discharged and to the applicable deductible and co-insurance amounts described in §§ 405.113–405.115.

4. The title and content of § 405.658 are revised to read as follows:

§ 405.658 Hospital election to receive health insurance payments.

(a) *Applicability.* The provisions of this section apply to hospitals (both domestic and foreign) which qualify under § 405.152 and § 405.153 to elect to claim payment for all covered hospital services furnished either directly by the hospital or under arrangement with the hospital during a calendar year. To be eligible to file an election for a calendar year, the hospital must not have previously charged a beneficiary or any other person on his behalf for covered hospital services furnished in that calendar year. The hospital's statement of election must be filed on a form designated by the Health Care Financing Administration (HCFA).

(b) *Statement of election.* Under the provisions of the statement of election, the hospital agrees for the calendar year of election:

(1) To comply with the provisions of §§ 405.607–405.610 relating to charges for items and services the hospital may make to the beneficiary, or any other person on his behalf.

(2) To comply with the provisions of §§ 405.618–405.621 relating to proper disposition of monies incorrectly collected from, or on behalf of, a beneficiary; and

(3) To request payment under the Medicare program based on amounts specified in § 405.456.

(c) *Filing a statement of election.* (1) The hospital's statement of election must be signed by an authorized official of the hospital and must be submitted to HCFA before the close of the calendar year of election.

(2) An election is submitted to HCFA before the close of a calendar year only if postmarked or received by HCFA before the close of the calendar year of election.

(3) If accepted by HCFA, the effective date of the election shall be the earliest day in the calendar year of election for which HCFA determines that the hospital has been in continuous compliance with the requirements of section 1814(d) of the Act.

(d) *Notification of failure to continue to comply.* HCFA will give the hospital at least 5 days notice of its determination that the hospital does not qualify to claim reimbursement because of its failure to continue to be in compliance with the elements of its election, or of its failure to continue to be a hospital. The notice will: (1) State the calendar year to which the determination applies;

(2) State the effective date of the determination;

(3) State that the determination applies to claims filed by the hospital for services furnished in the applicable calendar year to beneficiaries who are accepted as patients (inpatients and outpatients) on or after the effective date of the determination; and

(4) Inform the hospital of its right to appeal the determination.

(e) *Appeal by hospital.* Any hospital dissatisfied with a determination that it does not qualify to claim reimbursement shall be entitled to appeal the determination as provided in Subpart O of this part.

5. The title and content of § 405.659 are revised to read as follows:

§ 405.659 Reinstatement of hospital after notice of failure to continue to comply.

If a hospital is notified by HCFA of its ineligibility to receive reimbursement for a calendar year (see § 405.658(d)), the hospital may not file another election to claim payment from the Medicare program until HCFA finds that:

(a) The reason for its ineligibility has been removed; and

(b) There is reasonable assurance that it will not recur.

(Secs. 1102, 1814 (b), (d), and (f), 1861(v), and 1871 of the Social Security Act; (42 U.S.C. 1302, 1395f (b), (d), and (f), 1395x(v), and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 28, 1979.

Leonard D. Schaeffer,
Administrator, Health Care Financing
Administration.

Approved: November 5, 1979.

Nathan J. Stark,
Acting Secretary.

[FR Doc. 79-36327 Filed 11-23-79; 8:45 am]
BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Ch. II, Appendix

[Public Land Order 5687]

Restoration of Certain Lands To Navajo Tribe

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Public Land Order.

SUMMARY: Public Land Order 5687 concerns the restoration of lands to the Navajo Tribe under Pub. L. 93-493 which were previously transferred to the Bureau of Reclamation under Pub. L. 85-868 and which are no longer needed by the Bureau of Reclamation. The order restores certain former tribal lands that were used for the Glen Canyon Unit of the Colorado River Storage Project.

EFFECTIVE DATE: November 14, 1979.

FOR FURTHER INFORMATION CONTACT: L. David Williamson, Senior Staff Assistant for Land Management, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20415, Telephone (202) 343-5204.

Transfer of Lands to the Navajo Tribe of Indians

By virtue of the authority vested in the Secretary of the Interior by the Act of October 27, 1974 (88 Stat. 1486), (the Reclamation Development Act of 1974), it is ordered as follows:

1. The following described reclamation-withdrawn public lands in Conconino County, State of Arizona, are hereby added to and made a part of the Navajo Indian Reservation and shall hereafter be held by the United States in trust for the Navajo Tribe of Indians, and shall be subject to all laws and regulations applicable to the Navajo Indian Reservation:

A tract of land situated in the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 8, the Southwest Quarter (SW $\frac{1}{4}$) of Section 9, Section 16, the East Half of the Northeast Quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 17, Section 21, and the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 28, all in Township 41 North, Range 9 East, Gila

and Salt River Meridian, containing 808 acres, more or less, and more particularly described as follows:

Beginning at a point being the corner common to Sections 21, 22, 27, and 28, thence South 00°07'30" West, a distance of 1141.0 feet along the line common to Sections 27 and 28; thence North 52°37'00" West, a distance of 170.0 feet; thence North 67°29'00" West, a distance of 419.0 feet; thence North 44°49'00" East, a distance of 76.0 feet; thence North 78°52'00" East, a distance of 340.0 feet; thence North 42°01'00" East, a distance of 173.0 feet; thence North 22°14'00" West, a distance of 457.0 feet; thence North 16°37'00" East, a distance of 211.0 feet to a point on the section line common to Sections 21 and 28, being North 89°59'00" West, a distance of 132.0 feet from the corner common to Sections 21, 22, 27, and 28; thence North 40°44'00" West, a distance of 218.0 feet; thence North 16°19'00" West, a distance of 195.3 feet; thence North 40°46'00" West, a distance of 166.5 feet; thence North 31°45'00" East, a distance of 158.0 feet; thence North 72°54'00" West, a distance of 408.8 feet; thence North 17°35'00" West, a distance of 217.0 feet; thence North 10°51'00" East, a distance of 272.9 feet; thence South 79°35'00" West, a distance of 602.0 feet; thence North 22°13'00" West, a distance of 124.9 feet; thence North 41°28'00" East, a distance of 339.7 feet; thence North 80°06'00" West, a distance of 135.0 feet; thence North 30°39'00" East, a distance of 200.0 feet; thence North 75°11'00" West, a distance of 415.0 feet; thence North 04°55'30" West, a distance of 178.8 feet; thence South 82°17'00" West, a distance of 430.0 feet; thence North 83°14'00" West, a distance of 154.0 feet; thence North 19°16'00" West, a distance of 155.0 feet; thence South 89°44'30" West, a distance of 386.3 feet; thence North 64°17'00" West, a distance of 370.0 feet; thence North 18°30'00" East, a distance of 460.0 feet to a point on the Quarter line of Section 21, being North 89°55'00" West, a distance of 178.8 feet from the Center Quarter corner of Section 21; thence North 49°52'00" West, a distance of 615.8 feet; thence North 07°53'00" East, a distance of 87.0 feet; thence North 29°09'00" East, a distance of 261.0 feet; thence North 52°30'00" East, a distance of 247.0 feet; thence North 05°46'00" East, a distance of 141.0 feet; thence North 17°04'00" West, a distance of 369.6 feet; thence North 79°14'00" West, a distance of 290.5 feet; thence North 01°41'00" West, a distance of 409.8 feet; thence North 08°13'00" East, a distance of 197.7 feet; thence North 29°36'00" East, a distance of 242.0 feet; thence North 60°10'00" East, a distance of 126.0 feet; thence North 07°16'00" East, a distance of 350.9 feet; thence North 62°57'00" East, a distance of 121.0 feet to a point on the section line common to Sections 16 and 21, being North 89°51'00" West, a distance of 301.9 feet from the Quarter corner common to Sections 16 and 21; thence North 04°22'00" East, a distance of 358.2 feet; thence South 77°39'00" West, a distance of 138.7 feet; thence North 74°17'00" West, a distance of 240.0 feet; thence North 02°43'00" East, a distance of 270.8 feet; thence North 62°01'30" West, a distance of 165.5 feet; thence North 00°25'30" West, a distance of 160.3 feet; thence South 44°56'00" East, a distance of 138.2 feet; thence North 02°26'00" West, a

distance of 119.4 feet; thence North 20°51'00" East, a distance of 91.6 feet; thence North 81°26'30" East, a distance of 99.1 feet; thence North 06°53'30" West, a distance of 235.5 feet; thence North 27°48'00" East, a distance of 125.3 feet; thence North 87°20'00" East, a distance of 131.9 feet; thence North 05°28'00" East, a distance of 191.0 feet; thence North 13°50'00" West, a distance of 98.5 feet; thence North 47°39'00" West, a distance of 1,064.3 feet; thence South 70°14'00" West, a distance of 62.0 feet; thence North 37°44'00" West, a distance of 122.6 feet; thence North 05°44'00" West, a distance of 121.6 feet; thence North 15°40'00" East, a distance of 69.0 feet to a point on the Quarter line of Section 16, being North 89°54'00" West a distance of 1,315.8 feet from the center Quarter corner of Section 16; thence North 36°03'00" West, a distance of 134.9 feet; thence North 84°49'30" West, a distance of 183.7 feet; thence North 42°35'30" West, a distance of 182.5 feet; thence South 80°33'00" West, a distance of 263.3 feet; thence South 37°27'30" West, a distance of 124.0 feet; thence North 42°02'00" West, a distance of 196.6 feet; thence South 52°51'00" West, a distance of 106.3 feet; thence North 53°50'00" West, a distance of 80.9 feet; thence South 50°37'00" West, a distance of 59.3 feet; thence South 20°07'00" East, a distance of 89.4 feet; thence South 23°11'00" West, a distance of 94.1 feet; thence South 69°20'00" West, a distance of 108.1 feet to a point on the Quarter line of Section 16, being South 89°54'00" East, a distance of 179.7 feet from the Quarter corner common to Sections 16 and 17; thence South 16°27'00" West, a distance of 154.3 feet; thence South 70°56'00" West, a distance of 45.4 feet; thence North 69°19'30" West, a distance of 77.0 feet; thence North 16°55'30" East, a distance of 78.6 feet; thence North 14°34'30" East, a distance of 143.9 feet; thence North 39°50'00" East, a distance of 96.6 feet; thence North 03°57'00" West, a distance of 230.2 feet; thence South 84°14'30" West, a distance of 53.9 feet; thence North 30°29'00" West, a distance of 88.2 feet; thence North 13°42'00" West, a distance of 113.7 feet to a point on the section line common to Sections 16 and 17, being North 00°07'00" East, a distance of 563.7 feet from the Quarter corner common to Sections 16 and 17; thence North 12°57'00" West, a distance of 142.1 feet; thence North 47°16'30" West, a distance of 155.8 feet; thence North 22°13'00" West, a distance of 173.2 feet; thence South 79°17'30" West, a distance of 55.6 feet; thence North 01°34'30" East, a distance of 70.0 feet; thence North 50°34'30" West, a distance of 102.4 feet; thence North 71°17'30" East, a distance of 95.7 feet; thence North 11°14'00" West, a distance of 209.8 feet; thence North 15°05'30" West, a distance of 76.8 feet; thence North 17°32'30" East, a distance of 127.6 feet; thence North 36°05'30" West, a distance of 160.9 feet; thence North 37°31'30" West, a distance of 112.9 feet; thence North 82°07'00" West, a distance of 86.8 feet; thence North 41°30'30" West, a distance of 116.2 feet; thence North 46°15'00" West, a distance of 156.3 feet; thence North 23°19'30" East, a distance of 284.0 feet; thence North 47°48'30" East, a distance of 342.4 feet; thence North 34°59'00" West, a distance of 122.8 feet; thence North 78°32'30" West, a distance of 110.4 feet; thence North 46°43'30"

West, a distance of 104.3 feet to a point on the section line common to Sections 8 and 17, being West a distance of 607.3 feet from the corner common to Sections 8, 9, 16, and 17; thence North 13°07'30" West, a distance of 85.2 feet; thence North 02°53'30" East, a distance of 326.2 feet; thence North 09°33'30" East, a distance of 194.1 feet; thence North 23°27'00" East, a distance of 229.7 feet; thence North 37°56'00" East, a distance of 248.8 feet; thence North 62°25'00" East, a distance of 103.8 feet; thence North 81°34'30" East, a distance of 174.5 feet; thence North 36°01'00" East, a distance of 119.7 feet to a point on the line common to Sections 8 and 9; said point being North 00°04'00" East a distance of 1,177.1 feet from the corner common to Sections 8, 9, 16, and 17; thence North 36°01'00" East, a distance of 23.8 feet; thence North 55°29'00" East, a distance of 210.5 feet; thence North 70°56'00" East, a distance of 259.0 feet; thence South 86°28'00" East, a distance of 201.4 feet; thence North 81°15'30" East, a distance of 160.4 feet; thence South 72°36'30" East, a distance of 191.6 feet; thence North 77°14'00" East, a distance of 153.5 feet; thence South 65°09'00" East, a distance of 181.0 feet; thence South 42°50'00" East, a distance of 335.2 feet; thence South 21°57'00" West, a distance of 202.8 feet; thence South 06°22'00" East, a distance of 174.0 feet; thence South 15°38'00" West, a distance of 208.9 feet; thence South 66°14'00" West, a distance of 161.6 feet; thence South 60°44'00" East, a distance of 109.2 feet; thence South 18°51'00" West, a distance of 114.0 feet; thence South 41°05'00" West, a distance of 118.8 feet; thence South 78°34'00" East, a distance of 102.2 feet; thence North 81°39'00" East, a distance of 142.8 feet; thence South 58°47'00" East, a distance of 328.9 feet; thence North 76°04'00" East, a distance of 190.9 feet; thence South 46°52'00" East, a distance of 98.7 feet to a point on the section line common to Sections 9 and 16, being North 89°57'00" West, a distance of 633.8 feet from the Quarter corner common to Sections 9 and 16; thence South 13°01'30" East, a distance of 248.2 feet; thence South 04°18'30" East, a distance of 119.5 feet; thence South 78°53'00" East, a distance of 173.5 feet; thence South 52°11'00" East, a distance of 117.4 feet; thence South 04°04'30" East, a distance of 127.7 feet; thence South 19°31'30" West, a distance of 175.7 feet; thence South 38°47'30" East, a distance of 261.4 feet; thence South 17°49'00" East, a distance of 374.0 feet; thence South 06°09'00" East, a distance of 134.8 feet; thence South 40°30'30" West, a distance of 136.2 feet; thence South 08°53'00" East, a distance of 95.1 feet; thence South 44°14'30" East, a distance of 191.7 feet to a point on the Quarter line of Section 16, being North 00°07'00" East, a distance of 849.4 feet from the center Quarter corner of Section 16; thence South 54°25'00" East, a distance of 168.5 feet; thence North 42°42'00" East, a distance of 105.8 feet; thence North 11°11'00" West, a distance of 281.0 feet; thence North 25°51'00" East, a distance of 180.7 feet; thence North 30°43'00" East, a distance of 273.4 feet; thence North 29°55'00" East, a distance of 369.4 feet; thence North 53°03'00" East, a distance of 200.4 feet; thence North 60°17'00" East, a distance of 200.2 feet; thence North 67°55'00" East, a distance of 123.3 feet; thence

North 23°46'00" East, a distance of 111.6 feet; thence North 67°15'00" East, a distance of 93.2 feet; thence South 84°48'00" East, a distance of 158.1 feet; thence South 53°31'00" East, a distance of 335.3 feet; thence South 07°37'00" West, a distance of 165.8 feet; thence South 46°13'00" East, a distance of 209.7 feet; thence South 12°17'00" East, a distance of 140.7 feet; thence South 63°42'00" East, a distance of 209.7 feet; thence South 79°57'00" East, a distance of 205.2 feet; thence North 88°50'00" East, a distance of 440.3 feet; thence South 54°12'30" East, a distance of 37.7 feet; thence North 42°14'00" East, a distance of 108.6 feet to a point on the section line common to Sections 15 and 16; thence South 00°07'30" West along the East lines of Sections 16 and 21, a distance of 9,480.7 feet, more or less, to the point of beginning.

The above-described lands comprise what is known as the Navajo Tribe Antelope Creek Recreation Development Area and are shown on Bureau of Reclamation drawing No. 557-431-38, dated May 22, 1969, entitled "Navajo Tribe—Antelope Creek Recreation Development Area Survey Traverse," on file and available for public inspection in the office of the Bureau of Reclamation, Department of the Interior.

2. This transfer of title to the above-described lands is made in consideration of Navajo Tribal Council Resolution numbered CJN-50-69, dated June 3, 1969, which more specifically provides that the Navajo Tribe agrees that of the 50,000 acre-feet of water per year allocated to the State of Arizona, pursuant to Article III(a) of the Upper Colorado River Basin Compact, 34,100 acre-feet shall be used for a coal-fired powerplant, to be located on the Navajo Reservation, for the lifetime of the proposed powerplant or for 50 years, whichever occurs first; and an estimated 3,000 acre-feet of water per year may be used for the Glen Canyon Unit of the Colorado River Storage Project along with its associated community and recreation developments in Arizona.

Dated: November 14, 1979.

Cecil D. Andrus,
Secretary of the Interior.

[FR Doc. 79-38214 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 185a

Emergency School Aid Act

AGENCY: Office of Education, HEW.

ACTION: Interim final regulations.

SUMMARY: The Assistant Secretary for Education adopts interim regulations for the purpose of governing planning grants and transitional grants under the Emergency School Aid Act. These interim final regulations are necessary because it is not possible to use proposed rulemaking procedures and still make awards on a timely basis.

EFFECTIVE DATE: These interim final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the *Federal Register*. The effective date is changed if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these interim final regulations, call or write the Office of Education contact person.

ADDRESSES: Any comments or questions concerning these interim final regulations should be addressed to Mr. Jesse J. Jordan, U.S. Office of Education, Room 2007, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse J. Jordan (202) 245-7965.

SUPPLEMENTARY INFORMATION:

Waiver of Proposed Rulemaking Procedures

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), it has been the practice of the Office of Education to offer interested parties the opportunity to comment on proposed regulations. The Office of Education then reviews these comments and makes appropriate changes before republishing the regulations in final form. For the reasons described in the following paragraphs, the use of that practice in connection with these interim final regulations is impracticable and contrary to the public interest under 5 U.S.C. 553(b).

On June 29, 1979, the Office of Education published a notice in the *Federal Register* (44 FR 38364) proposing to amend the regulations governing awards under the Emergency School Aid Act (ESAA). This notice of proposed rulemaking (NPRM) included regulations that would govern planning and transitional grants as well as other awards authorized under the ESAA. The NPRM provided a period for public comment ending on August 28, 1979. Following the public comment period, a further period is required to review any comments received and to prepare revised regulations. The regulations will then be published in final form and will become effective following the period for congressional review (generally 45

days). As a result of this rulemaking process, regulations governing awards under ESAA for fiscal year (FY) 1980 will not be in effect until well after October 1, 1979, the date on which FY 1980 funds became available for obligation by the Office of Education.

In the case of most of the programs authorized under the ESAA, projects supported with FY 1980 funds would not commence before the summer of 1980 regardless of how early awards could be made. A delayed effective date is not a matter for concern for those programs. However, this is not the case with regard to planning and transitional grants. The ESAA NPRM proposed to permit awards under these two programs without regard to annual funding cycles, and therefore earlier in FY 1980, in order to ensure that awards are made on a timely basis as needs for assistance arise. Planning grants provide assistance to local educational agencies in the development of desegregation or other qualifying plans. The need for this assistance may arise from a court or agency order requiring immediate steps to develop a desegregation plan. Transitional grants provide three types of assistance—pre-implementation assistance, out-of-cycle assistance, and special discretionary assistance. Each of these types of assistance is designed to address needs that are not anticipated in advance and that require immediate attention.

In order to ensure that planning and transitional grants are available for as much of FY 1980 as possible, the Assistant Secretary has decided to publish regulations governing those grants as interim final regulations. These interim final regulations will govern awards under the planning grant and transitional grant programs only until the complete ESAA regulations published in proposed form on June 29, 1979 become effective. At that time, these interim final regulations will be replaced by provisions relating to planning and transitional grants in the complete ESAA regulations.

Relation of Interim Final Regulations to ESAA NPRM

The interim final regulations are based upon the provisions relating to planning and transitional grants in the ESAA NPRM. Because these interim final regulations are being published before it is possible to review comments from the public on the NPRM, no substantive changes are being made at this time. Comments on all provisions of the ESAA NPRM, including comments on the provisions relating to planning and transitional grants, will be

considered in preparing the ESAA regulations for publication in final form.

In addition to the provisions in the ESAA NPRM relating specifically to planning and transitional grants, these interim final regulations adopt certain generally applicable provisions of the NPRM. These provisions are listed in § 185a.2(a) of the interim final regulations.

Relation of Interim Final Regulations to EDGAR

The Education Division General Administrative Regulations (EDGAR) were published in the *Federal Register* in proposed form on May 4, 1979 (44 FR 26298). With certain exceptions, set out in § 185a.2(d) of these interim final regulations, the provisions of EDGAR as they appear in the May 4 notice of proposed rulemaking apply to awards under these regulations.

Submission of Applications Under Interim Final Regulations

Applicants for planning or transitional grants may submit applications at any time. Awards for fiscal year 1980 cannot be made under these programs until the effective date of these interim final regulations. Awards will be made under these interim final regulations only until the date on which the complete ESAA regulations, as published in final form, become effective.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the interim final regulations. The first citation is usually the appropriate section of the Act (Title VI of the Elementary and Secondary Education Act of 1965, as amended). This is usually followed by a citation to the same provision in the United States Code.

Accordingly, the Assistant Secretary amends Title 45 of the Code of Federal Regulations to create a new part 185a as set forth below.

Dated: September 27, 1979.

Mary F. Berry,

Assistant Secretary for Education.

Approved: October 29, 1979.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Program Nos. 13.685 Planning Grants; 13.686, Pre-implementation Assistance Grants; 13.687, Out-of-cycle Assistance Grants; and 13.688, Special Discretionary Grants)

Title 45 of the Code of Federal Regulations is amended by adding the following new part 185a:

PART 185a—EMERGENCY PLANNING AND TRANSITIONAL AID**Subpart A—General**

Sec.

- 185a.1 Scope and purposes.
185a.2 Other applicable regulations.

Subpart B—Planning Grants

- 185a.10 Purpose.
185a.11 Eligible applicants.
185a.12 Authorized activities.
185a.13 Application procedures.
185a.14 Approval of projects.

Subpart C—Transitional Grants

- 185a.20 Purposes.
185a.21 Eligible applicants.
185a.22 Authorized activities.
185a.23 Application procedures.
185a.24 Approval of projects.
Appendix A to Part 185a—Reprint of
Emergency School Aid Act Proposed
Rule.
Appendix B to Part 185a—Reprint of Parts
100a and 100c of the Education Division
General Administrative Regulations
Proposed Rule.

Authority: Title VI of the Elementary and
Secondary Education Act of 1965, as
amended by the Education Amendments of
1978 (20 U.S.C. 3191 *et seq.*).

Subpart A—General**§ 185a.1 Scope and purposes.**

(a) *Scope.* The regulations in this part govern awards for planning and transitional grants under the Emergency School Aid Act.

(b) *Purposes.* (1) The purpose of a planning grant is to develop a qualifying plan described in § 185.32 of the Emergency School Aid Act regulations published in the Federal Register on June 29, 1979 (44 FR 38364) in a notice of proposed rulemaking (hereafter referred to as the ESAA NPRM).

(2) A transitional grant is for any of the following purposes:

(i) Pre-implementation assistance—to help a local educational agency (LEA) that has adopted but not yet implemented a required plan, described in § 185.32(a) of the ESAA NPRM, to prepare for the reassignment of children or faculty under the plan.

(ii) Out-of-cycle assistance—to help an LEA to meet educational needs that arise from the implementation of a plan described in § 185.32 of the ESAA NPRM that the LEA adopted too late to serve as the basis for a basic grant application in the most recent competition under 45 CFR Part 185.

(iii) Special discretionary assistance—to help an LEA meet an unexpected educational need that arose from the implementation of a plan described in § 185.32 of the ESAA NPRM after the deadline date for basic grant

applications in the most recent competition under 45 CFR Part 185.

(Sections 604(b)(2), 606(a)(1)(E), 608(a); 20 U.S.C. 3194(b)(2), 3196(a)(1)(E), 3198(a))

§ 185a.2 Other applicable regulations.

(a) Awards under this part are subject to the language contained in the provisions of the ESAA NPRM set out in this paragraph. The ESAA NPRM is attached as Appendix A.

(1) Section 185.1(b), relating to the purposes of the Emergency School Aid Act.

(2) Section 185.4, containing definitions.

(3) Sections 185.10 through 185.25d, relating to requirements for LEAs.

(4) Section 185.32, relating to qualifying plans.

(b) All references in this part to sections in part 185 refer to sections in the ESAA NPRM.

(c) Awards under this part are subject to the language contained in applicable provisions of parts 100a (Direct Grant Programs) and 100c (General) of the Education Division General Administrative Regulations (EDGAR) as published in the Federal Register on May 4, 1979 (44 FR 26298 *et seq.*) in a notice of proposed rulemaking. Parts 100a and 100c are attached as Appendix B. All references in this part to sections in 45 CFR parts 100a and 100c refer to sections in EDGAR as published in that notice.

(d) However, the provisions of EDGAR set out below do not apply to awards under this part.

(1) The provisions of 45 CFR 100a.200 through 100a.220, except for 45 CFR 100a.216 and 100a.219(b)(3), do not apply to awards under this part. These inapplicable provisions relate to the selection of projects.

(2) The provisions in 45 CFR 100a.250, relating to the length of a project period, do not apply to awards under this part.

(3) The following provisions do not apply to any award to an LEA under this part—

(i) 45 CFR 100a.118(c) and 100a.253, relating to the criteria for a continuation grant;

(ii) 45 CFR 100a.560 through 100a.568, relating to indirect cost rates; and

(iii) 45 CFR 100a.680, relating to the participation of children enrolled in private schools.

(4) The provisions of 45 CFR 100a.100 through 100a.102, 100a.116(a), and 100a.118(b)(1), relating to deadline dates for applications, do not apply to awards under this part.

(5) The provisions in 45 CFR 100a.232, relating to the basis for the grant amount, do not apply to transitional grants.

(6) Any other provision of the EDGAR that conflicts with any provision of this part.

(Sections 601-617; 20 U.S.C. 3191-3207; 20 U.S.C. 1221e-3(a)(1))

Subpart B—Planning Grants**§ 185a.10 Purpose.**

The purpose of a planning grant is to develop a qualifying plan (described in § 185.32).

(Sections 604(b)(2), 606(a)(1)(E), 608(a); 20 U.S.C. 3194(b)(2), 3196(a)(1)(E), 3198(a))

§ 185a.11 Eligible applicants.

(a) An LEA may apply for a planning grant.

(b) No LEA may apply for a planning grant if it has received such a grant before.

(c) An LEA that applies for assistance to develop a required plan described in § 185.32(a) need not meet the requirements of §§ 185.21c or 185.21d if it provides assurances in its application that the development of the plan for which it seeks assistance will address the conditions described in those sections.

(Sections 606(a)(1), 606(a)(1)(E), 606(c)(2), 608(a); 20 U.S.C. 3196(a)(1), 3196(a)(1)(E), 3196(c)(2), 3198(a))

§ 185a.12 Authorized activities.

An LEA may use funds under a planning grant for any activity that is reasonably related to developing a qualifying plan.

(Sections 606(a)(1)(E), 608(a); 20 U.S.C. 3196(a)(1)(E), 3198(a))

§ 185a.13 Application procedures.

(a) An LEA may apply for a planning grant at any time.

(b) The applicant shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements of this part.

(c) If the applicant applies for a grant to develop a required plan described in § 185.32(a), it shall include in its application—

(1) A copy of the final order of the court, agency, or official that requires a plan described in § 185.32(a)(1); or

(2) A copy of the Secretary's finding of illegal separation of minority group children or faculty that requires a plan described in § 185.32(a)(2).

(d) If the applicant applies for a grant to develop a nonrequired plan described in § 185.32(b), it shall include in its application—

(1) The names of the schools in which minority group isolation will be eliminated, reduced, or prevented—or, in the case of a plan described in § 185.32(b)(4), the school districts from

which nonresident children will come—under the plan; and

(2) Evidence that the plan will be implemented at the end of the proposed project.

(e) The applicant shall include in its application an assurance that it has met and will meet applicable requirements in the Act and in this part.

(Sections 606(a)(1)(E), 608(a), 610(a); 20 U.S.C. 3196(a)(1)(E), 3198(a), 3200(a); S. Rep. No. 856, 95th Cong., 2d Sess. 66 (1978))

§ 185a.14 Approval of projects.

(a) The Commissioner decides whether to approve a new project on the basis of the degree to which the proposed activities afford promise of achieving the purposes of the Act described in section 185.1(b), as indicated by—

(1) The information described in 45 CFR 100a.110 through 100a.115; and

(2) The extent to which the application contains convincing evidence that the plan will be implemented at the end of the proposed project.

(Section 610(d); 20 U.S.C. 3200(d))

(b)(1) the Commissioner may approve a project period of up to 24 months.

(Section 606(a)(1)(E); 20 U.S.C. 3196(a)(1)(E))

(2) the Commissioner decides the length of a project period on the basis of—

(i) The severity and likely duration of the problems to which the plan would be addressed; and

(ii) The nature of the applicant's proposed activities.

(3) When approving an award for the first budget period of a multi-year project, the Commissioner indicates his or her intention to make a continuation award for a second budget period.

(Section 610(e)(1); 20 U.S.C. 3200(e)(1))

(c) The Commissioner approves a continuation award for a second budget period on the basis of the standards in § 185.37(a).

(Section 610(e)(2); 20 U.S.C. 3200(e)(2))

Subpart C—Transitional Grants

§ 185a.20 Purposes.

A transitional grant is for any one of the purposes set out in § 185a.1(b)(2).

(Sections 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

§ 185a.21 Eligible applicants.

(a) LEAs, SEAs, other public agencies, and private nonprofit agencies and organizations are eligible to apply for transitional grants.

(b) However, an applicant that is not an LEA may apply for a transitional

grant only at the request of the LEA that it proposes to help.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185a.22 Authorized activities.

(a) The recipient of a pre-implementation assistance grant described in § 185a.1(b)(2)(i) may use funds under the grant for any activity designed to meet an educational need that is reasonably related to the LEA's preparing for the reassignment of children or faculty under the plan.

(b) The recipient of an out-of-cycle assistance grant described in § 185a.1(b)(2)(ii) may use funds under the grant for any activity designed to meet an educational need that arises from the implementation of the plan.

(c) The recipient of a special discretionary assistance grant described in § 185a.1(b)(2)(iii) may use funds under the grant for any activity designed to meet the unexpected educational need described in that paragraph.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185a.23 Application procedures.

(a) An applicant may apply for a transitional grant at any time.

(b) The applicant shall meet the requirements of 45 CFR 100a.108 through 100a.116 and the requirements of this part.

(c) An applicant shall include in its application—(1) Except in the case of an application for a grant described in § 185a.1(b)(2)(iii) from an LEA that has a basic grant, a copy of the LEA's qualifying plan;

(2) A needs assessment that shows the relationship of the educational needs addressed by the proposed activities to the LEA's plan;

(3) If the applicant is not an LEA, a copy of the LEA's request for the applicant's help; and

(4) An assurance that the applicant has met and will meet applicable requirements of the Act and this part.

(Sections 608(a), 610(a); 20 U.S.C. 3198(a), 3200(a))

§ 185a.24 Approval of projects.

(a) The Commissioner decides whether an award to the applicant is warranted on the basis of—

(1) The degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by—(i) The applicant's needs assessment;

(ii) The information described in 45 CFR 100a.110 through 100a.115; and

(iii) Whether another applicant has submitted, or is likely to submit, an application to meet the need addressed by the proposed activities; and

(2) The factors set out in section 610(d) (1), (2), (3), and (5) of the Act.

(b)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (a) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to meet more effectively the educational needs described in § 185a.1(b)(2). However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to meet those needs.

(3) The Commissioner approves a project period of not more than 12 months for a transitional grant.

(4) The Commissioner does not set the amount of a grant described in § 185a.1(b)(2) (i) or (iii) above \$100,000.

(Sections 608(a), 610(d); 20 U.S.C. 3198(a), 3200(d))

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Subpart A—General Matters**§185.1 Emergency school aid.**

(a) *Scope.* The regulations in this part govern awards under the Emergency school aid Act.

(Sections 601-617; 20 U.S.C. 3191-3207)

(b) *Purpose.* The purpose of the Emergency School Aid Act is to provide financial assistance—

(1) To meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools; and

(2) To encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students.

(Section 602(b); 20 U.S.C. 3192(b))

§185.2 Eligibility.

Eligible applicants for each type of award under this part are set out in the regulations that pertain to that type of award.

(Sections 601-617; 20 U.S.C. 3191-3207)

§185.3 Other applicable regulations.

(a) Awards under this part are subject to applicable provisions of the Education Division General Administrative Regulations (EDGAR) in 45 CFR part 100a (Direct Grant Programs) and 45 CFR part 100c (Definitions).

(b) However, the provisions of the EDGAR set out below do not apply to the types of awards described.

(1) The provisions in 45 CFR 100a.200 through 100a.220, except for 45 CFR 100a.216 and 100a.219(b)(3), do not apply to any award under this part. These inapplicable provisions relate to the selection of projects.

(2) The provisions in 45 CFR 100a.250, relating to the length of a project period, do not apply to any award under this part except for—

(i) Grants for the Arts, described in subpart D;

(ii) Grants to jurisdictions set out in § 185.80(b); and

(iii) Nonprofit Organization Grants, described in subpart G.

(3) The following provisions do not apply to any award to a local educational agency under this part—

(i) 45 CFR 100a.118(c) and 100a.253, relating to the criteria for a continuation grant;

(ii) 45 CFR 100a.560 through 100a.568, relating to indirect cost rates; and

(iii) 45 CFR 100.680, relating to the participation of children enrolled in private schools.

(4) The provisions in 45 CFR 100a.100 through 100a.102, 100a.116(a), and 100a.118(b)(1), relating to deadline dates for applications, do not apply to Planning Grants and Transitional described in subpart D.

(5) The provisions in 45 CFR 100a.232, relating to the basis for the grant amount, do not apply to any award under this part except for—

(i) Planning Grants, described in subpart D;

(ii) Neutral Site Planning Grants, described in subpart E;

(iii) Compensatory Service Grants, described in subpart F; and

(iv) State Agency Grants, described in subpart H.

(6) Any other provision of the EDGAR which would conflict with the provisions of this part if it were applied to the matters treated in this part does not apply to awards under this part.

(Sections 601-617; 20 U.S.C. 3191-3207; 20 U.S.C. 1221e-3(a)(1))

(c) The provisions of 45 CFR part 100e (Education Appeal Board) apply to awards of assistance but not procurement contracts, under this part.

(Sections 601-617; 20 U.S.C. 3191-3207; 20 U.S.C. 1234-1234c)

§185.4 Definitions.

(a) The definitions of the following terms in section 617 of the Emergency School Aid Act apply to those terms as used in this part.

Equipment.
Institution of higher education.
Integrated school.
Local educational agency (LEA).
Magnet school.
Minority group.
Minority group isolated school.
Minority group isolation.
Neutral site school.
Standard Metropolitan Statistical Area (SMSA).
State.

(Section 617; 20 U.S.C. 3207)

(b) The definitions of the following terms in section 1001 of the Elementary and Secondary Education Act of 1965, as amended, apply to those terms as used in this part:

Commissioner.
Construction.
Elementary school.
Nonprofit.
Secondary school.
Secretary.
State educational agency (SEA).
(ESSA, Section 1001; 20 U.S.C. 3381)

(c) The definitions of terms in 45 CFR Part 100c apply to those terms as used in this part, except where a term is defined differently under this part.

(d) "The Act" means the Emergency School Aid Act (Title VI of the Elementary and Secondary Education Act of 1965, as amended)

(e) "Desegregation", in reference to a plan, means the reassignment of children of faculty required by a court, agency, or official to

remedy the illegal separation of minority group children or faculty in the schools of an LEA.

(Sections 606(a)(1)-(A), 606(c)(1)-(A)-(C), 607(a)(10) and (11), 610(a)(5); 20 U.S.C. 3196(a)(1)(A), 3196(c)(1)(A)-(C), 3197(a)(10) and (11), 3200(a)(5); H.R. Rep. No. 576, 92nd Cong., 1st Sess. 3, 12 (1971); S. Rep. No. 61, 92nd Cong., 1st Sess. 6, 35 (1971); 42 FR 12085 (March 2, 1977))

Subpart B—Requirements for Local Educational Agencies

§ 185.10 Public and advisory committee participation.

(a) An LEA shall develop any application for assistance in open consultation with parents, teachers, and, if the LEA operates a secondary school, secondary school students. At a minimum, the LEA shall—

(1) Meet the open meeting requirements of 45 CFR 100a.139 through 100a.141; and

(2) Consult with an advisory committee composed of parents of children enrolled in the LEA's schools, teachers, and, if the LEA operates a secondary school, secondary school students. At least half the members of the advisory committee must be parents. Also, at least half the members of the committee must be members of minority groups.

(b) The Commissioner does not approve an application without having received the written comments of a majority of each member of the advisory committee concerning the application. If a majority of the committee request an informal hearing concerning the application, the Commissioner does not approve the application without first affording the committee an opportunity for such a hearing.

(c) If the LEA receives an award, it shall periodically consult with the advisory committee, parents of children enrolled in its schools, and representatives of the area served regarding the services under the award.

(Section 610(a)(1) and (2), 610(c); 20 U.S.C. 3200(a)(1) and (2), 3200(c))

§ 185.11 State education agency review.

(a) An LEA that applies for assistance shall give the appropriate SEA a reasonable opportunity of offer recommendations to the LEA on the LEA's application.

(b) The LEA shall give the SEA a reasonable opportunity to submit comments to the Commissioner on the LEA's application, in accordance with 45 CFR 100a.156 through 100a.159.

(Section 610(a)(10); 20 U.S.C. 3200(a)(10))

§ 185.12 Additional cost.

(a) An LEA may include in its application for an award of assistance under the Act only activities that are authorized by the Act and are not normally carried out by the LEA.

(b) An LEA may not include an activity in its application if—

(1) The LEA supported the activity with funds from a source other than assistance under the Act in the fiscal year just prior to the fiscal year for which it seeks assistance for the activity; and

(2) Funds from sources other than assistance under the Act are available to

support the activity, or would have been available for that purpose in the absence of action by the LEA.

(c) The LEA shall use funds it receives under the Act solely to pay its additional cost in carrying out the activities included in its application.

(d) For the purpose of this section, "additional cost" means the actual, incremental cost of an activity. The term does not include any cost that is not related solely to that activity.

(e) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Sections 606(b), 610(a)(3); 20 U.S.C. 3196(b), 3200(a)(3))

§ 185.13 Supplementing non-Federal funds.

(a) An LEA that applies for assistance under the Act shall use funds it receives from that source to supplement the level of funds—and in no case supplant funds—that would, in the absence of those funds, be made available from non-Federal sources for—

(1) The purposes of the project for which the LEA seeks assistance;

(2) Promoting the integration of the LEA's schools; and

(3) The education of children participating in the project.

(b) However, this section does not prohibit the use of funds under the Act for an otherwise authorized activity required under a court-ordered plan described in section 606(a)(1)(A)(i) of the Act.

(c) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Section 610(a)(7); 20 U.S.C. 3200(a)(7))

§ 185.14 Coordination of Federal funds.

(a) An LEA that applies for assistance under the Act shall coordinate the use of funds it receives under any other law of the United States with funds it receives under the Act to the extent consistent with that other law.

(b) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Section 610(a)(7)(B); 20 U.S.C. 3200(a)(7)(B))

§ 185.15 Services to educationally deprived children.

An LEA that applies for assistance shall include in its application an assurance that, in developing its proposed project, it considered the need for compensatory services for children who—

(a) Received those services under title I of the Elementary and Secondary Education Act of 1965, as amended, and

(b) Are no longer eligible to receive those services as a result of attendance area changes under a qualifying plan (described in § 185.32).

(Section 610(a)(13); 20 U.S.C. 3200(a)(13))

§ 185.16 Evaluation.

(a) An LEA that receives assistance shall evaluate its approved project on a continuing basis to determine at least the following:

(1) The effectiveness of the project in achieving its goals;

(2) The impact of the project on related programs and on the community served; and

(3) The effectiveness of the project's structure and its means for the delivery of services.

(b) The LEA's evaluation shall include an objective measurement of change in educational achievement and other change that the LEA proposes to effect under the project.

(c) The LEA shall include in its application effective procedures for the evaluation described in this section.

(Section 610(a)(11); 20 U.S.C. 3200(a)(11))

§ 185.17 Private school participation.

(a)(1) An LEA that applies for assistance under the Act shall give children enrolled in private schools, and teachers and other educational staff employed in those schools, an opportunity to participate in its project on an equitable basis in accordance with this section.

(2) However, the Commissioner waives the requirement in this paragraph under section 612(c) of the Act if the LEA is prohibited by law from meeting it through reasonably feasible provisions.

(b)(1) In meeting the requirement in subsection (a), the LEA shall comply with the requirements of 45 CFR 100b.652 through 100b.663 for subgrantees.

(2) For the purpose of this section, the terms "subgrantee" and "subgrant" as used in those sections of part 100b mean "LEA" and "award", respectively. In addition, the terms "students" and "children" as used in those sections of part 100b include, for the purpose of this section, teachers and other educational staff.

(c) The requirement in subsection (a) relates only to a private nonprofit elementary or secondary school—

(1) That is located within the school district of the LEA; and

(2) That the LEA finds meets the requirements of § 185.21a (relating to nondiscrimination).

(d) A private school child, teacher, or other educational staff member may participate in the LEA's project only if his or her participation would assist in achieving the purposes of the Act (set out in § 185.1(b)). In meeting the requirements of 45 CFR 100b.657, the applicant shall include a description of how the participation of private school children, teachers, and other educational staff would assist in achieving those purposes.

(Sections 610(a)(8), 612(c); 20 U.S.C. 3200(a)(8), 3202(c))

§ 185.18 Freedom of choice desegregation plans.

If an LEA seeks assistance with respect to a desegregation plan described in section 606(a)(1)(A) of the Act, it shall identify in its application any elements of the plan that permit a child to select the school which he or she will attend.

(Section 610(a)(5); 20 U.S.C. 3200(a)(5))

§ 185.19 Compliance with plan.

If an LEA's eligibility for assistance is based on a plan described in section 606 of the Act, it shall include in its application an assurance that it will carry out, and comply with, all provisions, terms, and conditions of that plan.

(Section 610(a)(6); 20 U.S.C. 3200(a)(6))

§ 185.20 Maintenance of effort.

(a) An LEA that applies for assistance under the Act shall meet at least one of the following requirements:

(1) Its fiscal effort per student for the fiscal year for which it seeks assistance under the Act is not less than that for the second preceding fiscal year; or

(2) Its aggregate expenditure for the fiscal year for which it seeks assistance under the Act is not less than that for the second preceding fiscal year.

(b)(1) For the purposes of this section, "fiscal effort per student" means the expenditure for free public education—including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities—divided by the number of students in average daily attendance at the applicant's schools during the fiscal year for which the computation is made. Expenditures for free public education do not include expenditures for community services, capital outlay and debt service, or any expenditure from funds granted under any Federal program of assistance.

(2) "Aggregate expenditure" means the total expenditures used to compute "fiscal effort per student", as described in paragraph (b)(1).

(c) The LEA shall include in its application evidence that it meets the requirement of this section.

(Section 610(a)(9); 20 U.S.C. 3200(a)(9); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 232 (1976); 122 CONG. REC. H4209 (daily ed. May 11, 1976))

§ 185.21a Limitation on eligibility—Transfers to discriminatory nonpublic schools.

(a) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has transferred—directly or indirectly by gift, lease, loan, sale, or any other means—any real or personal property, or made available any services to, a nonpublic school or school system, or any person or organization controlling, operating, or intending to establish a nonpublic school or school system, before determining that the school or school system—

(1) Is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated or integrated public schools; and

(2) Does not otherwise practice, or permit to be practiced—in admissions or in the operation of any school activity—discrimination on the basis of race, color, or national origin.

(b)(1) In order to determine whether a transferee under paragraph (a) is a nonpublic

school or school system—or a person or organization controlling, operating, or intending to establish a nonpublic school or school system—the applicant shall, at a minimum, obtain from the transferee, in writing, the following information:

(i)(A) The legal name and address of the transferee; and

(B) If the immediate transferee is acting in a representative capacity, the legal name and address of the party represented.

(ii) If the information in (i) does not clearly indicate the nature of the transferee or the party represented, a copy of the articles of incorporation, charter, bylaws, or other documents indicating the legal status and stated purposes of the transferee or the party represented.

(iii) A statement of the use to be made of the property or services to be transferred.

(2) In the case of a transfer occurring after June 23, 1972, but prior to February 6, 1973 (the date on which the regulations relating to this matter first became effective), the requirements in paragraph (b)(1) do not apply.

(c)(1) In making the prior determination required under paragraph (a) as to the nature and practices of a nonpublic school or school system, an LEA shall, at a minimum, obtain from that school or school system, in writing, the following information:

(i) Whether the school has publicized a policy of nondiscrimination in admissions, educational policies, scholarship programs, athletics, and extracurricular activities.

(ii) Whether the school has publicized this policy in a manner intended and reasonably likely to bring it to the attention of school-age minority group persons, and their families, without making other statements or taking actions that negate the effect of that publicity.

(iii) Whether applicants for admission have been treated on a non-discriminatory basis.

(iv) Whether the racial composition of faculty, staff, and student body is consistent with a policy of nondiscrimination.

(v) Whether scholarship assistance is made available without regard to race.

(vi) Whether students and scholarship recipients are recruited among all segments of the community.

(vii)(A) Whether the school's incorporators, founders, board members, or donors of its land and buildings are announced or generally known as having as a primary objective the maintenance of segregated education; or

(B) Are announced or identified as officers or active members of an organization with that objective.

(2) In the case of a transfer occurring after June 23, 1972, but prior to February 6, 1973, a determination required to be made by paragraph (a) shall be substantiated by credible evidence satisfactory to the Secretary.

(d)(1) For the purpose of paragraph (c)(1)(iii) and (iv), a nonpublic school that has no minority students, or nonpublic school system that has no minority students in one or more of its schools, is presumed by the Secretary to discriminate.

(2) If that school or school system has also failed to adopt and publish a policy of

nondiscrimination in accordance with paragraph (c)(1)(i) and (ii), the presumption of discrimination is conclusive.

(e) The fact that an LEA may have obtained an assurance or statement of nondiscrimination from a transferee—or included that assurance or statement in the transfer documents—does not excuse the LEA from making the determination required by paragraph (a).

(Section 606(c)(1)(A); 20 U.S.C. 3196(c)(1)(A); *Green v. Connally*, 330 F. Supp. 1150 (D.D.C. 1971), *aff'd sub nom. Coit v. Green*, 404 U.S. 997 (1971); *Wright v. City of Brighton, Alabama*, 441 F.2d 447 (5th Cir. 1971), cert. den. 404 U.S. 915 (1971))

§ 185.21b Limitation on eligibility—Prohibited personnel practices.

(a) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any practice, policy, or procedure that—

(1) Results in the disproportionate demotion or dismissal or instructional, administrative, or other personnel from minority groups in conjunction with desegregation or the implementation of any plan or the conduct of any activity described in section 606 of the Act;

(2) Has resulted in the disproportionate demotion or dismissal of any of those personnel during the period in which the agency has been desegregating or eliminating or reducing isolation of minority group children under—

(i) An order of a Federal or State court;

(ii) A plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964; or

(iii) An order of a State agency or official of competent jurisdiction.

(b)(1) For the purpose of paragraph (a), a disproportionate demotion or dismissal of minority group personnel has occurred if the ratio of minority group elementary school teachers, secondary school teachers, principals, or other staff demoted or dismissed to the number of minority group personnel employed by the agency before those demotions or dismissals exceeds by more than 10 percentage points the ratio of nonminority group personnel demoted or dismissed over the same period of time to the number of nonminority group personnel employed by the agency prior to those demotions or dismissal. For example, the agency would be in violation of this paragraph (a) if it has demoted or dismissed 21 percent of its minority group principles and 10 percent of its nonminority group principals over the same period of time.

(2) For purposes of this section, a demotion includes any reassignment—

(i) Under which a faculty or staff member receives less pay or has less responsibility than under the assignment he or she held prior to the reassignment;

(ii) That requires a lesser degree of skill than did the assignment he or she held previously; or

(iii) Under which he or she is required to teach in a subject or grade other than one for which he or she is certified or in which he or she has substantial experience or qualifications.

(3) For the purpose of this section, a dismissal includes any termination of or failure to renew a contract, for cause or otherwise, including resignations impelled by threatened administrative or other sanctions.

(c)(1) The Secretary considers a practice, policy, or procedure resulting in the disproportionate demotion or dismissal of minority group personnel to be or remain in effect after June 23, 1972, if—at the time the LEA applies for assistance under the Act—the proportion of minority group personnel affected has not been restored at least to the proportion that existed prior to the demotions or dismissals.

(2) However, the Secretary does not make this finding if the LEA submits with its application information establishing that this practice, policy, or procedure has not been in effect since June 23, 1972. This information must include a description of corrective measures taken and progress achieved in eliminating the results of this practice, policy, or procedure.

(d) No LEA is eligible for assistance under the Act if—

(1) After June 23, 1972, the LEA, in selecting a staff member for demotion and dismissal, did not apply objective, nonracial, reasonable, and nondiscriminatory criteria to all staff members;

(2)(i) The LEA selected a staff member for demotion or dismissal on or before June 23, 1972, as described in paragraph (d)(1); and

(ii) At the time the LEA applies for assistance under the Act, the LEA has not offered this staff member reinstatement to his or her former position—or a comparable position—and offered him or her financial compensation for any loss caused by the demotion or dismissal; or

(3) The LEA fills a staff vacancy occurring after a demotion or dismissal in the process of desegregation with a person of a race, color, or national origin different from a qualified former staff member who was demoted or dismissed, unless this former staff member was offered employment in the vacancy and failed to accept the offer.

(e) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any other practice, policy, or procedure that results in discrimination on the basis of race, color, or national origin in the recruiting, hiring, promotion, payment, or assignment of any of its employees or other personnel for which the agency has any administrative responsibility. This includes the assignment of full-time classroom teachers to the schools of the LEA in a manner that identifies any of those schools as intended for students of a particular race, color, or national origin.

(Section 606(c)(1)(B); 20 U.S.C. 3196(c)(1)(B); S. Rep. No. 61, 92nd Cong., 1st Sess., 19 (1971), *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969))

§ 185.21c Limitation on eligibility—Classroom segregation.

(a) Except as provided in § 185.22, no LEA is eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any procedure for the assignment of children to or within classes—in conjunction with desegregation or the conduct of any

activity described in section 806 of the Act—that results in any separation of minority group from nonminority group children for more than 25 percent of the school day classroom periods.

(b) However, paragraph (a) does not prohibit, as a standard pedagogical practice, ability grouping that is—

(1) Based on nondiscriminatory, objective standards of measurement that—

(i) Are educationally relevant to the purposes of the grouping; and

(ii) In the case of national origin minority group children, do not essentially measure English language skills;

(2)(i) Determined by the nondiscriminatory application of the standards described in paragraph (b)(1); and

(ii) Maintained for only that portion of the school day classroom periods necessary to achieve the purposes of the grouping;

(3) Designed—(i) To meet the special needs of the students in each group; and

(ii) To improve the academic performance and achievement of students determined to be in the less academically advanced groups by means of—

(A) Specially developed curricula;

(B) Specially trained or certified instructional personnel; and

(C) Periodic retesting to determine academic progress and eligibility for promotion; and

(4) Validated by test scores or other reliable, objective evidence indicating the educational benefits of the grouping.

(Section 606(c)(1)(C); 20 U.S.C. 3196(c)(1)(C); S. Rep. No. 61, 92nd Cong., 1st Sess., 19 (1971))

§ 185.21d Limitation on eligibility—Discrimination against children.

Except as provided in § 185.22, no LEA is eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any practice, policy, or procedure that results or has resulted in discrimination against children on the basis of race, color, or national origin, including but not limited to—

(a) Limiting curricular or extracurricular activities or participation of children in those activities, to avoid the participation of minority group children;

(b) Denying equality of educational opportunity, or otherwise discriminating on the basis of language or cultural background, against national origin minority group children;

(c) Permitting the rental, use, or enjoyment of any of the LEA's facilities or services by a group or organization that—

(1) Discriminates against minority group children aged 5 through 17 in its admissions or membership policies; or

(2) Otherwise practices, or permits to be practiced, discrimination against these children on the basis of race, color, or national origin;

(d) Imposing disciplinary sanctions—including expulsion, suspension, or corporal or other punishment—in a manner that discriminates against minority group children on the basis of race, color, or national origin;

(e) Assigning students to ability groups, tracks, special education classes, classes for the mentally retarded, or other curricular or

extracurricular activities on the basis of race, color, or national origin. Racially or ethnically identifiable groups, tracks, or classes that cannot be justified educationally under the criteria set out in § 185.21c(b) are presumed by the Secretary to be assigned on the basis of race, color, or national origin; and

(f) Denying to minority group children, on the basis of race, color, or national origin facilities or instructional or other services comparable to those provided to nonminority group children.

(Section 606(c)(1)(D); 20 U.S.C. 3196(c)(1)(D))

§ 185.22 Exception for planning grants.

The provisions of §§ 185.21c and 185.21d do not apply to an LEA described in § 185.41 if the applicant LEA provides assurances in its application that the development of the plan for which it seeks assistance will address the conditions described in those sections.

(Section 606(c)(2); 20 U.S.C. 3196(c)(2))

§ 185.23 Continuing conditions of eligibility.

(a) The limitations on eligibility in §§ 185.21a through 185.21d are continuing conditions of eligibility during the entire grant period.

(b) The LEA's failure to comply with these conditions after the award of assistance is grounds for termination of assistance and for other sanctions that the Secretary may impose.

(c) The provisions of 45 CFR part 100e (Education Appeal Board) apply to a decision to terminate assistance or impose another sanction.

(Section 606(c); 20 U.S.C. 3196(c); S. Rep. No. 61, 92nd Cong., 1st Sess., 41–42 (1971))

§ 185.24 Show cause conferences.

(a)(1) If the Secretary determines that an applicant is not eligible for assistance under §§ 185.21a through 185.21d, the Secretary notifies the applicant in writing of that determination and the reasons for it.

(2) The notification includes an offer to show cause why the determination of ineligibility should be revoked and the applicant's application considered for funding.

(b) If the applicant requests an opportunity to show cause, the Secretary holds an informal conference for that purpose.

(c) After the conference has been held, the Secretary promptly notifies the applicant of the decision to continue or revoke the determination of ineligibility and the reasons for that decision.

(d) For the purpose of this section, "applicant" includes—

(1) An agency that is seeking an award for a new project; and

(2) An agency that is seeking a continuation award for a budget period after the first budget period of an approved multi-year project.

(e) The provisions of 45 CFR part 100e do not apply to a determination that an applicant is not eligible for assistance under §§ 185.21a through 185.21d.

(Section 606(c); 20 U.S.C. 3196(c))

§ 185.25 Waivers of ineligibility.

(a) In the event that an LEA prior to an award of assistance under the Act is determined to be ineligible under §§ 185.21a through 185.21d, the agency may apply to the Secretary for waiver of ineligibility.

(Section 606(c) (1) and (3); 20 U.S.C. 3196(c) (1) and (3))

(b) An application for waiver under paragraph (a) must contain—

(1) Information and assurances to ensure that any practice, policy, procedure, or other activity resulting in ineligibility has ceased to exist or occur; and

(2) Provisions to ensure that practice, policy, procedure, or activity will not reoccur after the agency submits its application for a waiver.

(c) If an applicant for assistance—except for assistance under section 608(a) of the Act—submits its application for waiver too late to permit the Secretary to consider it before the June 30 deadline in section 610(b) of the Act, the Commissioner disapproves the applicant's application for assistance.

(Sections 606(c) (1) and (3), 610 (a) and (b); 20 U.S.C. 3196(c) (1) and (3), 3200 (a) and (b))

§ 185.25a Waiver of ineligibility—Transfer to discriminatory nonpublic schools.

In the case of ineligibility under § 185.21a, an LEA shall include the following in its application for waiver:

(a) A list of all property transferred or services made available to nonpublic schools or school systems that—

(1) Are operated on a racially segregated basis; or

(2) Practice, or permit to be practiced, discrimination on the basis of race, color or national origin in admissions or the operation of any school activity.

(b) The names and addresses of these schools or school systems.

(c) The consideration received for these transfers.

(d) Evidence that—(1) The transfers have been rescinded; and

(2) To the extent possible under State law, all unearned consideration received for them has been repaid or returned; and

(e) A statement of steps taken by the agency to avoid or prevent these types of transfers in the future.

(Section 606(c); 20 U.S.C. 3196(c))

§ 185.25b Waiver of ineligibility—Prohibited personnel practices.

(a) In the case of ineligibility under § 185.21b resulting from the disproportionate demotion or dismissal of instructional, administrative, or other personnel from minority groups, an LEA shall include the following in its application for waiver:

(1) A plan of affirmative action to ensure that—within a reasonable time from the date of its application—the proportion of minority group personnel affected by these demotions or dismissals will be restored at least to the proportion that existed prior to the demotions or dismissals.

(2) A statement of steps taken by the LEA to prevent any future disproportionate demotion or dismissal of minority group personnel.

(b) In the case of ineligibility under § 185.21b resulting from discriminatory demotion or dismissal of instructional or other personnel from minority groups, an LEA shall include the following in its application for waiver:

(1) Evidence that all minority group personnel demoted or dismissed as a result of discrimination have been offered reinstatement to their former positions or comparable positions and afforded financial compensation for any loss caused by those demotions or dismissals; and

(2) A statement of steps taken by the LEA to prevent any future discriminatory demotion or dismissal of minority group personnel. This includes but is not limited to a statement of objective, nonracial, and reasonable criteria to be applied—

(i) In the event that reinstatement of minority group personnel as required by paragraph (b)(1) necessitates a reduction in the number of personnel; or

(ii) In the event of future demotions or dismissals for any reason.

(c)(1) In the case of ineligibility resulting from discriminatory assignment of teachers as prohibited by § 185.21b(e), an LEA shall include in its application for waiver evidence that the agency has assigned its full-time classroom teachers to its schools so that no school is identified as intended for students of a particular race, color, or national origin.

(2) In the case of an LEA implementing a required plan described in § 185.32(a), these nondiscriminatory assignments must conform to the requirements of that plan.

(3) In the case of an LEA not implementing that type of plan, or implementing a plan that contains no provision regarding assignment of faculty, the LEA shall make assignments so that the proportion of minority group full-time classroom teachers at each school is between 75 and 125 percent of the proportion of those teachers that exists on the LEA's faculty as a whole.

(d) In the case of ineligibility resulting from other discriminatory practices, policies, or procedures prohibited by § 185.21b(e), an LEA shall include the following in its application for waiver:

(1) Evidence that minority group personnel subjected to this type of discrimination have been—

(i) Reinstated or restored to the positions or status they held prior to, or would have held in the absence of, this discrimination; and

(ii) Given financial compensation for any loss caused by that discrimination.

(2) A statement of steps taken by the LEA to prevent this type of discrimination in the future.

(e) In the event that the corrective action required under this section includes the employment or promotion of minority group personnel, the LEA shall give preference—

(1) First to qualified minority group members of its own faculty or staff previously demoted or dismissed for any reason; and

(2) Second to qualified minority group faculty and staff members identified by the Department as previously demoted or dismissed by other LEA's in conjunction with desegregation or the conduct of any activity described in section 606 of the Act.

(Section 606(c); 20 U.S.C. 3196(c))

§ 185.25c Waiver of ineligibility—classroom segregation.

In the case of ineligibility under § 185.21c, an LEA shall include in its application for waiver—

(a) Evidence that minority group children are not separated from nonminority group children by or within classes for more than 25 percent of the school day classroom periods, except in the case of ability grouping that meets the requirements of § 185.21c(b) (1) through (3) and is the only available method of achieving a specific educational objective.

(b) A statement of steps taken by the LEA to ensure that separation of minority and nonminority group children as prohibited by § 185.21c will not reoccur.

(Section 606(c); 20 U.S.C. 3196(c))

§ 185.25d Waiver of ineligibility—discrimination against children.

In the case of ineligibility under § 185.21d, and LEA shall include in its application for waiver evidence that the practice, policy, or procedure prohibited by that section has ceased and that its effects have been remedied or eliminated. In particular—

(a) In the case of a denial of equal educational opportunity to national origin minority group children—as described in § 185.21(b)—the LEA shall submit an educational plan of sufficient comprehensiveness to remedy or eliminate the effects of the denial and to meet the special educational needs of all national origin minority group children for whose education the LEA is responsible.

(b) In the case of a violation under § 185.21d(c), the LEA shall include in its application for waiver evidence that—

(1) The discriminatory rental, use, or enjoyment of its facilities is no longer permitted; and

(2) Any agreement with respect to the discriminatory rental, use, or enjoyment has been rescinded and the unearned consideration from it has been returned or repaid, to the extent possible under the applicable State law.

(c)(1) In the case of the assignment of students to racially or ethnically identifiable groups, tracks, or classes that cannot be justified educationally—as described in § 185.21d(e)—the LEA shall include in its application for waiver the following information:

(i) If the assignment was to a grouping to provide special education or related services to handicapped students, evidence that the students have been evaluated and placed in accordance with requirements for evaluation and placement of handicapped students under Pub. L. 94-142, section 504 of Pub. L. 93-112, and any regulations under those statutes.

(ii) If the assignment was to other groupings, evidence that the students have been reassigned without discrimination to groupings that are not racially or ethnically identifiable, or evidence that the students have been reassigned to groupings in accordance with the criteria in § 185.21c(b) (1) through (3).

(2) If the agency reassigns any student to a new grouping under paragraph (c)(1), it shall

also include evidence that it has made provision for the transitional services necessary to enable the student to participate meaningfully in the educational program of the new grouping.

(Section 606(c); 20 U.S.C. 3196(c))

Subpart C—Basic Grants

§ 185.30 Purpose.

The purpose of a basic grant is to meet educational needs that arise from a qualifying plan described in § 185.32.

(Sections 602(b), 604(b)(1), 606(a)(1), 607(a); 20 U.S.C. 3192(b), 3194(b)(1), 3196(a)(1), 3197(a))

§ 185.31 Eligible applicants.

An LEA may apply for a basic grant.

(Section 606(a)(1); 20 U.S.C. 3196(a)(1))

§ 185.32 Qualifying plans.

(a) *Required plans.* (1) An LEA may apply if it is implementing a plan—

(i) That has been undertaken under a final order issued by—

(A) A court of the United States;

(B) A court of any State; or

(C) Any other State agency or official of competent jurisdiction;

(ii) That requires the desegregation of minority group segregated children or faculty in the LEA's elementary and secondary schools, or otherwise requires the elimination or reduction of minority group isolation in those schools; and

(iii) That may, in addition, require educational activities in minority group isolated schools not affected by the reassignment of children or faculty under the plan in order to remedy the effects of illegal segregation.

(2) For the purpose of subparagraph (1), a State agency or official of competent jurisdiction means any State agency or official authorized pursuant to State law to issue such an order.

(Section 606(a)(1)(A)(i); 20 U.S.C.

3196(a)(1)(A)(i))

(3) An LEA may apply if it is implementing a plan that has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in the LEA's schools.

(Section 606(a)(1)(A)(ii); 20 U.S.C.

3196(a)(1)(A)(ii))

(b) *Nonrequired plans.* (1) An LEA may apply if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan for the complete elimination of minority group isolation in all its minority group isolated schools.

(Section 606(a)(1)(B); 20 U.S.C. 3196(a)(1)(B))

(2)(i) An LEA may apply if it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to—

(A) Eliminate or reduce minority group isolation in one or more of its minority group isolated schools; or

(B) Reduce the total number of minority group children who are enrolled in its minority group isolated schools.

(ii) Elimination of minority group isolation is a change in a school's enrollment resulting in a reduction in the proportion of minority group children from greater than 50 percent to 50 percent or less.

(iii) Reduction of minority group isolation is a change in a school's enrollment after which the proportion of minority group children is reduced, but remains greater than 50 percent.

(Section 606(a)(1)(C) (i) and (ii); 20 U.S.C. 3196(a)(1)(C) (i) and (ii))

(3)(i) An LEA may apply if it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to prevent minority group isolation reasonably likely to occur (in the absence of assistance under the Act) in any of its schools in which at least 20 percent, but not more than 50 percent, of the enrollment consists of minority group children.

(ii) The Commissioner considers minority group isolation reasonably likely to occur (in the absence of assistance under the Act) in a school only if the LEA demonstrates by credible evidence that minority group children will comprise more than 50 percent of the enrollment of the school during the first fiscal year for which it seeks assistance or the next succeeding fiscal year. This evidence may include, but is not limited to—

(A) Enrollment figures for the school during previous fiscal years;

(B) Enrollment figures of schools from which the enrollment of the school is drawn;

(C) Demographic data concerning the attendance area served by the school; and

(D) School board resolutions or other evidence of final official action likely to affect the enrollment of the school during the first fiscal year for which assistance is sought or the next succeeding fiscal year.

(iii) If the LEA seeks assistance for more than one fiscal year, its plan to prevent minority group isolation must include provisions to accomplish the purpose of the plan by mandatory enrollment changes in the event other means fail.

(Section 606(a)(1)(C)(iii); 20 U.S.C.

3196(a)(1)(C)(iii))

(4) An LEA may apply if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to enroll and educate in its schools children who would not otherwise be eligible for enrollment because of nonresidence in its school district, where that enrollment would make a significant contribution toward reducing minority group isolation in one or more school districts. The Commissioner considers an LEA's plan to make a significant contribution toward reducing minority group isolation only if it involves the enrollment by the applicant of at least 100 children who would not otherwise be eligible for enrollment because of nonresidence in its school district. Reducing minority group isolation in one or more school districts, for the purpose of this subparagraph (4), refers to any of the changes in enrollment described in paragraph (b)(2) in any school district to which the plan relates.

(Section 606(a)(1)(D); 20 U.S.C. 3196(a)(1)(D))

(5) The Commissioner does not consider a plan described in paragraph (b) (2), (3), or (4)

to meet the requirements of this section where the elimination, reduction, or prevention of minority group isolation accomplished or to be accomplished in schools to which the plan relates results in an equal or greater degree of minority group isolation in other schools operated by the LEA or LEA's to which the plan relates.

(Sections 602(b), 606(a)(1) (C) and (D); 20 U.S.C. 3192(b), 3196(a)(1) (C) and (D))

(c) *Implementation of a plan.* (1) For purposes of determining an LEA's eligibility for assistance, the Commissioner considers the LEA to be implementing a plan if—

(i) It is operating its school system in accordance with the requirements of the plan; and

(ii) In the case of a required or nonrequired plan to eliminate, reduce, or prevent minority group isolation—or a plan to reduce the total number of minority group children who are enrolled in its minority group isolated schools—the degree of minority group isolation in its schools is less than the degree that would have existed in the absence of the plan.

(Section 606(a)(1); 20 U.S.C. 3196(a)(1))

(d) An LEA shall include in its application the following:

(i) A complete copy of the plan upon which it bases its application for assistance under this section (including all relevant legal documents);

(ii) A summary of the present requirements for that plan;

(iii) In the case of a plan described in paragraph (b), a copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement it upon the award of assistance; and

(iv) In the case of a plan to prevent minority group isolation described in paragraph (b)(3), where minority group children constitute more than 50 percent of the enrollment of all the schools operated by the LEA—

(A) A statement of the enrollment, by race, in any of its schools in which minority group children constitute more than 70 percent of the enrollment;

(B) A statement of the reasons for that disproportionate minority group enrollment in each school; and

(C) A statement of instructional and other services to be provided to children enrolled in each school that will ensure that services to those children are comparable to services to be provided to children enrolled in any school to which the plan described in paragraph (b)(3) relates.

(Sections 606(a)(1), 610(a); 20 U.S.C. 3196(a)(1), 3200(a))

§ 185.33 Authorized activities.

An LEA may use funds under a basic grant for any activity that is designed to meet an educational need that arises from a qualifying plan (described in § 185.32). Section 607(a) of the Act lists examples of authorized activities.

(Section 607(a); 20 U.S.C. 3197(a))

§ 185.34 Application procedures.

(a) An LEA that wants to apply shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements in this part.

(b) The LEA shall include in its application a needs assessment that shows the relationship of the educational needs addressed by the proposed activities to the implementation of the LEA's qualifying plan.

(c) The LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Section 610(a); 20 U.S.C. 3200(a))

§ 185.35 Approval of new projects.

(a) The Commissioner decides whether to approve a new project on the basis of the procedures in this section.

(Sections 602(b), 610(d); 20 U.S.C. 3192(b), 3200(d))

(b) Applications for new projects submitted by LEA's in each State are considered separately.

(Section 605; 20 U.S.C. 3195)

(c)(1) Each application is assigned to one of the categories in this paragraph on the basis of the date when the LEA implemented the qualifying plan on which it bases its application.

(i) Category I contains applications relating to plans with implementation dates not more than three years before the July 1 that follows the deadline date for applications.

(ii) Category II contains applications relating to plans with implementation dates more than three, but not more than six, years before that date.

(iii) Category III contains applications relating to plans with implementation dates more than six years before that date.

(2)(i) The implementation date of a plan is the date of the first change in the enrollment of a school—or, in the case of a plan for the desegregation of minority group segregated faculty, the first reassignment of a faculty member—under the plan.

(ii) If an LEA is implementing more than one plan, or a plan that was implemented over a period of time, the implementation date is the date of the greatest change in the enrollments of schools, or the greatest number of reassignments of faculty members, as appropriate.

(3)(i) The Commissioner makes awards for all approvable applications contained in Category I before those in Category II.

(ii) The Commissioner makes awards for all approvable applications contained in Category II before those in Category III.

(Sections 610(d) (1) and (3); 20 U.S.C. 3200(d) (1) and (3))

(d)(1) Within each category, applications are ranked on the basis of the net change in isolation in the applicant's schools between the fiscal year just prior to the implementation date of its plan ("base year") and the first fiscal year for which it seeks assistance ("project year"). The net change in isolation is computed on the basis of the procedures in this paragraph.

(2) The minority group percentage of the enrollment of each of the applicant's schools in the base year is computed. The number of

minority group students enrolled in schools within each percentage range in column A of table I is determined. The number of students in each percentage range is then multiplied by the corresponding weight in column B of table I. The resulting weighted numbers are added. The sum is then divided by the total number of minority group students.

Table I

Column A minority group percentage	Column B weight
95 or more.....	0.0
At least 90 but less than 95.....	.1
At least 85 but less than 90.....	.2
At least 80 but less than 85.....	.3
At least 75 but less than 80.....	.4
At least 70 but less than 75.....	.5
At least 65 but less than 70.....	.6
At least 60 but less than 65.....	.7
At least 55 but less than 60.....	.8
At least 50 but less than 55.....	.9
50 or less.....	1.0

(3) The computation described in subparagraph (2) is repeated using the number of minority group students to be enrolled in the applicant's schools in the project year.

(4) The result of the computation for the base year is subtracted from the result of the computation for the project year to determine the net change in isolation between the base year and the project year.

(Section 610(d) (1) and (2); 20 U.S.C. 3200(d) (1) and (2))

(e) With the concurrence of the Assistant Secretary for Education that compelling evidence of extraordinary difficulty by an applicant in effectively carrying out a desegregation plan exists, the Commissioner may revise the rank order of applications between and within categories under paragraph (c) and (d) to reflect the applicant's greater need for assistance.

(Section 610(d)(1); 20 U.S.C. 3200(d)(1))

(f)(1) The Commissioner reviews each application to determine if it contains activities that address educational needs that arise from the implementation of the LEA's qualifying plan.

(2)(i) If the application contains activities described in subparagraph (1), the Commissioner reviews those activities to determine the degree to which they afford promise of achieving the purposes of the Act described in § 185.1(b).

(ii) In making this determination, the Commissioner considers—

(A) The information described in 45 CFR 100a.110 through 100a.115 as it relates to those activities; and

(B) The degree to which the applicant's plan involves, to the fullest extent practicable, the total educational resources, both public and private, of the community to be served.

(iii) On the basis of this review, the Commissioner decides whether an award to the applicant is warranted.

(Sections 602(b), 605(b)(3), 607(a), 610(d) (1), (4) and (5); 20 U.S.C. 3192(b), 3195(b)(3), 3197(a), 3200(d) (1), (4) and (5))

(g)(1) The Commissioner further reviews each application submitted by an applicant to

which an award is warranted under paragraph (f) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to meet more effectively the educational needs that arise from its plan. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to meet those needs. (Sections 602(b), 607(a), 610(d)(4); 20 U.S.C. 3192(b), 3197(a), 3200(d)(4))

§ 185.36 Length of project.

(a) The Commissioner may approve a project period of up to 60 months.

(b) The Commissioner decides the length of a project period on the basis of the following factors:

(1) The severity and likely duration of the educational needs addressed by the applicant's proposed activities.

(2) The nature of those activities, or of activities to meet those needs most effectively.

(3) The recency of the LEA's implementation of the qualifying plan on which it bases its application.

(c) When approving an award for the first budget period of a multi-year project, the Commissioner indicates his or her intention to make one or more continuation awards for budget periods during the remainder of the project period.

(Section 610(e)(1); 20 U.S.C. 3200(e)(1))

§ 185.37 Approval of continuation awards.

The Commissioner approves a continuation award for a budget period after the first budget period of a multi-year project if—

(a) Sufficient appropriations are available for the budget period under section 610(e)(2)(A) of the Act;

(b) The applicant is not ineligible for assistance under §§ 185.21a through 185.21d; and

(c) The applicant is making satisfactory progress toward achieving the objectives of its project.

(Section 610(e)(2); 20 U.S.C. 3200(e)(2))

Subpart D—Special Project Grants**Planning Grants****§ 185.40 Purpose.**

The purpose of a planning grant is to develop a qualifying plan (described in § 185.32).

(Sections 604(b)(2), 606(a)(1)(E), 608(a); 20 U.S.C. 3194(b)(2), 3196(a)(1)(E), 3198(a))

§ 185.41 Eligible applicants.

(a) An LEA may apply for a planning grant.

(b) No LEA may apply for a planning grant if it has received such a grant before.

(c) An LEA that applies for assistance to develop a required plan described in § 185.32(a) need not meet the requirements of §§ 185.21c or 185.21d if it provides assurances in its application that the development of the plan for which it seeks assistance will address the conditions described in those sections.

(Sections 606(a)(1), 606(a)(1)(E), 606(c)(2), 608(a); 20 U.S.C. 3196(a)(1), 3196(a)(1)(E), 3196(c)(2), 3198(a))

§ 185.42 Authorized activities.

An LEA may use funds under a planning grant for any activity that is reasonably related to developing a qualifying plan.

(Sections 606(a)(1)(E), 608(a); 20 U.S.C. 3196(a)(1)(E), 3198(a))

§ 185.43 Application procedures.

(a) An LEA may apply for a planning grant at any time.

(b) The applicant shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements of this part.

(c) If the applicant applies for a grant to develop a required plan described in § 185.32(a), it shall include in its application—

(1) A copy of the final order of the court, agency, or official that requires a plan described in § 185.32(a)(1); or

(2) A copy of the Secretary's finding of illegal separation of minority group children or faculty that requires a plan described in § 185.32(a)(2).

(d) If the applicant applies for a grant to develop a nonrequired plan described in § 185.32(b), it shall include in its application—

(1) The names of the schools in which minority group isolation will be eliminated, reduced, or prevented—or, in the case of a plan described in § 185.32(b)(4), the school districts from which nonresident children will come—under the plan; and

(2) Evidence that the plan will be implemented at the end of the proposed project.

(e) The applicant shall include in its application an assurance that it has met and will meet applicable requirements in the Act and in this part.

(Sections 606(a)(1)(E), 608(a), 610(a) 20 U.S.C. 3196(a)(1)(E), 3198(a), 3200(a) S. Rep. No. 856, 95th Cong., 2d Sess. 66 (1978))

§ 185.44 Approval of projects.

(a) The Commissioner decides whether to approve a new project on the basis of the degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by—

(1) The information described in 45 CFR 100a.110 through 100a.115; and

(2) The extent to which the application contains convincing evidence that the plan will be implemented at the end of the proposed project.

(Section 610(d); 20 U.S.C. 3200(d))

(b)(1) The Commissioner may approve a project period of up to 24 months.

(Section 606(a)(1)(E); 20 U.S.C. 3196(a)(1)(E))

(2) The Commissioner decides the length of a project period on the basis of—

(i) The severity and likely duration of the problems to which the plan would be addressed; and

(ii) The nature of the applicant's proposed activities.

(3) When approving an award for the first budget period of a multi-year project, the Commissioner indicates his or her intention

to make a continuation award for a second budget period.

(Section 610(e)(1); 20 U.S.C. 3200(e)(1))

(c) The Commissioner approves a continuation award for a second budget period on the basis of the standards in § 185.37(a).

(Section 610(e)(2); 20 U.S.C. 3200(e)(2))

Transitional Grants

§ 185.50 Purposes.

A transitional grant is for any one of the following purposes:

(a) *Pre-implementation assistance*—to help an LEA that has adopted but not yet implemented a required plan, described in § 185.32(a), to prepare for the reassignment of children or faculty under the plan.

(b) *Out-of-cycle assistance*—to help an LEA to meet educational needs that arise from the implementation of a plan described in § 185.32 that the LEA adopted too late to serve as the basis for a basic grant application in the most recent competition under subpart C.

(c) *Special discretionary assistance*—to help an LEA meet an unexpected educational need that arose from the implementation of a plan described in § 185.32 after the deadline date for basic grant applications in the most recent competition under subpart C.

(Sections 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

§ 185.52 Eligible applicants.

(a) LEAs, SEAs, other public agencies, and private nonprofit agencies and organizations are eligible to apply for transitional grants.

(b) However, an applicant that is not an LEA may apply for a transitional grant only at the request of the LEA that it proposes to help.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.52 Authorized activities.

(a) The recipient of a pre-implementation assistance grant described in § 185.50(a) may use funds under the grant for any activity designed to meet an educational need that is reasonably related to the LEA's preparing for the reassignment of children or faculty under the plan.

(b) The recipient of an out-of-cycle assistance grant described in § 185.50(b) may use funds under the grant for any activity designed to meet an educational need that arises from the implementation of the plan.

(c) The recipient of a special discretionary assistance grant described in § 185.50(c) may use funds under the grant for any activity designed to meet the unexpected educational need described in that paragraph.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.53 Application procedures.

(a) An applicant may apply for a transitional grant at any time.

(b) The applicant shall meet the requirements of 45 CFR 100a.108 through 100a.116 and the requirements of this part.

(c) An applicant shall include in its application—

(1) Except in the case of an application for a grant described in § 185.50(c) from an LEA

that has a basic grant, a copy of the LEA's qualifying plan;

(2) A needs assessment that shows the relationship of the educational needs addressed by the proposed activities to the LEA's plan;

(3) If the applicant is not an LEA, a copy of the LEA's request for the applicant's help; and

(4) An assurance that the applicant has met and will meet applicable requirements of the Act and this part.

(Sections 608(a), 610(a); 20 U.S.C. 3198(a), 3200(a))

§ 185.54 Approval of projects.

(a) The Commissioner decides whether an award to the applicant is warranted on the basis of—

(1) The degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by—

(i) The applicant's needs assessment;

(ii) The information described in 45 CFR 100a.110 through 100a.115; and

(iii) Whether another applicant has submitted, or is likely to submit, an application to meet the need addressed by the proposed activities; and

(2) The factors set out in section 610(d) (1), (2), (3), and (5) of the Act.

(b)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (a) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to meet more effectively the educational needs described in § 185.50. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to meet those needs.

(3) The Commissioner approves a project period of not more than 12 months for a transitional grant.

(4) The Commissioner does not set the amount of a grant described in § 185.50 (a) or (c) above \$100,000.

(Sections 608(a), 610(d); 20 U.S.C. 3198(a), 3200(d))

Grants for the Arts

§ 185.60 Purpose.

The purpose of a grant for the arts is to provide, through the arts, opportunities for interracial and intercultural communication and understanding to help meet the special needs incident to the implementation of a qualifying plan (described in § 185.32).

(Sections 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

§ 185.61 Eligible applicants.

A public agency other than an LEA that is responsible for the administration of statewide public arts programs may apply for a grant for the arts at the request of the LEA or LEAs that it proposes to serve.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.62 Eligibility for services from a grantee.

A grantee shall conduct activities under the grant primarily with students who attend schools—

- (a) That are affected by a qualifying plan;
- (b) In which the minority group enrollment is between 20 and 80 percent; and
- (c) That are operated by LEAs that are in compliance with the requirements of §§ 185.21a through 185.21d.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.63 Authorized activities.

A grantee may use funds to carry out any activity that is reasonably related to the purpose of a grant for the arts (described in § 185.60).

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.64 Application procedures.

(a) An applicant shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements of this part.

(b) An applicant shall include in its application—

(1) A copy of the qualifying plan for each LEA that the applicant proposes to serve, unless the LEA has submitted its plan to the Commissioner;

(2) A copy of the request for the applicant to serve the LEA, from each LEA that the applicant proposes to serve;

(3) An assurance, signed by an authorized official of each LEA that the applicant proposes to serve, that the LEA is in compliance with §§ 185.21a through 185.21d;

(4) Evidence, such as a copy of a State statutory provision or executive order, that the applicant is a public agency responsible for the administration of statewide public arts programs; and

(5) An assurance that the applicant has met and will meet applicable requirements of the Act and this part.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.65 Approval of projects.

(a) The Commissioner decides whether an award to the applicant is warranted on the basis of—

(1) The degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by the information described in 45 CFR 100a.110 through 100a.115; and

(2) The factors set out in section 610(d) (1), (2), (3) and (5) of the Act.

(b)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (a) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to carry out more effectively the purpose set out in § 185.60. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to carry out that purpose.

(3) The maximum assistance for any budget period for a grant for the arts is \$100,000.

(c) The Commissioner does not award more than one grant for activities in any State,

(Section 610(d); 20 U.S.C. 3200(d))

Metropolitan Area Grants**§ 185.70 Purposes.**

A metropolitan area grant is for either of the following purposes:

(a) To establish or maintain one or more integrated schools.

(b) To support the joint development of a plan to reduce or eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools within a Standard Metropolitan Statistical Area (SMSA).

(Sections 604(b)(2), 606(a)(2), 609(a); 20 U.S.C. 3194(b)(2), 3196(a)(2), 3199(a))

§ 185.71 Eligible applicants.

(a) *Integrated schools.* An LEA may apply for a grant if—

(1) It is located within an SMSA or serves a school district adjacent to a school district that is located wholly within an SMSA;

(2) The total student enrollment of the LEA includes a percentage of minority group students that is smaller than the percentage of minority group students enrolled in all schools in the SMSA; and

(3)(i) It has made a joint arrangement for the establishment or maintenance of one or more integrated schools with a cooperating LEA—

(A) That is located within the same SMSA; and

(B) That has a total student enrollment that includes a percentage of minority group students that is greater than the percentage of minority group students enrolled in all the schools in that SMSA.

(ii) A joint arrangement must consist of the enrollment in schools of the applicant LEA of students residing in the district served by, or attending the schools of, the cooperating LEA. The arrangement may not result in an increase in the degree of minority group isolation in any school operated by any LEA. The arrangement must involve the enrollment in the applicant's schools of only those students who in the absence of the arrangement would be enrolled in, or assigned to, a minority group isolated school. (Sections 606(a)(2), 609(a)(1), 617(3); 20 U.S.C. 3196(a)(2), 3199(a)(1), 3207(3))

(b) *Area-wide plans.* (1) Two or more LEAs located within an SMSA may apply for a grant for the joint development of a plan to reduce and eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools in that SMSA. The plan must, at a minimum, provide that by a certain date—no later than July 1, 1983—the percentage of minority group children enrolled in each public elementary and secondary school in the SMSA will be at least 50 percent of the percentage of minority group children enrolled in all those schools, and shall specify in detail the means by which that objective is to be achieved.

(2) The Commissioner does not make a grant under this paragraph unless—

(i) Two-thirds or more of the LEAs in an SMSA have approved the application; and

(ii) The number of students in the schools of those agencies that have approved the application constitutes two-thirds or more of

the number of students in the schools of all the LEAs in the SMSA.

(Sections 609(a)(2); 20 U.S.C. 3199(a)(2))

§ 185.72 Authorized activities.

(a) *Integrated schools.* (1) The recipient of a grant under § 185.70(a) may use funds under the grant for any activity that is designed to meet an educational need that arises from the joint arrangement described in § 185.71(a)(3).

(2) The recipient may also use these funds to pay the net cost, if any, to the recipient of enrolling and educating in its integrated schools students from the cooperating LEA. (Section 609(a)(1); 20 U.S.C. 3199(a)(1))

(b) *Area-wide plans.* (1) The recipient of a grant under § 185.70(b) may use funds under the grant for any activity reasonably necessary to the joint development of a plan described in § 185.71(b).

(2) The recipient may not use these funds for construction or any repair or remodeling of facilities.

(Section 609(a)(2); 20 U.S.C. 3199(a)(2))

§ 185.73 Application procedures.

(a) An LEA that wants to apply for a metropolitan area grant shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements in this part.

(b) An LEA that wishes to apply for a metropolitan area grant shall meet the requirements in § 185.10, relating to public and advisory committee participation. However, references to an LEA in paragraph (a)(2) of that section include—

(1) The cooperating LEA, in the case of an application for an integrated schools project, described in § 185.70(a); and

(2) All the LEAs in the SMSA, in the case of an application for an area-wide plan project, described in § 185.70(b).

(c) An LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Section 610(a); 20 U.S.C. 3200(a))

§ 185.74 Approval of new projects.

(a) The Commissioner decides whether an award to the applicant is warranted on the basis of—

(1) The degree to which the proposed activities afford promise of achieving the purposes of the act described in § 185.1(b), as indicated by the information described in 45 CFR 100a.110 through 100a.115; and

(2) The factors set out in section 610(d)(1), (2), (3) and (5) of the Act.

(b)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (a) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to carry out more effectively the purposes set out in § 185.70. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to carry out those purposes.

(Section 610(d); 20 U.S.C. 3200(d))

§ 185.75 Length of project.

(a) Awards of metropolitan area grants are subject to the provisions of § 185.36(a) and (c), and section 610(e)(1)(A) through (C) of the Act, relating to the length of a project.

(b) However, the project period for a grant for an area-wide plan, described in § 185.71(b), may not extend beyond July 1, 1983.

(Sections 609(a)(2), 610(e)(1); 20 U.S.C. 3199(a)(2), 3200(e)(1))

§ 185.76 Approval of continuation awards.

Awards of metropolitan area grants are subject to the provisions of § 185.37, relating to the approval of continuation awards.

(Section 610(e)(2); 20 U.S.C. 3200(e)(2))

Other Special Projects**§ 185.80 Use of discretionary funds.**

The Commissioner may use funds appropriated under section 604(b)(2) of the Act for the following types of awards:

(a) The types of grants described in this subpart.

(b) Grants to Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to achieve the purposes of the act described in § 185.1(b).

(c) Magnet school, university/business cooperation, and neutral site planning grants described in subpart E.

(d) State agency grants described in subpart H.

(e) Television and radio contracts described in subpart I.

(f) Evaluation contracts under section 613 of the Act.

(g) Any other type of award described in this part.

(h) Contracts, consistent with the requirements of the Act, for particular purposes designed to achieve the purposes of the act described in § 185.1(b).

(Sections 604(b)(2), 608(a), 617(10); 20 U.S.C. 3194(b)(2), 3198(a), 3207(10))

§ 185.81 Applicable requirements.

(a) The requirements of the act and this part that relate to a type of award apply to the use of any funds for that type of award.

(b) However, if the Commissioner uses funds appropriated under section 604(b)(2) for basic grants described in subpart C, he or she distributes these funds in the following way:

(1) He or she distributes to each State an amount which bears the same ratio to the amount available for basic grants as the number of minority group children aged five through seventeen, inclusive, in that State bears to the number of those children in all States.

(2) He or she uses the distributed funds for approvable applications contained in Categories I and II (as described in § 185.35(c)).

(3) If the amount distributed to a State exceeds the amount required for those applications in that State, he or she distributes the excess amount to other States in proportion to the need in those States for approvable applications contained in Categories I and II.

(4) If the amount available for basic grants exceeds the amount required for all

approvable applications contained in Categories I and II, he or she distributes the excess amount to States in the manner described in this paragraph for approvable applications contained in Category III (as described in § 185.35(c)).

(Sections 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

Subpart E—Magnet School, University/Business Cooperation and Neutral Site Planning Grants**§ 185.90 Purposes.**

(a) The purposes of magnet school grants are to plan, design, and conduct educational programs in magnet schools.

(b) The purpose of university/business cooperation grants is to conduct cooperative programs between LEAs and institutions of higher education or businesses.

(c) The purpose of neutral site planning grants is to develop plans for neutral site schools.

(Sections 604(b)(2), 608(a)(1)–(3), 617(5) and (8); 20 U.S.C. 3194(b)(2), 3190(a)(1)–(3), 3207(5) and (8))

§ 185.91 Eligible applicants.

(a) An LEA may apply for a grant under this subpart.

(Section 608(a)(1)–(3); 20 U.S.C. 3198(a)(1)–(3); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 231 (1976))

(b) In the case of a grant to conduct educational programs in a magnet school, the Commissioner considers the curriculum of the magnet school to be capable of attracting substantial numbers of students of different racial backgrounds if—

(1) The LEA—

(i) Does not compel any student to enroll in the magnet school for any part of the grant period; and

(ii) Does not compel any student to enroll in another school after enrolling in the magnet school; and

(2) Sixty days after the beginning of the first school term, any part of which falls within the grant period, or 90 days after the effective date of the grant, whichever is later, the enrollment of the school meets the following requirements:

(i) Minority group students constitute no less than 20 and no more than 80 percent of the enrollment.

(ii) If the percentage of minority group students enrolled in all the applicant's schools is less than 20 percent, minority group students constitute between 20 percent and 50 percent, inclusive, of the enrollment in the school.

(iii) If the percentage of minority group students enrolled in all the applicant's schools is greater than 80 percent, minority group students constitute between 50 percent and 80 percent, inclusive, of the enrollment in the school.

(iv) The ratios of the number of students from each minority group to the total number of minority group students enrolled in the magnet school generally reflect the ratios among minority group students enrolled in all the LEA's schools.

(c)(1) An LEA's failure to meet the requirements of paragraph (b) is grounds for

terminating the grant, insofar as it relates to a school affected by the failure, as of—

(i) The date of any compulsory enrollment referred to in paragraph (b)(1); or

(ii) The applicable date referred to in paragraph (b)(2).

(2) However, the Commissioner, at the written request of the LEA, may forebear from terminating the grant if he or she determines that the LEA—

(i) Has substantially complied with these requirements; and

(ii) Is likely to attain full compliance in the near future.

(Sections 608(a)(1), 617(5); 20 U.S.C. 3198(a)(1), 3207(5))

§ 185.92 Authorized activities.

An LEA may use funds under the grant for the activities described in this section.

(a) *Magnet schools.* (1) Funds may be used for the following three activities:

(i) The planning and design of one or more magnet schools.

(ii) The conduct of educational programs in one or more magnet schools where these programs are a part of, or directly related and necessary to, the special curriculum of a magnet school.

(iii) The repair and minor remodeling or alteration of existing school facilities in connection with the conduct of educational programs described in this paragraph (a)(1).

(2) "Special curriculum", as used in the definition of "magnet school" in section 617(5) of the Act, means a course of study embracing subject matter or a teaching methodology that is not generally offered to students of the same age or grade level, and in the same LEA, as the students to whom the special curriculum is offered. This term does not include—

(i) A course of study or a part of a course of study designed solely to provide basic educational services to handicapped students or to students of limited English-speaking ability;

(ii) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited English-speaking ability;

(iii) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited financial resources; or

(iv) A course of study or a part of a course of study which fails to provide for a participating student's meeting the requirements for completion of elementary or secondary education in the same period as other students enrolled in the applicant's schools.

(3) The planning and design of a magnet school includes, but is not limited to, the following activities:

(i) Planning and design of educational programs for the school.

(ii) Architectural design of new or modified facilities to house the school.

(iii) Surveys and studies relating to the establishment or improvement of the school.

(iv) Recruitment of students and staff for the school.

(4)(i) The Commissioner awards funds for the conduct of educational programs in a magnet school only if the LEA's fiscal effort

per student for students enrolled at a magnet school is no less than its fiscal effort per student for students enrolled at all schools serving students of the same age or grade level operated by the applicant in the fiscal year for which it seeks assistance under this subpart.

(ii) For the purpose of this subparagraph (4), "fiscal effort per student" means the expenditure for free public education—including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities—divided by the number of students with respect to whom the computation is made. Expenditures for free public education do not include expenditures for community services, capital outlay and debt service, or any expenditure from funds granted under any Federal program of assistance.

(Sections 608(a)(1), 617(5); 20 U.S.C. 3198(a)(1), 3207(5))

(b) *University/business cooperation.* Funds may be used for—

(1) The conduct of educational programs by the applicant, in cooperation with one or more institutions of higher education or businesses, for the benefit of students enrolled, or staff employed, in—

(i) A magnet school assisted under this subpart; or

(ii) A school affected by a qualifying plan described in § 185.32; and

(2) The repair and minor remodeling or alteration of facilities in connection with the conduct of these educational programs.

(Section 608(a)(2); 20 U.S.C. 3198(a)(2))

(c) *Neutral site planning.* (1) Funds may be used for the development of plans for one or more neutral site schools, including but not limited to the following activities:

(i) Surveys and studies to determine the location of the school.

(ii) Planning educational programs for the school.

(iii) Architectural design of facilities to house the school.

(iv) The repair and minor remodeling or alteration of facilities in connection with the development of plans for the school.

(2) Funds may be used only in connection with a school planned to have the following characteristics:

(i) Minority group students will constitute no less than 20 percent and no more than 80 percent of the enrollment of the school.

(ii) The ratios of the number of students from each minority group to the total number of minority group students who will be enrolled in the school generally reflect the ratios among minority group students who will be enrolled in all the LEA's schools.

(iii) The school will be equally accessible to nonminority group students and students from each minority group who will be enrolled in it.

(3) Funds may not be used for—

(i) The acquisition or improvement of a site for the school;

(ii) The construction of facilities to house the school;

(iii) The acquisition of equipment for the school; or

(iv) Any activity related to the operation of the school.

(Sections 608(a)(3), 617(8); 20 U.S.C. 3198(a)(3), 3207(8))

§ 185.93 Application procedures.

(a) An LEA that wants to apply for a grant under this subpart shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements in this part.

(b) An LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(c) In the case of an application for a grant to carry out activities relating to magnet schools and university/business cooperation, respectively, the applicant shall also include in its application—

(1) The number of minority group students and the total number of students enrolled or to be enrolled in each of its schools in the following years:

(i) The "base year" (meaning the second fiscal year prior to the first fiscal year for which an applicant seeks assistance under this subpart); and

(ii) The "project year" (meaning the first fiscal year for which an applicant seeks assistance under this subpart); and

(2) A description of the basis for its enrollment projections for the project year.

(Section 610(a); 20 U.S.C. 3200(a))

§ 185.94 Approval of new projects—magnet schools and university/business cooperation.

(a) The Commissioner ranks applications to carry out activities relating to magnet schools and university/business cooperation on the basis of the net change in isolation in the applicant's schools between the base year and the project year. The net change in isolation is computed on the basis of the procedures in § 185.35 (d)(2) through (d)(4).

(b) If an application contains compelling evidence of extraordinary difficulty in effectively carrying out the project for which the applicant seeks assistance, the Commissioner may revise the rank order of applications under paragraph (a) to reflect the applicant's greater need for assistance.

(c) The Commissioner reviews each application to determine whether the activities that the applicant proposes to carry out afford promise of achieving the purposes of the Act described in § 185.1(b). In making this determination, the Commissioner considers—

(1) The information described in 45 CFR 100a.110 through 100a.115; and

(2) The extent to which the proposed activities are related to the elimination, reduction, or prevention of minority group isolation in all the applicant's schools.

(d) On the basis of this review, the Commissioner decides whether an award to the applicant is warranted.

(e)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (d) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to

modify its proposed activities in order to carry out more effectively the purposes set out in § 185.90. However, the amount of the award does not exceed the amount that would be requested for activities that the applicant proposed to carry out those purposes.

(Section 610(d); 20 U.S.C. 3200(d))

§ 185.95 Approval of new projects—neutral site planning.

The Commissioner decides whether to approve a new project on the basis of the degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by—

(a) The information described in 45 CFR 100a.110 through 100a.115; and

(b) The extent to which the application contains convincing evidence that the plan will be implemented at the end of the proposed project.

(Section 610(d); 20 U.S.C. 3200(d))

§ 185.96 Length of project.

(a)(1) The Commissioner may approve a project period of up to 60 months for activities relating to magnet schools and university/business cooperation.

(2) The Commissioner may approve a project period of up to 24 months for activities relating to neutral site planning.

(b) The Commissioner sets the length of the project period on the basis of—

(1) The severity and likely duration of the problems addressed by the proposed activities; and

(2) The nature of those activities, or—except for natural site planning grants—of activities to address those problems effectively.

(c) When approving an award for the first budget period of a multi-year project, the Commissioner indicates his or her intention to make one or more continuation awards for budget periods during the remainder of the project period.

(Section 610(e)(1); 20 U.S.C. 3200(e)(1))

§ 185.97 Approval of continuation awards.

Section 185.97 applies to the approval of continuation awards under this subpart.

(Section 610(e)(2); 20 U.S.C. 3200(e)(2))

Subpart F—Compensatory Service Grants

§ 185.100 Purpose.

The purpose of a compensatory service grant is to continue compensatory services to students who would otherwise lose those services as a result of an attendance area or enrollment change under a qualifying plan (described in § 185.32).

(Section 604(c); 20 U.S.C. 3194(c))

§ 185.101 Definitions.

The following definitions apply to terms used in this subpart:

"Attendance area or enrollment change" means any change in the policy of an LEA that results in a student's voluntary or mandatory enrollment at a school other than the school at which the student would normally have been enrolled in the absence of the change in policy.

"Compensatory services" means any educational services authorized under title I

to meet the special educational needs of educationally deprived children.

"Title I" means title I of the Elementary and Secondary Education Act of 1965, as amended.

(Section 604(c); 20 U.S.C. 3194(c))

§ 185.102 Eligible applicants.

An LEA may apply for a compensatory services grant if—

(a) It is implementing—

(1) A required plan described in § 185.32(a)(1) that was ordered after August 21, 1974;

(2) A required plan described in § 185.32(a)(2) that was approved after that date; or

(3) A nonrequired plan described in § 185.32(b) that was adopted after that date;

(b) Under the plan, there are attendance area or enrollment changes; and

(c) As a result of the attendance area or enrollment changes, students who received compensatory services funded in whole or in part under title I are no longer receiving those services.

(Section 604(c)(1); 20 U.S.C. 3194(c)(1); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 231 (1976))

§ 185.103 Authorized activities.

(a) An LEA may use funds under the grant to—

(1) Provide compensatory services to students who—

(i) Received compensatory services funded in whole or in part under title I; and

(ii) In the project period, are no longer receiving compensatory services as a result of attendance area or enrollment changes under a plan described in § 185.102; and

(2) Provide services to other students as provided for in section 604(c)(2)(B)(ii) of the Act.

(b) The Commissioner considers a student eligible to receive compensatory services under paragraph (a)(1) if—

(1) The student received compensatory services funded under title I at any time prior to the implementation of a plan described in § 185.102;

(2) The student is not receiving any compensatory services funded under title I in the project period;

(3) The student is an educationally deprived child, for title I purposes, at the beginning of the project period; and

(4) In the absence of a plan described in § 185.102, the student would be enrolled at a different school, in which compensatory services funded under title I were provided during the last regular school term prior to the implementation of the plan, for the grade in which the student is enrolled in the project period.

(c) In addition, a student is eligible to receive compensatory services under paragraph (a)(1) if—

(1) The student meets the requirement in paragraph (b)(1); and

(2) The applicant shows by credible evidence that attendance area or enrollment changes under a plan described in § 185.102 alone caused the student to receive, in the project period, fewer—or no—compensatory services funded in whole or in part under title I.

(d)(1) The LEA shall ensure that at least 30 percent of the enrollment of a compensatory services project funded under the Act is comprised of students—

(i) Who are enrolled in the same school as students eligible under paragraph (a)(1); and
(ii) Whose enrollment in the school is not a result of attendance area or enrollment changes under a plan described in § 185.102.

(2) An LEA may not use funds under the grant in any manner that would result in the isolation of the students eligible under paragraph (a)(1) from other students enrolled in the same school.

(e)(1) An LEA shall use funds under the grant to provide to each student eligible under paragraph (a)(1) the level of compensatory services he or she failed to receive in the project period because of attendance area or enrollment changes under a plan described in § 185.102.

(2) However, if the Commissioner has reduced the grant amount under § 185.105, the LEA may use the grant funds to provide services to only some of those students, or to provide fewer services to those students, or both.

(Section 604(c); 20 U.S.C. 3194(c))

§ 185.104 Application procedures.

(a) An applicant shall meet the requirements in 45 CFR 100a.109 through 100a.118 and the requirements of this part.

(b) An applicant shall include in its application the following information:

(1) A copy of the plan on which the applicant bases its eligibility for assistance.

(2) A precise description of attendance area or enrollment changes under the plan.

(3) The number of students eligible to receive compensatory services under § 185.103(a)(1) and a description of how the applicant determined their eligibility.

(4) A description of the compensatory services for which the applicant seeks assistance.

(5) An assurance that it has met and will meet applicable requirements of the Act and this part.

(Section 610(a); 20 U.S.C. 3200(a))

§ 185.105 Funding procedures

(a) The Commissioner may approve a project period of up to 12 months.

(b) To the extent funds permit, the Commissioner sets the amount of each grant at a level sufficient to provide to each student eligible under § 185.103(a)(1) the level of compensatory services he or she will not receive in the project period because of attendance area or enrollment changes under a plan described in § 185.102, consistent with the requirements of section 604(c)(2) of the Act.

(c) If the amount needed to fund all approvable services exceeds the amount of funds available, the Commissioner reduces the amount for each grant by an equal proportion.

(Section 604(c); 20 U.S.C. 3194(c))

Subpart G—Nonprofit Organization Grants

§ 185.110 Purpose.

The purpose of a nonprofit organization grant is to support an LEA's development or

implementation of a qualifying plan (described in § 185.32).

(Sections 604(b)(3), 608(b); 20 U.S.C. 3194(b)(3) 3198(b))

§ 185.111 Eligible applicants.

(a) Any public or private nonprofit agency, institution or organization (NPO), other than an LEA, is eligible to apply for a grant under this subpart.

(b) An NPO may receive a grant under this subpart regardless of whether the LEA whose plan the NPO proposes to support applies for assistance under the Act.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.112 Authorized activities.

(a) Except as provided in paragraph (b), an NPO may apply for any activity that is designed to support the development or implementation of a qualifying plan. These activities include, but are not limited to—

(1) Encouraging parental and community involvement in matters relating to the development or implementation of the plan;

(2) Providing information to parents and community members on the contents of the plan;

(3) Monitoring the implementation of the plan;

(4) Carrying out activities designed to promote interracial and intercultural understanding among students who are affected by, or are reasonably likely to be affected by, the implementation of the plan;

(5) Carrying out activities designed to stimulate a desire to learn in those students;

(6) Addressing non-academic problems faced by those students—at home, in school, or in the community—that affect their adjustment to schools to which the plan relates; and

(7) Promoting student understanding of and support for the plan.

(b) An NPO may not use funds under this subpart in connection with the provision of compensatory education, the development of basic skills, or the training of LEA staff.

(c) An NPO that proposes to support the development of a qualifying plan must receive a written request for that assistance from the LEA, except in the case of plan described in § 185.32(a) that has been required but not yet adopted.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.113 Application procedures.

(a) An NPO that wants to apply for a grant shall meet the requirements in 45 CFR 100a.108 through 100a.118, and the requirements in this part.

(b) An NPO may include in an application activities in support of only one qualifying plan. However, an NPO may submit more than one application.

(c) An NPO shall include in its application a needs assessment that shows the severity of the needs addressed by the proposed activities and the relationship of those needs to the development or implementation of a qualifying plan.

(d) An NPO that proposes to support the implementation of a qualifying plan shall include in its application—

(1) A copy of the LEA's qualifying plan or a detailed description of that plan; and

(2) The date when the LEA adopted the plan.

(e) An NPO that proposes to support the development of a plan shall include a copy of the LEA's request for that assistance, if a request is required under § 185.112(c).

(f) An NPO shall include in its application an assurance that it has met and will meet the applicable requirements of the Act and this part.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.114 Approval of new projects.

(a) Applications for projects to support the development of qualifying plans and those support the implementation of plans are considered separately. The Commissioner states in the application notice published in the Federal Register the amount of funds available for each type of project.

(b) The Commissioner reviews each application according to the procedures described in § 185.115 or § 185.116, as appropriate, to decide whether an award to the applicant is warranted.

(c)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (b) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to carry out more effectively the purposes set out in § 185.110. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to carry out that purpose. (Section 608(b); 20 U.S.C. 3198(b))

§ 185.115 Approval of projects to support the implementation of a plan.

(a) The Commissioner reviews each application for a project to support the implementation of a qualifying plan and—

(1) Assigns it to a category, as described in § 185.35(c); and

(2) Ranks it within the category on the basis of an evaluation of the application under the criteria in paragraph (b).

(b) The Commissioner applies the following criteria in ranking applications within a category:

(1) The extent to which the applicant identifies needs that are clearly related to the plan.

(2) The severity of those needs.

(3) The extent to which the authorized activities proposed by the applicant are clearly related to the identified needs.

(4) The extent to which the applicant has experience working with other community organizations in the community affected by the qualifying plan.

(5) The quality of the key personnel the applicant plans to use on the project, as indicated by the factors in 45 CFR 100a.203.

(c) Except as provided in paragraph (d)—

(1) The Commissioner approves all projects contained in Category I before those in Category II;

(2) The Commissioner approves all projects contained in Category II before those in Category III; and

(3) The Commissioner approves within a category in the rank order of the applications established under paragraph (a).

(d) If more than one otherwise approvable project relates to the same qualifying plan, the Commissioner—

(1) Reviews the approvable activities to identify any duplication in the needs addressed by those activities; and

(2) In the case of duplication, approves only the activity contained in the highest ranking application.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.116 Approval of projects to support the development of a plan.

(a) The Commissioner ranks each application for a project to support the development of a qualifying plan on the basis of—

(1) An evaluation of the application under the criteria in § 185.115(b); and

(2) The extent to which the application contains convincing evidence that the plan will be adopted at the end of the proposed project.

(b) Except as provided in paragraph (c), the Commissioner approves projects in the rank order established under paragraph (a) until funds available for projects under this section are exhausted.

(c) If more than one otherwise approvable application relates to the same qualifying plan, the Commissioner follows the procedure described in § 185.115(d).

(Section 608(b); 20 U.S.C. 3198(b))

Subpart H—State Agency Grants

§ 185.120 Purpose.

The purpose of a State agency grant is to pay a portion of the cost to a State of the activities described in § 185.122.

(Sections 604(b)(2), 608(c); 20 U.S.C. 3194(b)(2), 3198(c))

§ 185.121 Eligible applicants.

(a) A State agency may apply for a grant under this subpart if—

(1) It is involved in or responsible for the desegregation of public elementary and secondary schools; and

(2) It obligated funds derived from State sources for the activities described in § 185.122 in the Federal fiscal year just prior to the Federal fiscal year for which funds for the grant are appropriated.

(b) The Commissioner does not make more than one grant for activities in any State. If more than one State agency in a State is eligible under paragraph (a), the Commissioner makes any grant under this subpart to the agency most directly responsible for carrying out the activities in § 185.122 in the State.

(Section 608(c); 20 U.S.C. 3198(c))

§ 185.122 Authorized activities.

(a) A State agency may use funds under the grant for the following activities:

(1) Planning for the implementation of voluntary plans to eliminate or reduce minority group isolation in public elementary and secondary schools.

(2) Assessing future needs for those plans, and developing strategies to meet those needs.

(3) Providing technical assistance to encourage LEAs or groups of LEAs to develop or implement those plans.

(4) Providing training for educational personnel involved in developing or carrying out those plans.

(b) A State agency may not use funds under the grant for grants to LEAs.

(c) The plans described in this section include—

(1) A plan described in § 185.32(b)(1), (2), and (4); and

(2) A plan described in § 185.32(a)(2), where the elimination or reduction of minority group isolation under the plan was voluntary within the meaning of section 602 of the Civil Rights Act of 1964.

(Section 608(c)(1); 20 U.S.C. 3198(c)(1); 42 U.S.C. 2000d-1)

§ 185.123 Application procedures.

(a) A State agency that wants to apply for a grant shall meet the requirements of 45 CFR 100a.109 through 100a.116 and the requirements of this part.

(b)(1) The applicant shall develop its application in consultation with teachers, educators, parents (including parents of minority group children) and representatives of the general public (including representatives of minority groups).

(2) At a minimum, the applicant shall consult with an advisory committee composed of the persons described in subparagraph (1). The proportion of the committee membership that is comprised of minority group members must be approximately the same as the proportion of children enrolled in the elementary and secondary schools in the State that is comprised of minority group children.

(3) The applicant shall include in its application the written comments of the advisory committee concerning the application.

(c) The applicant shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Section 608(c)(1) and (3); 20 U.S.C. 3198(c)(1) and (3))

§ 185.124 Approval of projects.

(a) The Commissioner approves a project if the proposed activities are authorized under § 185.122.

(b)(1) In setting the amount of a grant, the Commissioner first determines the amount of funds derived from State sources that was obligated by eligible applicants in a State for the activities described in § 185.122 in the Federal fiscal year just prior to the Federal fiscal year for which funds for the grant are appropriated. The Commissioner then sets the approvable amount of the grant at twice that amount.

(2) If the approvable amount of a grant under subparagraph (1) exceeds the amount justified by the applicant for authorized activities, the Commissioner reduces the approvable amount to the amount justified.

(3) If necessary, the Commissioner further reduces the approvable amount of a grant in any fiscal year to the greater of the following:

(i) Ten percent of the amount apportioned to the State for that fiscal year under section 605 of the Act; or

(ii) \$500,000.

(4) If, after the reductions described in subparagraphs (2) and (3), the amount needed for all approvable grants exceeds the amount of funds available, the Commissioner reduces the amount for each grant by an equal proportion.

(c) The Commissioner approves a project period of not more than 12 months for a State agency grant.

(Section 608(c), 610(d); 20 U.S.C. 3198(c), 3200(d))

Subpart I—Television and Radio Contracts

§ 185.130 Purpose.

The purpose of a contract under this subpart is to—

(a) Develop and produce a children's television or radio program that—

(1) Teaches academic skills or encourages interracial and intercultural understanding, or both; and

(2) Appeals to both minority and nonminority children; or

(b) Carry out ancillary activities designed to make these programs available for transmission and utilization.

(Sections 604(b)(2), 611; 20 U.S.C. 3194(b)(2), 3201)

§ 185.131 Eligible offerors.

Any public or private nonprofit agency, institution, or organization capable of providing expertise in the activities authorized under this subpart is eligible to submit a proposal for a contract.

(Section 611(a)(1); 20 U.S.C. 3201(a)(1))

§ 185.132 Authorized activities.

The Commissioner makes contracts for—

(a) *Development and production*—the development and production of children's television and radio programs described in § 185.130(a); and

(b) *Ancillary activities*—the following activities, where they are related to programs developed and produced under this subpart:

(1) Duplication of tapes and other materials to meet broadcaster and other user needs.

(2) Promotion of viewership or listenership.

(3) Promotion of carriage by commercial broadcasters.

(4) Promotion of use by schools and others.

(Section 611(a)(1); 20 U.S.C. 3201(a)(1))

§ 185.133 Proposal procedures.

An offeror may submit a proposal for a contract in response to a Request for Proposals published by the Commissioner.

(Section 611; 20 U.S.C. 3201)

§ 185.134 Selection of contractors.

(a) The selection of contractors is subject to—

(1) The provisions of section 611 of the Act; and

(2) To the extent they are consistent with the regulations in this part:

(i) Applicable Requests for Proposals; and
(ii) The Federal Procurement Regulations in 41 CFR Chapters 1 and 3.

(b) *Development and production*. In establishing the competitive range for proposals for the development and production of programs, as provided for

under the Federal Procurement Regulations, the Commissioner considers each of the following for each proposal:

(1) The quality of the needs assessment, and the magnitude of the assessed needs.

(2) The relationship of the proposed program's objectives to the assessed needs.

(3) The relationship of the proposed program to the objectives and assessed needs.

(4) The attainability of the objectives through the proposed program.

(5) The likely artistic and educational significance of the proposed program.

(6) The appropriateness of proposed program format and content to the target age group.

(7) The research and production techniques that the offeror will use.

(8) The qualifications of the project staff.

(9) The offeror's employment of minority group members in—

(i) Responsible administrative positions; and

(ii) Responsible development and production positions on the project staff.

(10) The quality of supplementary materials, such as teachers' guides and student workbooks, where appropriate.

(11) The schedule of activities and deliverables.

(12) The effectiveness of procedures for evaluating the educational and other effects of the proposed program on children.

(13) The adequacy of the offeror's facilities.

(c) *Ancillary activities*. In establishing the competitive range for proposals for ancillary activities, as provided for under the Federal Procurement Regulations, the Commissioner applies criteria included in the Request for Proposals for a particular activity.

(Section 611(a)(1) and (3); 20 U.S.C. 3201(a)(1) and (3))

§ 185.135 Requirements for offerors.

(a) *Usage*. An offeror to develop and produce a program shall include in its proposal an assurance that it will comply with each of the following requirements with respect to the program for which it seeks a contract.

(1) It will not charge users of the programs—whether broadcast or nonbroadcast—any cost beyond that of tape distribution and duplication.

(2) Any contract between a contractor and a talent union must allow at least the usages of the programs in this subparagraph (2) without charge to the user. However, the Commissioner may authorize lesser usages on a finding that the cost of these usages would be excessive.

(i) Six years of usage by public broadcasting stations starting with the first broadcast by such a station. A "year of usage" means unrestricted use during three separate weeks of any given 12 month period.

(ii) Twelve years of unrestricted use for in-school audiovisual purposes. For television programs, this includes transmission of the programs by education-dedicated, local origination, CATV channels and Instructional Television Fixed Services systems.

(iii) One broadcast over commercial stations in each of two 3-year periods, including broadcasts that result from network originations.

(iv) If the program is distributed by a public network and is not broadcast in a commercial station's coverage area, one additional broadcast by the commercial station in a 3-year period.

(3) The contractor will not permit the program to be made available for transmission under commercial sponsorship. If a commercial firm meets the costs of transmission, the Commissioner does not consider a brief statement to that effect at the beginning or end of the transmission commercial sponsorship. In the case of series programming, any commercial spot announcements must be demarcated by a station identification.

(4) A contractor that develops and produces a television program shall not give a station the exclusive right to broadcast any program in a coverage area until the thirteenth week after the first week in which it is broadcast in that area.

(5) The contractor will not permit the transmission or use of a program in any manner that results in a financial benefit to any person or organization.

(6) The contractor will cooperate with the Commissioner in making arrangements for the transmission of the programs.

(Section 611(a)(2); 20 U.S.C. 3201(a)(2))

(b) *Disclaimer*. (1) Each television or radio program—except for radio materials of less than three minutes in length—must carry the following disclaimer: "This program was produced by [name of contractor] under a contract from the U.S. Department of Health, Education, and Welfare, Office of Education. The content of this program is the responsibility of the contractor and is not officially endorsed by the Department or the Office of Education."

(2) Radio materials of less than three minutes in length must conclude with the following statement: "Funded by the U.S. Office of Education, HEW."

(Section 611; 20 U.S.C. 3201)

Appendix B to Part 185a—Reprint of Parts 100a and 100c of the Education Division General Administrative Regulations Proposed Rule

Subchapter A—Education Division General Administrative Regulations

PART 100A—DIRECT GRANT PROGRAMS

Subpart A—General

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Authority: Sec. 408(a)(1) of Pub. L. 90-247, as amended, 88 Stat. 559, 560 (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

PART 100a—DIRECT GRANT PROGRAMS**Subpart A—General****Regulations That Apply to Direct Grant Programs****§ 100a.1 Programs to which Part 100a applies.**

The regulations in Part 100a apply to grants under the programs of the Education Division that are listed in the following table. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.
 (20 U.S.C. 1221e-3(a)(1))

Name of program*	Authorizing statute	Implementing regulations	CFDA number
I. OFFICE OF THE ASSISTANT SECRETARY FOR EDUCATION			
Fund for the Improvement of Postsecondary Education.....	Section 404 of the General Education Provisions Act (20 U.S.C. 1221d).	Part 1501	13.925.
Capacity Building for Statistical Activities in State Educational Agencies.	Section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Part 164	13.922.
II. NATIONAL INSTITUTE OF EDUCATION			
Programs of the National Institute of Education.....	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e).	Parts 1430, 1450, 1451, 1460, 1470, 1480, and 1490.	13.950.
III. INSTITUTE OF MUSEUM SERVICES			
Museum Services Program	Section 206 of the Museum Services Act (20 U.S.C. 965).	Part 64	13.923.
IV. OFFICE OF EDUCATION			
A. GENERAL PROGRAMS			
Program Planning and Evaluation	Section 416 of the General Education Provisions Act (20 U.S.C. 1226b).	Part 107	None.
National Diffusion Network	Section 422(a) of the General Education Provisions Act (20 U.S.C. 1231a(a)).	Part 193	None.
Assistance for School Construction in Areas Affected by Federal Activities.	Public Law 81-815, except section 16 (20 U.S.C. 631-645, 647).	Part 114	13.477.
Handicapped Children and Children with Specific Learning Disabilities.	Section 3(d)(2)(C) of Public Law 81-874 (20 U.S.C. 238).	Part 115, Subpart H	13.478.
Entitlements Related to Low-Rent Public Housing	Section 5(e)(3) of Public Law 81-874 (20 U.S.C. 240).	Part 115, Subpart I	13.478.
School Construction Assistance in Cases of Certain Disasters.	Section 16 of Public Law 81-815 (20 U.S.C. 646).	Part 112	13.477.
Assistance for Current School Expenditures in Cases of Certain Disasters.	Section 7 of Public Law 81-874 (20 U.S.C. 241-1).	Part 113	13.478.
B. ELEMENTARY AND SECONDARY EDUCATION PROGRAMS			
Coordination of Migrant Education	Section 143 of the Elementary and Secondary Education Act (20 U.S.C. 2763).	None	None.
Transition of Neglected or Delinquent Children.....	Section 153 of the Elementary and Secondary Education Act (20 U.S.C. 2783).	None	None.

Name of program*	Authorizing statute	Implementing regulations	CFDA number
B. ELEMENTARY AND SECONDARY EDUCATION PROGRAMS—Continued			
Basic Skills Improvement—National Program	Title II-A of the Elementary and Secondary Education Act (20 U.S.C. 2881-2890).	None	None.
Basic Skills Improvement—State Leadership Program	Section 224 of the Elementary and Secondary Education Act (20 U.S.C. 2904).	None	None.
Special Programs for Improving Basic Skills	Title II-C of the Elementary and Secondary Education Act (20 U.S.C. 2911-2912).	None	None.
Special Projects	Title III-A of the Elementary and Secondary Education Act (20 U.S.C. 2941-2943).	None	None.
Metric Education	Title III-B of the Elementary and Secondary Education Act (20 U.S.C. 2951-2954).	None	None.
Arts in Education	Title III-C of the Elementary and Secondary Education Act (20 U.S.C. 2961-2963).	None	None.
Preschool Partnership	Title III-D of the Elementary and Secondary Education Act (20 U.S.C. 2971).	None	None.
Consumer Education	Title III-E of the Elementary and Secondary Education Act (20 U.S.C. 2981-2986).	None	None.
Youth Employment	Title III-F of the Elementary and Secondary Education Act (20 U.S.C. 2991-2992).	None	None.
Law-related Education	Title III-G of the Elementary and Secondary Education Act (20 U.S.C. 3001-3003).	None	None.
Environmental Education	Title III-H of the Elementary and Secondary Education Act (20 U.S.C. 3011-3018).	None	None.
Health Education	Title III-I of the Elementary and Secondary Education Act (20 U.S.C. 3021-3024).	None	None.
Correction Education	Title III-J of the Elementary and Secondary Education Act (20 U.S.C. 3031-3034).	None	None.
Dissemination of Information	Title III-K of the Elementary and Secondary Education Act (20 U.S.C. 3041).	None	None.
Biomedical Sciences	Title III-L of the Elementary and Secondary Education Act (20 U.S.C. 3051-3057).	None	None.
Population Education	Title III-M of the Elementary and Secondary Education Act (20 U.S.C. 3061-3062).	None	None.
Federal Financial Assistance for Strengthening State Departments of Education—Special Project Grants	Section 505 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	119	None.
Comprehensive Educational Planning and Evaluation	Sections 531-534 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	Part 129	None.
Bilingual Education	Title VII of the Elementary and Secondary Education Act (20 U.S.C. 3221-3261).	Part 123	13.403.
Financial Assistance for Demonstration Projects for Reducing School Dropouts	Section 807 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	Part 124	None.
Grants for Demonstration Projects to Improve School Health and Nutrition Services for Children from Low-Income Families	Section 808 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	Part 127	None.
Community Education Programs	Sections 809-813 of the Elementary and Secondary Education Act (20 U.S.C. 3289-3293).	None	None.
Gifted and Talented Children	Section 905 of the Elementary and Secondary Education Act (20 U.S.C. 3315).	None	None.
Educational Proficiency Standards	Title IX-B of the Elementary and Secondary Education Act (20 U.S.C. 3331-3332).	None	None.
Women's Educational Equity	Title IX-C of the Elementary and Secondary Education Act (20 U.S.C. 3341-3348).	None	None.
Safe Schools	Title IX-D of the Elementary and Secondary Education Act (20 U.S.C. 3351-3354).	None	None.
Follow Through Program	Sections 551-556 of the Community Services Act of 1974 (20 U.S.C. 2929-2929e).	Part 158	13.433.
Guidance and Counseling	Title III-D of the Education Amendments of 1976 (20 U.S.C. 2531-2534).	Part 191	13.577.
C. EDUCATION OF THE HANDICAPPED PROGRAMS			
Regional Resource Centers	Section 621 of the Education of the Handicapped Act (20 U.S.C. 1421).	Part 121b	13.450.
Centers and Services for Deaf-Blind Children	Section 622 of the Education of the Handicapped Act (20 U.S.C. 1422).	Part 121c	13.445.
Early Education for Handicapped Children	Section 623 of the Education of the Handicapped Act (20 U.S.C. 1423).	Part 121d	13.444.
Severely Handicapped Children	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	None	13.568.
Auxiliary Activities	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	Part 121e	None.
Training Personnel for the Education of the Handicapped	Sections 631, 632, and 634 of the Education of the Handicapped Act (20 U.S.C. 1431, 1432, 1434).	Part 121f	13.451.
Recruitment of Personnel and Dissemination of Information	Section 633 of the Education of the Handicapped Act (20 U.S.C. 1433).	Part 121g	13.452.
Research in the Education of the Handicapped	Part E of the Education of the Handicapped Act (20 U.S.C. 1441-1444).	Part 121h	13.443.
Instructional Media for the Handicapped	Part F of the Education of the Handicapped Act (20 U.S.C. 1451-1454).	Part 121i	13.446.
Regional Education Programs for Handicapped Persons	Sections 625-627 of the Education of the Handicapped Act (20 U.S.C. 1424a-1426).	Part 121k	13.560.
Removal of Architectural Barriers to the Handicapped	Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406).	None	None.
D. OCCUPATIONAL AND ADULT EDUCATION PROGRAMS			
Commissioner's Discretionary Programs of Vocational Education	Title I-B and Section 103(a)(1)(B) of the Vocational Education Act (20 U.S.C. 2301-2461).	Part 105	13.498, 13.558, 13.586, 13.587, and 13.588.
Career Education—Model Programs	Section 10 of the Career Education Incentive Act (20 U.S.C. 2609).	None	None.
Career Education Information Program	Section 11 of the Career Education Incentive Act (20 U.S.C. 2610).	None	None.
Adult Education Programs	Sections 309 and 318 of the Adult Education Act (20 U.S.C. 1207a and 1211c).	None	None.

Name of program*	Authorizing statute	Implementing regulations	CFDA number
E. HIGHER EDUCATION PROGRAMS			
College Library Resources Program	Title II-A of the Higher Education Act (20 U.S.C. Part 131 1021-1028).		13.406.
Grants for Training in Librarianship	Section 222 of the Higher Education Act (20 U.S.C. Part 132 1031-1033).		13.468.
Library Research and Demonstration	Section 223 of the Higher Education Act (20 U.S.C. Part 133 1034).		13.475.
Strengthening Research Library Resources	Title II-C of the Higher Education Act (20 U.S.C. Part 136 1041-1046).		13.576.
Modern Foreign Language and Area Studies (except Foreign Language and Area Studies Fellowships—See Part 100c).	Title VI of the National Defense Education Act Part 146 (except Subpart D)..... (except sections 511(b) and 803).		13.435 and 13.436.
Higher Education Programs in Modern Foreign Language Training and Area Studies	Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2452(b)(6)).	Part 148	13.440.
Citizen Education for Cultural Understanding Program	Section 603 of the National Defense Education Act (20 U.S.C. 512a).	Part 146a	None.
Educational Opportunity Centers	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 154	13.543.
Upward Bound Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 155	13.492.
Special Services for Disadvantaged Students	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 157	13.482.
Talent Search Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 159	13.488.
Strengthening Developing Institutions Program	Title III of the Higher Education Act (20 U.S.C. 1051-1056).	Part 169	13.454.
Training for Higher Education Personnel	Section 533 of the Higher Education Act (20 U.S.C. 1119a-1).	Part 198	13.417.
Financial Assistance for Construction of Higher Education Facilities (except Loans for Construction of Academic Facilities and Annual Interest Grants for Construction of Academic Facilities).	Parts A and B of Title VII of the Higher Education Act (20 U.S.C. 1132b-1).	Part 170 (except Subparts D and E)	13.455.
Instructional Equipment Grants for Institutions of Higher Education	Title VI of the Higher Education Act (20 U.S.C. 1121-1129).	Part 171	13.518.
Financial Assistance for Community Service and Continuing Education Programs—Special Programs and Projects	Section 106 of the Higher Education Act (20 U.S.C. 1005a).	Part 173, Subpart C	13.557.
Cooperative Education Programs	Title VIII of the Higher Education Act (20 U.S.C. 1133-1133b).	Part 182	13.510.
Veteran's Cost-of-Instruction Payments to Institutions of Higher Education	Section 420 of the Higher Education Act (20 U.S.C. 1070e-1).	Part 189	13.540.
Public Service Education Program—Public Service Institutional Grants	Sections 901-904 of the Higher Education Act (20 U.S.C. 1134-1134c).	Part 194, Subpart A	13.555.
Graduate and Professional Study Institutional Grant	Sections 901-904 of the Higher Education Act (20 U.S.C. 1134-1134b).	Part 179 (except Subpart C)	13.580.
State Postsecondary Education Commissions Program—Inter-state Planning	Section 1203(c) of the Higher Education Act (20 U.S.C. 1142b(c)).	None	13.550.
Community Colleges	Title X of the Higher Education Act (20 U.S.C. 1135 through 1135c-1).	None	None.
Ethnic Heritage Studies Program	Title IX-E of the Elementary and Secondary Education Act (20 U.S.C. 3361-3367).	Part 184	13.549.
F. OTHER PROGRAMS			
Special Projects	The Special Projects Act (20 U.S.C. 1851-1853, 1861-1867, 887d).	Part 160	13.541.
Metric Education Program	Section 403 of the Education Amendments of 1974 (20 U.S.C. 1862).	Part 160a	13.561.
Program for the Gifted and Talented	Section 404 of the Education Amendments of 1974 (20 U.S.C. 1863).	Part 160b	13.562.
Community Education Program	Section 405 of the Education Amendments of 1974 (20 U.S.C. 1864).	Part 160c	13.563.
Career Education Program	Section 406 of the Education Amendments of 1974 (20 U.S.C. 1865).	Part 160d	13.554.
Consumer's Education Program	Section 811 of the Elementary and Secondary Education Act (20 U.S.C. 887d).	Part 160e	13.564.
Women's Educational Equity Act Program	Section 408 of the Education Amendments of 1974 (20 U.S.C. 1866).	Part 160f	13.565.
Arts Education Program	Section 409 of the Education Amendments of 1974 (20 U.S.C. 1867).	Part 160g	13.566.
National Reading Improvement Program (except State Reading Improvement Programs—See Part 100b).	Parts A and C of Title VII of the Education Amendments of 1974.	Part 162 (except Subpart C)	13.533.
National Alcohol and Drug Abuse Prevention Program	Public Law 93-422 (21 U.S.C. 1001-1007).	Part 182a	13.420.
Financial Assistance for Environmental Education Projects	The Environmental Education Act (20 U.S.C. 1531-1536).	Part 183	13.522.
Educational Broadcasting Facilities Program	Part IV of the Title III of the Communications Act of 1934 (47 U.S.C. 390-395 and 397-399).	Part 153	13.413.
Television Program Assistance	Section 1527 of the Education Amendments of 1978 (20 U.S.C. 1221j).	None	None.
Teacher Corps Program	Section V-A of the Higher Education Act (20 U.S.C. 1101-1107a).	Part 172	13.489.
Teachers Centers Program	Section 532 of the Higher Education Act (20 U.S.C. 1119a).	Part 197	13.416.
Territorial Teacher Training	Section 1525 of the Education Amendments of 1978.	None	None.
Education Information Management System	Section 400A (f) and (g) of the General Education Provisions Act (20 U.S.C. 1221-3 (f) and (g)).	None	None.
Indian Elementary and Secondary School Assistance (Part A)	Title III of Public Law 81-874 (20 U.S.C. 241aa-241ff).	Part 186	13.534 and 13.551.

Name of program*	Authorizing statute	Implementing regulations	CFDA number
F. OTHER PROGRAMS—Continued			
Indian Education (Part B) (except the Indian Fellowship Program—See Part 100c).	Section 1005 of the Elementary and Secondary Education Act (20 U.S.C. 3385).	Part 187	13.535.
Indian Education (Part C)	Section 314 of the Adult Education Act (20 U.S.C. 1211a).	Part 188	13.536.
Desegregation of Public Education	Title IV of the Civil Rights Act (42 U.S.C. 2000c-9).	Part 180	13.405.
Emergency School Aid	Title VI of the Elementary and Secondary Education Act (20 U.S.C. 3191-3207).	Part 185	13.525, 13.526, 13.528, 13.529, 13.530, 13.532, 13.589, and 13.590.
Racially Isolated School Districts	Section 1522 of the Education Amendments of 1978.	None	None.

*Some programs may not be funded. Check the application notices published under § 100a.100.

§ 100a.2 Exceptions in program regulations to Part 100a.

If a program has regulations that are not consistent with Part 100a, the implementing regulations for that program identify the sections of Part 100a that do not apply.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.3 HEW general grant regulations apply to these programs.

The HEW general grant regulations in Part 74 of this title apply to the programs covered by this part. To find subjects covered under Part 74, look in the table of contents at the beginning of Part 74.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.4 Education Division contracts.

(a) A contract of the Education Division is governed by:

(1) Chapters 1 and 3 of Title 41 of the Code of Federal Regulations;

(2) Any applicable program regulations; and

(3) The request for proposals for the procurement, if any, referenced in *Commerce Business Daily*.

(b) The regulations in Part 100a do not apply to a contract of the Education Division except where they specifically provide otherwise.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.5(b); 121h.1(b)(2d sent.); 123.62(b); 146 Appendix Chapter V, Sec 1.1(a); 160a.4; 160e.1(c)(2)(i); 160e.8(b)(1)(ii); 160f.1(c)(2); 160f.9(a)(2); 185.84(b); 191.25(b); 193.3; 193.15; 193.25; 1400.2(g))

Eligibility for a Grant

§ 100a.50 How to find out whether you are eligible.

Eligibility to apply for a grant under a program of the Education Division is governed by the authorizing statute and implementing regulations for that program. The table in § 100a.1 gives references to the statutes and regulations that apply to the direct grant programs of the Education Division.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.51 How to prove nonprofit status.

(a) Under some programs, an applicant must show that it is a nonprofit organization. (See the definition of "nonprofit" in § 100c.1)

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that—(i) the organization is a nonprofit organization operating within the State, and (ii) no part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or

(4) Any of the items described in subparagraphs (1) through (3) of this paragraph if that item applies to a State or national parent organization, together with a statement by the parent organization that the applicant is a local nonprofit affiliate.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 123.14(c)(2); 184.22(a); 185.61(b))

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

The Application Notice

§ 100a.100 Publication of an application notice; content of the notice.

(a) Each fiscal year each appropriate official of the Education Division publishes application notices in the *Federal Register* that explain what kind of assistance is available under the programs that he or she administers.

(b) The application notice for a program explains one or more of the following:

(1) How to apply for a grant to start a new project.

(2) How to apply for a grant to continue an existing project already being funded by the Education Division.

(3) How to preapply for a grant to start a new project, if preapplications are used under the program.

(c) The appropriate official of the Education Division publishes the application notice for each program together in a single notice in the *Federal Register* unless the official finds that it is necessary to publish a separate notice for a particular program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.15(1st sent.); 114.2; 114 App. § 2.5; 148.12(a)(4th sent.); 148.22(a)(3rd sent.); 148.32(a)(2nd sent.); 148.42(d); 154.5(c); 169.26(b); 169.36(b); 172.137)

Note.—The term "appropriate official of the Education Division" is defined in § 100c.1 of this title to mean the official that has

overall administrative responsibility for an Education Division program. For each program, that official is one of the following—

- (a) The Assistant Secretary;
- (b) The Commissioner;
- (c) The Director of the National Institute of Education; or
- (d) The Director of the Institute of Museum Services.

§ 100a.101 Information in the application notice that helps an applicant apply.

(a) The application notice for each program gives important information that can help an applicant. The information usually includes—

(1) How an applicant can get an information package that contains detailed information about the program and the application form that the applicant must use;

(2) Where in the Education Division an applicant must send its application;

(3) The amount of funds available to start new projects;

(4) The number of new projects the Education Division expects to fund under the program;

(5) The average amount of funding that the Education Division expects to provide to a new project under the program;

(6) The average duration of a new project that the Education Division expects to approve under the program;

(7) The amount of funds available to continue existing projects already being funded under the program;

(8) The number of these existing projects the Education Division expects to fund under the program;

(9) The average amount of funding that the Education Division expects to provide to these existing projects; and

(10) A reference to the regulations that apply to the program.

(b) If the appropriate official of the Education Division either requires or permits preapplications under a program, an application notice for the program explains how an applicant can get the preapplication form.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.102 Deadline date for applications.

(a) An application notice for each program sets a deadline date for applications.

(b) If an applicant wants a grant for a new project, the applicant shall—

(1) Mail the application to the Education Division on or before the deadline date; or

(2) Hand deliver the application to the Education Division before 4:30 p.m. (Washington, D.C. time) on or before the deadline date.

(c) If an applicant wants a grant to continue a project, the applicant, to be assured of consideration, shall—

(1) Mail the application to the Education Division on or before the deadline date; or

(2) Hand deliver the application to the Education Division before 4:30 p.m. (Washington, D.C. time) on or before the deadline date.

(d) The appropriate official of the Education Division accepts each of the following as proof of mailing:

(1) A legible U.S. Postal Service dated postmark; or

(2) A mail receipt with the date of mailing stamped by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. An applicant should check with its local post office before relying on this method.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 115.12; 127.5(a)(3rd sent.); 146.15(a)(1st sent.); 146.25(a)(1st sent.); 146.53(a)(1st sent.); 155.7(a)(1st sent.); 157.5(a)(1st sent.); 159.6(a)(1st sent.); 160a.24(1st sent.))

§ 100a.103 Deadline date for preapplications.

(a) If the appropriate official of the Education Division invites or requires preapplications under a program, an application notice for the program sets a deadline date for preapplications.

(b) An applicant shall submit its preapplication in accordance with the procedures for applications in § 100a.102(b) and (d).

(20 U.S.C. 1221e-3(a)(1))

(Sources: 127.5(a)(3rd sent.); 160a.23(a)(1st sent., wds. 4-10); 160b.5(a)(wds. 31 to end); 160f.7(a)(1st sent., wds. 28 to end))

§ 100a.104 Applicants must meet procedural rules.

The appropriate official of the Education Division may make a grant only to an eligible party that—

(a) Submits an application; and
(b) Complies with all procedural rules that govern the submission of the application.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 119.2(a)(2nd sent.); 160e.8(a); 160f(a); 160f.8(b)(1)(1st sent.); 179.4(c))

Application Contents

§ 100a.107 Application contents: Purpose of §§ 100a.108-100a.118.

(a) An applicant shall include in its application the information described in §§ 100a.108 through 100a.118.

(b) An applicant shall also include in its application any other information that is required under a particular program.

(c) If a program does not need some of the information required by these sections, the implementing regulations for the program identify the sections that do not apply.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.15; 100a.16(g); 105.605(a)(3); 105.615(a)(3); 105.625(c); 123.14(a)(Rejected);

123.24(a)(Rejected); 129.3(b); 142.5(j); 153.5(a)(3); (i) + (iii); 154.5(a); 155.7(a); 157.5(a); 159.6(a); 160a.24; 169.15(a); 169.34(a); 169.36(a); 170.17(a); 170.52; 170.73; 171.9(a); 183.41(b)(Rejected); 187.14(n); 187.24(o); 187.44(k); 187.55(m); 187.65(m); 188.7(g); 192.5(b))

§ 100a.108 Address each selection criterion.

If an applicant applies for a grant under a program that uses selection criteria, the application must include information that addresses each selection criterion that applies to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110; 105.605(a)(2); 105.615(a)(2); 105.626(b); 136.05(b); 146.15(a); 146.25(a); 146.34; 146.36(a)(1); 146.53(a); 160b.21(b)(4); 160c.14(b)(1); 160c.15(b)(1); 160d.7; 160c.8(c)(6); 160f.8(c); 162.12(d); 162.4c(b)(2)(x); 172.134; 179.23(c); 187.14(b); 187.24(b); 187.34(b); 187.44(b); 187.55(b); 187.65(b); 188.7(g); 191.31(c)(3); 191.44(b)(2); 197.9(a)(5); 198.6(c))

§ 100a.109 Assure compliance with appropriate requirements of law.

An application must include an assurance that a grantee will comply with the requirements imposed by the appropriate official of the Education Division concerning—

- (a) Special requirements of law;
- (b) Program requirements; and
- (c) Administrative requirements.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.15; 105.605(a)(1); 105.614(b); 105.15(a)(1); 105.625(a); 153.53(b)(3); 157.5(c) + (d); 158.25(a); 160c.14(c); 160c.32(d)(4); 160c.33(d); 160e.8(c)(1); 160e.11(b); 160f.8(c)(1); 162.40(a)(1); 162.52(a)(5); 169.15(a)(3); 169.38(a)(8); 170.17(a)(3rd sent., 2nd clause); 170.53(b); 171.8(b); 171.9(a)(2nd sent., 2nd clause); 178a.6(a)(3rd sent.); 184.22(b); 185.13(c); 185.13(1) (5) + (m); 185.33; 185.53(c)(1); 185.93-2(b)(1); 186.33(b)(1); 189.21(b)(6); 192.5(b)(4); 193.13(b))

§ 100a.110 Describe the project.

An application must describe the project in detail. The description must include—

- (a) The purpose of the project;
- (b) Each objective of the project;
- (c) The methods the applicant proposes to use to meet these objectives;
- (d) How the applicant plans to use its resources and personnel to achieve each objective; and
- (e) An assessment of the effect, if any, of the project on persons who are members of groups that have been traditionally underrepresented; such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.16(a); 121d App. § 3.2(a)(4); 112.8(a); 114.62(c)(7); 123.14(a); 123.53(a)(3); 123.24(a)(1st sent.); 123.33(a); 124.5; 136.05(a)(2); 146.15(a); 146.25(a); 154.5(a)(3); 160a.22(a); 160b.3(b)(8); 160c.14(b)(1); 160c.15(b)(1); 160c.31(a)(1)(i) + (iii); 160f.8(c)(3) + (4)(i); 162.52(a)(1) + (3); 162.61(c)(1)(i) + (iii); 169.26(a)(10); 171 App.

§ 4.2(a); 171 guides § 5.1(a)-(c); 172.110(a)(1) + (7); 172.127; 178a.6(a); 185.73(e)(1); 187.14(d)(2); 187.24(d)(2); 187.34(d)(2); 187.44(d)(2); 187.55(d)(1) + (2); 187.65(d)(1) + (2); 188.7(a)-(c); 191.31(c)(1)(ii) + (iii); 191.44(b)(1)(ii) + (iii); 192.5(a)(1); 193.13(b); 194.5(a))

§ 100a.111 Include a timeline.

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.16(a); 121d App. § 4.1; 121h App. § 3.2(a)(4); 160a.14(b)(7); 160a.15(e); 160c.31(a)(1)(ii); 160d.6(b)(5); 160e.8(c)(4)(ii)(D)(1); 162.12(a)(2); 162.52(a)(2); 162.61(c)(1)(ii); 172.110(a)(2); 187.14(d)(3); 187.24(d)(3); 187.34(d)(3); 187.44(d)(3); 187.55(d)(3); 187.65(d)(3); 191.31(c)(1)(vi); 191.44(b)(1)(viii))

§ 100a.112 Describe the key personnel.

An application must include the name and qualifications of each key person in the proposed project. This information must include—

- (a) The name and qualifications of the project director (if any);
- (b) The name and qualifications of each of any other key personnel in the project; and
- (c) The time that each person referred to in paragraphs (a) and (b) of this section plans to commit to the proposed project.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.113 Describe the resources.

An application must describe the resources the applicant plans to devote to the project, including—

- (a) Facilities; and
- (b) Equipment and supplies.

§ 100a.114 Describe the evaluation plan.

An application must include a description of the plan to evaluate the project under § 100a.590 and the implementing regulations of the program.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.115 Demonstrate capability; include evaluation of completed project.

(a) An application must include information that demonstrates the applicant's capability to—

- (1) Conduct the project; and
- (2) Meet the needs of the persons (if any) that the applicant plans to serve with the project.

(b) If an applicant wants a grant for a new project that furthers the objectives of a project already completed by the applicant, the applicant shall include an evaluation of the completed project.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.604(e); 155.7(a)(3)(ii); 159.6(a)(3)(ii); 160c.14(b)(2)(i) + (3); 160c.15(b)(2)(i) + (3); 160e.8(c)(2)(i); 160f.8(c)(2)(v) + (5); 185.73(e); 185.73(e)(4); 185.74(f) (2nd sent.); 197.9(b)(1) - (3))

§ 100a.116 Changes to application; number of copies.

(a) An applicant may make changes to its application on or before the deadline date for submitting applications under the program.

(b) Each applicant shall submit an original and two copies of its application to the Education Division, including any information that the applicant supplies voluntarily.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 123.14(a); 153.5(a)(5); 160f.8(b)(3); 173 App A § 4.1; 183.41(b))

§ 100a.117 Information needed if applicant proposes a multi-year project.

An applicant that proposes a multi-year project shall include in its application—

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.209; 123.04(c); 136.10(b)&(c); 160d.9(a); 160e.5(b)&(c); 160f.5(a)&(c); 162.17(b); 162.44(b)&(c); 162.55(b)&(c); 162.63(b)&(c); 197.7(c); 198.8(c))

§ 100a.118 How to apply for funds to continue a project.

(a) An applicant shall comply with paragraph (b) of this section if—

(1) The applicant wants funds to continue a project already approved on a multi-year basis;

(2) The applicant is about to complete one or more of the budget periods; and

(3) The budget period for which the applicant wants a continuation award is within the approved project period.

(b) An applicant for a continuation award shall—

(1) Comply with the deadline date for continuation applications (see § 100a.102(c)); and

(2) Submit the following:

(i) A revised face page (standard form 424) and revisions to any other affected pages.

(ii) A budget that covers the next budget period, and an estimate of the amount of funds that will remain unobligated at the end of the current budget period.

(iii) An estimate of the Federal funds needed for each budget period that comes after the next budget period.

(c) The criteria the appropriate official of the Education Division uses to decide whether to make a continuation grant are in § 100a.253.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 123.04(e); 123.14(a) (Rejected); 127.5(c); 173 App A § 4.1 (Rejected); 183.41(b))

Separate Applications—Alternate Programs**§ 100a.125 Submit a separate application to each program.**

An applicant shall submit a separate application to each program under which it wants a grant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.126 How to seek funding from more than one program.

If an applicant wants to submit its application under more than one program, the applicant shall list in each application the other programs under which the applicant is applying.

(20 U.S.C. 1221e-3(a)(1))

More Than One Eligible Party Can Join in an Application.**§ 100a.127 Eligible parties may apply as a group.**

(a) Eligible parties may apply as a group for a grant.

(b) Depending on the program under which a group of eligible parties seeks assistance, the name used to refer to the group may vary. The list that follows contains some of the names used to identify a group of eligible parties:

(1) Combination of institutions of higher education;

(2) Consortium;

(3) Joint applicants;

(4) Cooperative arrangements.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.19(a); 100a.19(b); 121c.10(a); 158.43(1st sent. and 2nd sent., 3rd clause); 160a.15(b); 171 Guidelines § 2.2(b) 1st sent.; 172.32; 172.106)

§ 100a.128 Who acts as applicant; the group agreement.

(a) If a group of eligible parties applies for a grant, the members of the group shall enter into an agreement—

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

(b) The members of the group shall enter into an agreement that—

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(c) The applicant shall submit the agreement with its application.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 119.10(b); 121c.10(b); 123.11(b); 123.21(c); 123.31(b); 146.15(b); 146.25(b); 154.3(a)(2); 154.5(b); 155.6(b); 157.4(b); 159.5(b); 160a.15(d); 169.22(a)(2); 171 Guidelines § 2.2(b)(2nd sent.))

§ 100a.129 Legal responsibilities of each member of the group.

(a) If the appropriate official of the Education Division makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for—

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements.

(b) Each member of the group is legally responsible to—

(1) Carry out the activities it agrees to perform; and

(2) Use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 119.10(b); 121c.10(b); 123.21(c); 123.31(b); 146.15(b); 146.25(b); 154.3(a)(2); 154.5(b); 155.6(b); 157.4(b); 159.5(b); 160a.15(d); 169.22(a)(2); 171 Guidelines § 2.2(b) (2nd sent.); 172.42)

Preapplications**§ 100a.130 Consideration of a preapplication.**

The appropriate official of the Education Division considers a preapplication if—

(a) The applicant complies with the procedural rules that govern submission of the preapplication; and

(b)(1) The preapplication is submitted in response to an application notice that invites or requires preapplications; or

(2) The preapplication is submitted by a government. (See Subpart N of Part 74 of this title.)

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.31; 160a.23(a) (1st sent.); 160b.5(a); 160f.7(a)(1) (1st sent.))

§ 100a.131 The effect of not submitting a preapplication.

(a) If the appropriate official of the Education Division invites but does not require preapplications under a program, an applicant may apply for a grant under the program even if the applicant did not preapply.

(b) If the appropriate official of the Education Division requires preapplications under a program and an applicant does not preapply, the applicant may not apply for a grant under the program.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.132 Result of a preapplication.

(a) If an applicant submits a preapplication under a program, the appropriate official of the Education Division—

(1) Informs the applicant that it is eligible and encourages it to apply for grant under the program;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant under the program; or

(3) Informs the applicant that it is ineligible for assistance under the program.

(b) An applicant may apply under a program even if the official does not encourage it to apply.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 114 App. A § 2.6(b) + (c); 124.3 (last sent.); 127.5(a) (2nd sent.); 160b.5(b)(4); 160c.12(b)(2); 160f.7(a)(3) (2nd sent.))

§ 100a.133 The basis for the preapplication decision.

To decide whether to encourage a preapplicant to apply, the appropriate official of the Education Division uses the same criteria that the official uses to select an applicant for a grant. (See §§ 100a.200–100a.206 for a description of how selection criteria work.)

(20 U.S.C. 1221e-3(a)(1))

(Sources: 124.3 (last sent.); 160b.5(b)(3); 160c.12(b)(3); 160f.7(d) (separate criteria approach rejected))

Open Meeting Certification under Certain ESEA Programs

§ 100a.138 Open meetings: Purpose of §§ 100a.139–100a.141.

(a) Sections 100a.139–100a.141 implement Section 1006 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

(b) Section 1006 requires a local educational agency that submits an application under certain ESEA programs to certify that it has held an open meeting regarding the contents of the application.

(c) Section 1006 applies to each ESEA program listed in § 100a.1.

(20 U.S.C. 887e)

(Source: 100d.1)

§ 100a.139 The local educational agency shall hold an open meeting.

(a) If a local educational agency applies for a grant under an ESEA program listed in § 100a.1, the agency shall hold at least one meeting.

(b) The agency shall make the meeting open to the public.

(c) The agency shall inform the people who attend the meeting of—

(1) The ESEA program under which the agency wants a grant;

(2) The kinds of activities that are authorized under the statute and program regulations; and

(3) The activities for which the agency wants the grant.

(d) The agency shall give each person who attends the meeting an opportunity to comment or make recommendations on the proposed activities.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.140 Give notice of the meeting; make information available.

(a) If a local educational agency must hold an open meeting under § 100a.139, the agency shall give notice of the time, place, and purpose of the meeting.

(b) The agency shall give notice that—

(1) Is likely to reach the general public in the area served by the project; and

(2) Gives the public time to prepare for the meeting.

(c) The agency shall take steps to ensure that persons who are members of groups that have been traditionally underrepresented receive the type of notice required by paragraph (b)(1) of this section and that these persons are encouraged to participate in the meeting. These persons include—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(d) The agency shall make the following material available for inspection by the public at least 24 hours before the open meeting begins.

(1) An outline of the information described in § 100a.139(c).

(2) A draft copy of the agency's application if the application has been prepared.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100d.2(b))

§ 100a.141 Certify that open meeting was held.

If a local educational agency must hold an open meeting under § 100a.139, the agency shall certify in its application that—

(a) The agency held at least one open meeting under § 100.139;

(b) The agency gave notice of each open meeting in accordance with § 100a.140 (a) and (b);

(c) The agency made information available in accordance with § 100a.140(c);

(d) The agency gave meaningful consideration to any comments or recommendations that it received at each open meeting; and

(e) The agency has included the results of that consideration in its application.

(20 U.S.C. 887e)

(Source: 100d.3)

State Review Procedures

§ 100a.150 Review procedure if State must approve applications—purpose of §§ 100a.151–100a.153.

If the authorizing statute for a program requires the State to approve each application, the State and the applicant shall use the procedures in §§ 100a.151–100a.153.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.151 When an applicant must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 100a.150 shall submit a copy of its application to the State at least 15 days before the deadline date for submitting the application to the Education Division.

(b) The applicant shall attach to its application a copy of its letter that requests the State to approve the application.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 162.13(b); 162.39(a)(2))

§ 100a.152 The State reviews each application.

Each State that receives an application under § 100a.151 shall review the application to decide if the State wishes to approve or disapprove the application.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.153 Deadlines for State approval.

(a) The appropriate official of the Education Division may publish in the *Federal Register* a notice that establishes a deadline for receipt of State approvals of applications under a program covered by § 100a.150.

(b) If a State approves an application, the appropriate State official shall:

(1) Sign a statement that approves the application; and

(2) Submit the application and the statement by the deadline date for State approvals. The procedures in § 100a.102 (b) and (d) (how to meet a deadline) apply to this submission.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 162.13(c) (1st sent.) + (d)(1); 162.13(e) (Rejected; 162.39(a)(3) (1st sent.) + (a)(4))

§ 100a.154 Effect of State approval; failure to approve.

(a) If a State approves an application on or before the deadline for State approval, the appropriate official of the Education Division may select that project for a grant.

(b) If a State does not approve an application on or before the deadline for State approval, the appropriate official of the Education Division may not select that project for a grant.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 124.4; 162.13(c) (2nd sent.); 162.39(a)(3) (2nd sent.))

§ 100a.155 Review procedure if State may comment on applications—purpose of §§ 100a.156–100a.158.

If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 100a.156–100a.158.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.156 When an applicant must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 100a.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Education Division.

(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.207; 105.604(a) (1st sent.); 123.24(b)(9); 129.4 (b)(2); 160a.28(b); 160b.23(c)(1) (1st sent.); 160c.13(b); 160d.10 (2nd + 3rd sents.); 160e.7(b); 160f.8(e)(2); 160g.15(b); 179.23(b); 182a.13(d) (1st sent.); 181.31(c); 185.13(j); 194.5(b))

§ 100a.157 The State reviews each application.

A State that receives an application under § 100a.156 may review and comment on the application.

(20 U.S.C. 1221e-3(a)(1))

((Sources: 129.4(b)(3); 170.73 (3rd sent.))

§ 100a.158 Deadlines for State comments.

(a) The appropriate official of the Education Division may publish in the *Federal Register* a notice that establishes a deadline for receipt of State comments on applications under a program covered under § 100a.155.

(b) The State shall make its comments in a written statement signed by an appropriate State official.

(c) The appropriate State official shall submit comments by the deadline date for State comments. The procedures in § 100a.102 (b) and (d) (how to meet a deadline) apply to this submission.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.604(a) (2nd sent.); 129.4(c); 160a.28(c) (1st sent.); 160b.23(c)(1) (2nd sent.); 160c.13(c) (1st sent.); 160e.7(c) (1st sent.); 160f.8(e)(3) (1st sent.); 160g.15(c) (1st sent.); 170.73 (4th–6th sents.); 182a.13(d) (2d sent.); 191.32(d) (1st sent.))

§ 100a.159 Effect of State comments or failure to comment.

(a) The appropriate official of the Education Division considers those comments of the State that relate to—

(1) Any selection criteria that apply under the program; or

(2) Any other matter that affects the selection of projects for funding under the program.

(b) If the State fails to comment on an application on or before the deadline date for the appropriate program, the State waives its right to comment.

(c) If the applicant does not give the State its opportunity to comment, the appropriate official of the Education Division may not select that project for a grant.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 129.4(a) (2nd sent.); 160a.13(b)(5); 160a.28(a) + (c) (2d sent.); 160c.13(c) (2d sent.); 160e.7(c) (2d sent.); 160f.8(e)(1) + (3) (2d sent.); 160g.15(a) + (c) (2d sent.); 185.13(j) (2nd sent.); 185.53(c)(2) (3rd sent.); 185.63(b)(3)(iii); 191.32(d) (2d sent.))

§ 100a.160 Procedure for State approval of or comment on preapplications.

(a) If the authorizing statute for a program requires that a State approve each preapplication, the State and the applicant shall use the approval procedures in §§ 100a.151-100a.153 for the preapplication.

(b) If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each preapplication, the State and the applicant shall use the comment procedures in §§ 100a.156-100a.158 for the preapplication.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 124.3; 160c.12(b)(4); 160f.7(b))

OMB Circular A-95 Clearinghouse Procedures**§ 100a.170 Clearinghouse procedures—Purpose of §§ 100a.170-100a.173.**

(a) Sections 100a.170 through 100a.173 implement Part I of OMB Circular A-95.

(b) Part I of OMB Circular A-95 requires an applicant under certain Federal programs to notify the appropriate State and areawide clearinghouses of the applicant's intent to apply. The clearinghouses may comment on the application.

(c) The following programs listed in § 100a.1 are covered by Part I of OMB Circular A-95:

Name of program	Authorizing statute	Implementing regulations	CFDA number
Environmental education.	Title III-H of the Elementary and Secondary Education Act (20 U.S.C. 3011).	None.....	None
Follow through program.	Sections 551-554 of the Community Services Act of 1974 (42 U.S.C. 22929).	Part 158.....	13.433

Name of program	Authorizing statute	Implementing regulations	CFDA number
Model programs under the research in the education of the handicapped program.	Section 641 of the Education of the Handicapped Act (20 U.S.C. 1441).	Part 121h.....	13.443
Community service and continuing education programs—special programs and projects.	Section 106 of Title I the Higher Education Act of 1965 (20 U.S.C. 1005a).	Subpart C of part 173.	13.557

(20 U.S.C. 1221e-3(a)(1))

(Source: Catalog of Federal Domestic Assistance)

§ 100a.171 Notify the appropriate clearinghouses.

(a) An applicant under a program listed in §§ 100.270 shall include in its notice to the clearinghouses a summary of the project. The summary must include—

- (1) The identity of the applicant;
- (2) The geographic location of the proposed project (include a map, if appropriate);
- (3) A brief description of the proposed project that helps the clearinghouses identify any State and local agencies that have plans or projects that may be affected by the project. The description must include—

- (i) The type of project;
- (ii) The purpose of the project;
- (iii) The general size of the project;
- (iv) The estimated cost of the project;
- (v) The beneficiaries of the project; and
- (vi) Any other information that will help the clearinghouse identify affected agencies;

(4) A statement that shows whether the applicant must prepare an Environmental Impact Statement;

(5) The name of the program and the Catalog of Federal Domestic Assistance number for the program; and

(6) The date the applicant expects to submit its application to the Education Division.

(b) If an applicant uses the preapplication procedure in this subpart, the applicant shall submit a copy of the preapplication to the appropriate clearinghouses on the same date it submits the preapplication to the Education Division.

(20 U.S.C. 1221e-3(a)(1))

(Source: OMB Circular A-95)

§ 100a.172 Applicant shall show compliance with A-95 procedures.

An applicant under a program listed in § 100a.170 shall include the following in its application:

(a) The comments of each clearinghouse that commented on the application; or

(b) A statement that the applicant used the procedures of OMB Circular A-95 but did not receive any clearinghouse comments.

(20 U.S.C. 1221e-3(a)(1))

(Source: OMB Circular A-95)

§ 100a.173 The effect of not complying with Part I of OMB Circular A-95.

(a) OMB Circular A-95 gives a clearinghouse 30 days to—

- (1) Review the applicant's notice;
- (2) Notify affected agencies and governments; and

(3) Consult with the applicant about the application.

(b) The Circular also permits a clearinghouse to take an additional 30 days to review the application.

(c) The appropriate official of the Education Division may make a grant under a program listed in § 100a.170 only if the applicant has complied with Part I of OMB Circular A-95.

(20 U.S.C. 1221e-3(a)(1))

(Source: OMB Circular A-95)

Subpart D—How Grants Are Made**Selection of New Projects****§ 100a.200 How new projects are selected.**

(a) The Education Division administers two different kinds of direct grant programs. A direct grant program is either a discretionary grant or a formula grant program.

(b) *Discretionary grant programs.* (1) A discretionary grant program is one that permits the appropriate official of the Education Division to select new projects on the basis of the quality of competing applications. To receive a grant under this kind of program, an applicant usually must compete with other applicants (but see § 100a.219).

(2) The appropriate official of the Education Division uses the selection criteria in EDGAR and the specific selection criteria for a program to evaluate each application submitted for a new project under a discretionary grant program.

(3) Sections 100a.202-100a.206 contain the EDGAR selection criteria.

(4) The specific selection criteria for a program are in the implementing regulations for that program. However, if a discretionary grant program does not have specific selection criteria, the program uses the EDGAR criteria alone to evaluate applications. If used alone, the EDGAR criteria are not weighted.

(5) If a discretionary grant program has criteria that are inconsistent with one or more of the EDGAR selection criteria, the implementing regulations for that program identify the EDGAR selection criteria that do not apply.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The appropriate official of the Education Division uses the program statute and regulations to select new projects under a formula grant program. The EDGAR selection criteria in §§ 100a.202-100a.206 are not used to evaluate applications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.201 How to use the selection criteria.

(a) If the selection criteria for a program are not weighted, the appropriate official of the Education Division evaluates each criterion equally.

(b) If the selection criteria for a program are weighted—

(1) The appropriate official of the Education Division assigns in the program regulations a total number of points that an applicant may receive under all of the criteria;

(2) The specific program selection criteria use 70 percent of the total points assigned to the program; and

(3) The EDGAR selection criteria use the remaining 30 percent of the total points assigned to the program.

(c) The last paragraph under each EDGAR selection criterion gives the weight assigned to that criterion under EDGAR. This weight is expressed as a percentage of the total points assigned to the program. To find the number of points assigned to an EDGAR selection criterion under a particular program, use the following steps:

(1) Find the percentage given in the last paragraph of the EDGAR selection criterion in which you are interested.

(2) Find the total number of points assigned to the program in which you are interested.

(3) Multiply the percentage you found under step (1) by the number you found under step (2).

Example: You are interested in finding out how many points the EDGAR selection criterion "Evaluation plan" gets under the bilingual vocational training program. The EDGAR criterion "Evaluation plan" is in § 100.205. Paragraph (c) of that section indicates that the criterion gets 5% of the total number of points used by a program. The bilingual vocational training program is in Subpart 5 of Part 105 of this title. Section 105.606 gives the selection criteria for this program. Section 105.606 indicates that the program has a maximum of 100 points for selection criteria. Multiply 100 by 5% (.05) the answer is 5 points. This is the number of points that § 100a.205 assigns to "Evaluation plan" under the bilingual vocational training program.

(d) If the selection criteria for a program are weighted, the program regulations may increase, but may not decrease, the weight of an EDGAR criterion. This is done by adding points to the EDGAR selection criterion. The appropriate official of the Education Division uses part of the 70% weight devoted to specific program selection criteria to add weight to an EDGAR criterion.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.202 Selection criterion—plan of operation.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the plan of operation for the project.

(b) The official looks for information that shows:

- (1) High quality in the design of the project;
- (2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(c) Under a program using weighted selection criteria, this criterion is assigned 10 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110(c) + (e); 105.211(c) + (d); 105.606(b)(c); 105.616(b) + (c); 105.626(c) + (d); 123.15(a)(2); 123.25(b); 123.26(b); 123.27(b); 123.349(a)(2); 132 App A(a)(3) + (5); 132 App A(b)(1) + (3); 133 App A(a)(3) + (4); 136.06(b)(1) + (3); 153.12(b)(6); 158.52(b) + (c); 160a.25(a)(9), (12) + (14); 160b.6(b)(2); 160b.46(a); 160c.17(b); 160c.18(b); 160c.35(a)(3); 160d.7(c); 160e.9(a); (3); 160f.10(a)(3)(i) + (iii); 162.14(a)(8); 162.14(c)(8); 162.41(a); 162.53(b)(1), (2) + (3); 172.151(a) + (b); 180.44; 185.14(b)(2); 185.24; 185.34(b)(1), (2) + (3); 185.35(b)(1); 185.54(b)(2); 185.64(b)(2); 184.91-2(b)(2); 185.92-3(a)(2); 185.94-3; 185.106(6); 185.107(b) + (d)(3); 187.12(c); 187.22(c); 187.32(c); 187.42(c); 187.53(c); 187.63(c); 191.33(b); 191.45(b)(2) + (3); 194.8(c); 198.7(f)(1))

§ 100a.203 Selection criterion—quality of key personnel.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(b) The official looks for information that shows—

(1) The qualifications of the project director (if any);

(2) The qualifications of each of the other key personnel used in the project;

(3) The qualifications of any of the following persons who are hired for the project—

(i) Any member of the immediate family of a person on the project staff;

(ii) Any member of the governing body of the grantee; or

(iii) Any member of the immediate family of a person on that governing body.

(4) The time that each person referred to in paragraphs (b)(1)–(3) of this section plans to commit to the project; and

(5) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(c) To determine the qualifications of a person, the official considers evidence of past experience in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Under a program using weighted selection criteria, this criterion is assigned 7 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110(h); 105.211(g); 105.606(f); 105.616(f); 105.626(h); 123.15(a)(2); 123.25(b);

123.26(b); 123.27(b); 123.34(a)(3); 123.54(c); 132 App A(a) (6) + (7); 132 App A(b)(5); 132 App A(c)(6); 133 App A(a)(5); 136.06(b)(5); 153.12(b)(8); 154.6(c)(4); 155.8(c)(3); 155.8(h)(3); 157.6(c)(3); 157.6(f)(3); 158.42(b)(2); 158.52(g); 159.7(c)(3); 159.7(f)(3); 160b.6(b)(4); 160b.32(c); 160b.46(a)(9); 160c.17(b); 160c.18(b); 160c.35(a)(2); 160d.7(c); 160d.15(f); 160e.9(a)(1); 160f.10(a)(1) (iv) + (v); 162.14(a)(3); 162.14(c)(3); 162.41(d); 162.62(a)(2); 179.26(b)(6); 180.14(c); 180.24(c); 180.34(c); 182.14(a)(2); 182a.25(a)(2); 185.149(b)(3); 185.24; 185.34(b)(2); 185.35(b)(2); 185.54(b); 185.64(b); 185.91-2(b)(3) (ii); 185.92-3(a)(3)(ii); 185.94-3; 185.106(c)(2); 185.107(c)(2); 187.12(f); 187.22(e); 187.32(e); 187.42(f); 187.53(f); 187.63(f); 188.15(b)(6); 191.33(d); 191.45(b)(5); 193.14(d); 193.24(b)(3); 194.8(c); (2); 198.7(b))

§ 100a.204 Selection criterion—budget and cost effectiveness.

(a) The appropriate official of the Education Division reviews each application for information that shows that the project has an adequate budget and is cost effective.

(b) The official looks for information that shows:

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(c) Under a program using weighted selection criteria, this criterion is assigned 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110(i); 105.211(h); 105.505(b)(8) + (9); 105.606(g); 105.616(g); 105.626(i); 123.15(a)(3); 123.25(c); 123.26(c); 123.27(c); 123.34(a)(6); 123.54(f); 132 App A(a)(9); 132 App A(c)(6); 133 App A(a)(1); 136.06(b)(4); 146.14(a)(4); 146.24(a) (5); 153.12(b)(7); 154.6(c)(10); 155.8(c)(4); 157.6(c)(4); 159.7(c)(4); 160b.24(c)(1) (iii); 160c.35(a)(3)(iv); 160d.7(h); 160d.15(g); 160e.9(a)(3)(iv); 160f.10(a)(3)(v); 162.14(a)(5); 162.41(e); 162.62(a)(4); 179.26(b)(3); 180.14(d); 180.24(e); 180.34; 180.44; 185.14(b)(4)(ii) + (iv); 185.24; 185.34(b)(3); 185.35(b)(3); 185.54(b)(4); 185.64(b)(4); 185.91-2(b)(4); 185.92-3(a)(4); 185.94-3; 185.106(d)(1) + (2); 185.107(d)(1) + (2); 187.12(b)(8); 187.22(b)(5); 187.32(b)(5); 187.42(b)(2); 187.53(b)(6); 187.63(b)(6); 188.15(f)(3); 188.16; 191.33(e); 191.45(b)(6); 193.14(g); 193.24(b)(8); 194.8(c)(5); 198.7(d))

§ 100a.205 Selection criterion—evaluation plan.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the evaluation plan for the project.

(b) The official looks for information that shows an objective, quantifiable method of evaluation under § 100a.590.

(c) Under a program using weighted selection criteria, this criterion is assigned 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.10(f); 105.211(f); 105.606(e); 105.616(e); 105.626(f); 121F.20(b), (e), (f), (h), (i)(1) + (j)(2) + (3); 123.15(a)(4); 123.25(d); 123.26(d); 123.27(d); 123.34(a)(8); 132 App A(a)(12) + (13); 132 App A(b)(2) + (12); 132

App A(c)(6); 133 App A(a)(6); 146.24(a)(2); 155.8(c)(2); 155.8(h)(2); 157.6(c)(2); 157.6(f)(2); 158.52(f); 159.7(c)(2); 159.7(f)(2); 160a.25(a)(11); 160b.6(b)(5); 160d.7(e); 160e.9(a)(3); 160f.10(a)(2)(iii); 160f.10(a)(3)(ii); 162.14(a)(8); 162.14(b)(3); 162.14(c)(3); 162.53(b)(4); 179.26(b)(2); 180.14(e); 180.24(d); 180.34; 180.44; 185.14(b)(5); 185.24; 185.34(b)(4); 185.35(b)(4); 185.54(b)(5); 185.64(b)(5); 185.91-2(b)(5); 185.92-3(a)(5); 185.94-3; 185.106(e); 185.107(e); 187.12(d); 187.22(d); 187.32(d); 187.42(d); 185.53(d); 187.63(d); 188.15(d); 188.16; 191.33(c); 191.45(b)(4); 193.14(b); 193.24(b)(2); 194.8(c)(7); 198.7(f)(2)

§ 100a.206 Selection criterion—adequacy of resources.

(a) The appropriate official of the Education Division reviews each application for information that shows that the applicant plans to devote adequate resources to the project, including resources to meet the needs of persons to be served by the project who are members of groups that have been traditionally underrepresented, such as

- (1) Members of racial or ethnic minority groups;
 - (2) Women;
 - (3) Handicapped persons; and
 - (4) The elderly.
- (b) The official looks for information that shows:

- (1) The facilities that the applicant plans to use are adequate; and
- (2) The equipment and supplies that the applicant plans to use are adequate.

(c) Under a program using weighted selection criteria, this criterion is assigned 3 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110(j)(2); 105.211(i)(2); 105.606(h)(2); 105.616(h)(2); 105.626(j)(2); 121f.20(c); 132 App A(a)(8); 132 App A(b)(6); 132 App A(c)(6); 133 App A(a)(5); 153.12(b)(8); 155.8(c)(3); 155.8(h)(3); 157.6(c)(3); 157.6(f); 159.7(c)(3); 159.7(f); 160b.6(b)(4); 160e.9(a)(1); 160f.10(a)(1)(vi); 162.14(a)(4); 162.62(a)(3); 185.91-2(b)(3)(iii); 185.92-2(b)(3)(iii); 185.92-3(a)(3)(iii); 185.106(d)(4); 185.107(d)(4); 187.12(g)(1); 187.22(f)(1); 187.32(f)(1); 187.42(e)(2); 188.15(b)(7); 193.14(e); 193.24(b)(4); 194.8(c)(8); 198.7(c))

Selection Procedures

§ 100a.215 How the Education Division selects a new project: Purpose of §§ 100a.216-100a.221.

Sections 100a.216-100a.221 describe the process the appropriate official of the Education Division uses to select new projects. All of these sections apply to a discretionary grant program. However, only § 100a.216 applies to a formula grant program (see § 100a.200 for a description of the difference between a discretionary grant program and a formula grant program).

(20 U.S.C. 1221e-3(a)(1))

§ 100a.216 Returning an application to the applicant.

(a) The appropriate official of the Education Division returns an application to an applicant if—

- (1) The applicant is not eligible;

(2) The application does not contain the information required under the program; or

(3) The proposed project cannot be funded under the authorized statute or implementing regulations for the program.

(b) If the appropriate official of the Education Division returns an application under this section, the official includes a statement that gives the reason that the application was returned.

(20 U.S.C. 1221e-3(a)(1))

(Sources: OE III-2.7.1C; 153.8(a)(1st sent.); 156.8(a)(1st sent.); 178a.7; 183.30(2nd sent.); 183.31)

§ 100a.217 How the Education Division reviews an application.

(a) The appropriate official of the Education Division uses a group of experts to review an application unless the circumstances under § 100a.219 exist.

(b)(1) The appropriate official of the Education Division may use one or more groups of experts to review the applications submitted under each program.

(2) Each group of experts consists of 3 or more persons who are well qualified to review the applications.

(3) In each group of experts, there is at least one person who is not an employee of the Federal Government.

(4) A person may not serve with a group of experts if—

(i) The person is an employee of HEW who is involved in the administration of the program for which the group is reviewing applications; or

(ii) The person was involved within the past year in the administration of the program for which the group is reviewing applications.

(5) If the appropriate official of the Education Division signs a waiver for a person covered by paragraph (b)(4) of this section, the person may serve on a group of experts.

(c) A group of experts uses the selection criteria that apply to the program to rate the quality of each application.

(d) After the groups of experts have completed their review and have rated the applications, the appropriate official of the Education Division prepares a rank ordering of the applications. The rank ordering of applications is based on the ratings of the applications by the groups of experts.

(e)(1) If the official has information that affects the rank ordering of applications, he or she attaches this information to the rank ordering.

(2) The official only attaches information to a rank ordering if the information is—

(i) Relevant to a matter that affects selection of projects for funding under the program; and

(ii) Gained through appropriate procedures such as site visits or recommendations of advisory groups.

(20 U.S.C. 1221e-3(a)(1))

(Sources: OE III-2.7.2A1; III-2.7.2D; III-2.8)

§ 100a.218 How the Education Division selects new projects.

(a) Under each program, the appropriate official of the Education Division selects the

projects of highest quality based on the selection criteria that apply to the program.

(b) In deciding which projects to select, the official considers the following:

- (1) The information in each application;
- (2) The rank ordering of the applications; and

(3) The information attached to the rank ordering of applications.

(c) In each competition under a program the official selects projects until the funds available for new projects are used up.

(d) If a project is not selected under the procedures of this section, the appropriate official of the Education Division—

(1) Returns the application to the applicant; and

(2) Informs the applicant why the application was not selected.

(20 U.S.C. 1221e-3(a)(1))

(Source: OE III-2.8.1)

§ 100a.219 A project can be selected for funding without competition.

The appropriate official of the Education Division may select a project for funding without competition with other projects if—

(a) The objectives of the project cannot be achieved unless the official makes the grant before the date grants can be made under the selection procedure in §§ 100a.217 and 100a.218; or

(b)(1) The project was reviewed by a group of experts under the preceding competition of the program;

(2) The group of experts rated the project high enough to deserve selection under § 100a.218; and

(3) The proposed project was not selected for a grant because the application was mishandled by the Education Division.

(20 U.S.C. 1221e-3(a)(1))

(Sources: OE III-2.13.1A; III-2.13.2A intro.)

§ 100a.220 Procedures the Education Division uses under § 100a.219(a).

If the special circumstances of § 100a.219(a) appear to exist for an application, the appropriate official of the Education Division uses the following procedures:

(a) The official assembles a board to review the application.

(b) The board consists of—

- (1) A program officer of the program under which the applicant wants a grant;
- (2) An HEW grants officer; and
- (3) An HEW employee who is not a program officer of the program but who is well qualified to review the application.

(c) The board reviews the application to decide if—

- (1) The special circumstances under § 100a.219(a) are satisfied;
- (2) The proposed project rates high enough, based on the selection criteria that apply to the program, to deserve selection; and
- (3) If the proposed project is selected, it will not have an adverse impact on the budget of the program.

(d) The board forwards the results of its review to the appropriate official of the Education Division.

(e) The appropriate official of the Education Division may select the proposed

project if each of the conditions in paragraph (c) of this section are satisfied.

(f) If the official does not select the project, the applicant may submit its application under the procedures in Subpart C.

(20 U.S.C. 1221e-3(a)(1))

(Source: OE III-2.13.1B-f)

§ 100a.221 Procedures the Education Division Uses Under § 100a.219(b).

If the special circumstances of § 100a.219(b) appear to exist for an application, the appropriate official of the Education Division may select the project if—

(a) The official has documentary evidence that the special circumstances of § 100a.219(b) exist;

(b) The official has a statement that explains the circumstances of the mishandling; and

(c) The appropriate program officer recommends that the project be selected.

(20 U.S.C. 1221e-3(a)(1))

(Source: OE III-213.2A1-4, B-D)

Procedures To Make a Grant

§ 100a.230 How the Education Division makes a grant: purpose of §§ 100a.231-100.236.

If the appropriate official of the Education Division selects a project under §§ 100a.218, 100a.220, or 100a.221, the official follows the procedures in §§ 100a.231-100a.236 to set the amount and determine the conditions of a grant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.231 Additional budget information.

After selecting a project for funding, the appropriate official of the Education Division may ask the applicant to submit additional budget information.

(20 U.S.C. 1221e-3(a)(1))

(Source: 115.13)

§ 100a.232 The cost analysis; basis for grant amount.

(a) Before the appropriate official of the Education Division sets the amount of a grant, the official does a cost analysis of the project. The official—

(1) Verifies the cost data in the detailed budget for the project.

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations.

(b) The official uses the cost analysis as a basis for determining the amount of the grant to the applicant. The cost analysis shows whether the applicant can achieve the objectives of the project with reasonable efficiency and economy under the budget in the application.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.233 Setting the amount of the grant.

The appropriate official of the Education Division may fund up to 100 percent of the allowable costs in the budget. In deciding what percent of the allowable costs to fund, the official considers—

(a) Matching or cost sharing requirements that apply; and

(b) Any other financial resources available to the applicant.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.50; 158.65a(c))

§ 100a.234 The conditions of the grant.

The appropriate official of the Education Division makes a grant to an applicant only after determining—

(a) The approved costs; and

(b) Any special conditions.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.235 The notification of grant award.

(a) To make a grant, the appropriate official issues a notification of grant award and sends it to the grantee.

(b) The notification of grant award sets the amount of the grant and gives other information about the grant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.236 Effect of the grant.

The grant obligates both the Federal Government and the grantee to the requirements that apply to the grant.

(20 U.S.C. 1221e-3(a)(1))

Approval of Multi-Year Projects

§ 100a.250 Project period can be longer than one year.

(a) The appropriate official of the Education Division generally approves a project period of not more than 12 months.

(b) If an applicant cannot achieve the objectives of the project in 12 months, the official may approve a project period of up to 60 months.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.209; 113.8(a); 121.5(b); 123.04(b); 136.10(a) + (c); 146.17(a); 146.27(a); 160a.17; 160c.5(a); 160d.9(a) + (b); 160d.17(a) + (b); 160e.5(b) + (c); 160f.5(a) + (c); 160g.4; 162.17(c); 162.44(c); 162.55(c); 162.63(c); 164.06 (1st sent.); 172.30; 179.27(a) + (b); 180.20(c); 180.39(b); 180.57(b); 180.65(b); 182.34(b) (3rd sent.) + (c)(1); 191.34; 191.46; 197.7(a) + (b); 198.8(a); 105.107; 105.302(b); 105.433; 113.2(b) (1st + 2nd sent.); 121.5(a) (1st sent.); 127.5(d); 132.13; 162.17(a); 162.44(a); 162.55(a); 162.63(a); 169.27; 182.34(a); 187.6(a) + (b); 187.78; 188.11(a) + (b); 187.7(a) (2nd clause))

§ 100a.251 The budget period.

(a) The appropriate official of the Education Division usually approves a budget period of not more than 12 months, even if the project has a multi-year project period.

(b) If the official approves a multi-year project period, the official—

(1) Makes a grant to the project for the initial budget period; and

(2) Indicates his or her intention to make continuation awards to fund the remainder of the project period.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 113.8(a); 121.5(b); 136.10(c) (2nd sent., 2nd clause); 146.17(b); 146.27(b); 160a.17; 160c.5(a); 160d.9(a) + (b); 169d.17(b); 160e.5(c); 160f.5(c) (2nd clause); 160g.4; 162.44(c); 162.55(c); 162.63(c); 172.30; 182.34(b)

(93rd sent.); 180.20(c); 180.39(b); 180.57(b); 180.65(b); 187.6(b); 191.29(a)(5); 191.46)

Continuation Awards and Extension of a Project

§ 100a.253 Continuation of a multi-year project after the first budget period.

(a) The appropriate official of the Education Division may make a continuation award for a budget period after the first budget period of an approved multi-year project if—

(1) The Congress has appropriated sufficient funds under the program;

(2) The official is satisfied that the grantee will satisfactorily complete the budget period that is about to end;

(3) The grantee has submitted every report that it must submit before the date of the continuation award; and

(4) Continuation of the project is in the best interest of the Federal Government.

(b) A grantee that is in the final budget period of a project period may seek continued assistance for the project under the procedures for selecting new projects. (See Subpart C.)

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.209; 105.308; 105.438; 113.8(a); 121h.4(b); 121.89(b); 121.119(b); 123.04(d); 123.15(b); 136.10(c)(d) + (e); 157.6(a) + (b); 158.13(a); 158.52; 159.7(a) + (b); 160.4(c); 160a.17(b); 160c.5(a); 160d.9(a); 160d.17(b); 160e.5(c); 160f.5(c); 160g.4; 162.44 (c)(d) + (e); 162.55(c)(d) + (e); 162.63(c)(d) + (e); 172.30; 172.150(c); 180.20(c); 180.39(b); 180.57(b); 180.65(b); 182.34(b)(3rd sent.); 187.6(c); 188.11(c) + (d); 191.34; 191.46; 198.8(d))

§ 100a.254 Extension of a project period.

The appropriate official of the Education Division may extend a project period if:

(a) Special or unusual circumstances exist that delay completion of the project;

(b) The grantee provides the official with a written request or the extension;

(c) The grantee requests the extension at least 45 days before the end of the project period;

(d) The grantee states the reason that it needs the extension;

(e) The extension does not violate any statute or regulation; and

(f) The extension does not involve the obligation of additional Federal funds.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.54(a)(2nd sent.) and (b); 100-100d App. A para. 2(b); 164.06 (3rd + 4th sent.); 1405.9(a)(2nd sent.) + (b))

Miscellaneous

§ 100a.260 Allotments and reallocations.

(a) Under some of the programs listed in § 100a.1, the appropriate official of the Education Division allots funds under a statutory or regulatory formula.

(b) If the official determines that a grantee does not need all of the funds that are allotted under one of these programs, the official reallocates the unneeded funds among grantees in the same way that the official reallocates funds among states under §§ 100b.230-100b.235.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 119.9(a), (b); 129.20; 186.25(b); 192.3(b), (c), (d))

Subpart E—What Conditions Must Be Met by a Grantee?

Nondiscrimination

Subject	Statute	Regulations
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	45 CFR Part 80.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	45 CFR Part 86.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 <i>et seq.</i>)	45 CFR Part 90.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.160; 100a.262; 112.17; 113.19; 114.63(c)(1)(ix); 114.63(c)(2)(x); 115.16; 158.85; 160f.3(d)(3); 171 App. Sec. 2.2(a); 189.4)

Project Staff

§ 100a.510 Use of a project director.

(a) This section applies to each grantee that uses a project director to administer its project.

(b) The grantee shall insure that its project director has—

- (1) Appropriate professional qualifications, experience, and administrative skills; and
- (2) A clear commitment to the objectives of the project.

(c) The grantee shall give its project director sufficient authority to conduct the project effectively and to spend project funds.

(20 U.S.C. 1221e-3(a)(1))
(Sources: 155.5(e)(3) + (4); 155.9(a)(3) + (4); 157.7(b)(6); 159.9(b)(6))

§ 100a.511 Waiver of requirement for a full-time project director.

(a) The appropriate official of the Education Division may waive a program regulation that requires a full-time project director if:

- (1) The project will not be adversely affected by the waiver; and
- (2)(i) The project director is needed to coordinate two or more related projects; or
- (ii) The project director must teach a minimum number of hours to retain faculty status.

(b) The waiver either permits the grantee—

- (1) To use a part-time project director; or
- (2) Not to use any project director.

(c)(1) An applicant grantee may request the waiver.

(2) The request must be in writing and must demonstrate that a waiver is appropriate under this section.

(3) The appropriate official of the Education Division gives a waiver of a program regulation in writing. The waiver is effective on the date the official signs the waiver.

(20 U.S.C. 1221e-3(a)(1))

(Cross reference: Changes in key people in a research project—See § 74.103(c) of this title)

(Sources: 155.9(a)(3); 157.7(b)(6); 159.9(b)(6))

§ 100a.500 Federal statutes and regulations on nondiscrimination.

Each grantee shall comply with the following statutes and regulations:

§ 100a.515 Qualifications of project staff.

A grantee shall operate its project with a staff that is adequate in education, experience, and number to achieve the objectives of the project.

(20 U.S.C. 1221e-3(a)(1))
(Sources: 155.5(d)(4); 157.7(b)(7); 159.9(b)(7))

§ 100a.516 Inservice training for project staff.

A grantee shall provide any necessary preservice and inservice training for its project staff.

(20 U.S.C. 1221e-3(a)(1))
(Sources: 157.7(b)(8); 159.9(b)(8))

§ 100a.517 Use of consultants.

(a) Subject to federal statutes and regulations, a grantee shall use its general policies and practices when it hires, uses, and pays a consultant as part of the project staff.

(b) The grantee may not use its grant to pay a consultant unless:

- (1) There is a need in the project for the services of that consultant; and
- (2) The grantee cannot meet that need by hiring an employee rather than a consultant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.518 Compensation of consultants—employees of institutions of higher education.

If an institution of higher education receives a grant for research or for educational services, it may pay a consultant's fee to one of its employees only in unusual circumstances and only if—

- (a) The work performed by the consultant is in addition to his or her regular departmental load; and
- (b)(1) The consultation is across departmental lines; or
- (2) The consultation involves a separate or remote operation.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100-100d App. A para. 20c; HEW GAM Ch. 1-45)

§ 100a.519 Changes in key staff members.

A grantee shall comply with § 74.103(c)(2) of this title (replacement or lesser involvement of any key project staff), whether or not the grant is for research.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.260; 100-100d App. A para. 23)

§ 100a.520 Minimum wage rates.

The grantee shall pay a project staff member not less than any minimum wage required under Federal law.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 155.12(b); 157.12(b); 158.68; 159.12(b))

§ 100a.521 Dual compensation of staff.

A grantee may not use its grant to pay a project staff member for time or work for which that staff member is compensated from some other source of funds.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.261; 100-100d App. A para. 17; 1410.15)

Conflict of Interest

§ 100a.524 Conflict of interest: Purpose of § 100a.525.

(a) The conflict of interest regulations of the Education Division that apply to a grant are in § 100a.525.

(b) These conflict of interest regulations do not apply to a "government" as defined in § 74.3 of this title.

Note.—A government must provide a conflict of interest assurance under the standard application required by Subpart N of Part 74.

(c) The regulations in § 100a.525 do not apply to a grantee's procurement contracts. The conflict of interest regulations that cover those procurement contracts are in Part 74 of this title.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.525 Conflict of interest—participation in a project.

(a) A grantee may not permit a person to participate in an administrative decision regarding a project if:

(1) The decision is likely to benefit that person or a member of his or her immediate family; and

- (2) The person—
- (i) Is a public official; or
- (ii) Has a family or business relationship with the grantee.

(b) A grantee may not permit any person participating in the project to use his or her position for a purpose that is—or gives the appearance of being—motivated by a desire for a private gain for that person or for others.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.250; 187.82(a); 1410.14)

Allowable Costs

§ 100a.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are referenced in Subpart Q of Part 74 of this title.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.80-100a.84; 100-100d App. A para. 4b and 9; 100-100d Apps. B, C and D; 119.6; 136.08(b); 155.14; 157.14; 159.14; 160b.7(a)(1); 160c.36(a); 160f.15(a)(1); 162.18(b); 162.64; 164.05(a); 189.34(b); 191.35(a); 197.8(a)(6); 198.4(a)(2))

§ 100a.531 Limit on total cost of a project.

A grantee shall insure that the total cost to the Federal Government is not more than the amount set forth in the notification of grant award.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.51; 100-100d App. A para. 3a; 153.14(a)(1st sent.); 160c.10(b); 189.34)

§ 100a.532 Use of funds for religion prohibited.

(a) A grantee may not use its grant to pay for any of the following:

- (1) Religious worship, instruction, or proselytization;
- (2) Equipment or supplies to be used for any of those activities;
- (3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of those activities; or
- (4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to—

- (1) Prepare them to enter into a religious vocation; or
- (2) Prepare them to teach theological subjects.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 112.11; 113.14; 123.13(e); 131.4(a) + (b); 136.08(c); 158.06; 169.5; 171 App. Sec. 4.2(c); 173.16; 179.25(c); 182.18(b); 185.13(f); 187.4; 189.21(b)(3); 194.7(c))

§ 100a.533 Acquisition of real property; construction.

A grantee may not use its grant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 184.23(b); 185.72(d); 185.92-1; 185.103(b)(3))

§ 100a.534 Foreign travel.

A grantee may not use its grant for foreign travel unless approved in advance by the appropriate official of the Education Division. The term "foreign travel" does not include travel between the United States, Puerto Rico, and the U.S. Virgin Islands.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100-100d App. A para. 13)

§ 100a.535 Training grants—automatic increases for additional dependents.

The appropriate official increases an educational training grant to cover the cost of additional dependents not specified in the notification of grant award if—

- (a) Allowances for those dependents are authorized by the program statute and are allowable under the grant; and
- (b) Appropriations are available to cover the cost.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100-100d App. A para. 3c)

Indirect Cost Rates**§ 100a.560 General indirect cost rates; exceptions.**

(a) Appendices C-F to Part 74 of this title describe the differences between direct and indirect costs and include the principles for determining the general indirect cost rate that a grantee may use for grants under most programs.

(b) Sections 100a.562-100a.568 provide restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.561 Approval of indirect cost rates.

(a) The appropriate official of the Education Division approves an indirect cost rate for a grantee other than a local educational agency.

(b) Each State educational agency, on the basis of a plan approved by the Commissioner, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate for a grantee must be approved annually.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100c.2(a) + (b))

§ 100a.562 Indirect cost rates for educational training projects.

(a) The appropriate official of the Education Division may approve an indirect cost rate for an educational training project at the lesser of—

- (1) The actual indirect cost rate of the grantee; or
- (2) Eight percent of the total direct costs of the project.

(b) This section does not apply to—

- (1) A State (as defined in § 74.3 of this title); or
- (2) A local government (as defined in § 74.3 of this title).

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100-100d App. A para. 4c; 155.11(c); 157.11(c); 159.11(c); 160c.36(a); 160f.15(d))

§ 100a.563 Restricted indirect cost rate—programs covered.

Sections 100a.564-100a.568 apply to each program that has a statutory requirement not to supplant Federal funds, including the following:

Program	Authorizing statute
Bilingual Education	Title VII of the Elementary and Secondary Education Act
Follow Through Program	Sections 551-554 of the Community Services Act of 1974
Indian Elementary and Secondary School Assistance (Part A)	Title III of Public Law 81-874
Strengthening Developing Institutes Program	Title III of the Higher Education Act

(20 U.S.C. 1221e-3(a)(1))

(Source: 100c.1)

§ 100a.564 Restricted indirect cost rate—formula.

(a) An indirect cost rate for a grant under a program covered by § 100a.563 is determined with the following formula:

Indirect cost rate = (Administrative charges + Fixed charges) - (Other expenditures).

(b) Administrative charges, fixed charges, and other expenditures must be determined under §§ 100a.565-100a.567.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100c.2(c))

§ 100a.565 Administrative charge.

(a) As used in § 100a.564, "administrative charge" means the cost of an activity that is for the direction and control of the grantee's affairs that are organization-wide. An activity is not organization-wide if it is limited to one activity, component of the grantee, subject, phase of operations, or other single responsibility.

(b) The term includes a service function, such as accounting, payroll, or personnel, that is normally at the grantee's level even if the function is physically located elsewhere for convenience or better management.

(c) The term does not include expenditures for:

- (1) The governing body of the grantee;
- (2) Compensation of the chief administrative officer of the grantee;
- (3) Compensation of the chief administrative officer of each of the components of the grantee; and
- (4) Operation of the immediate offices of these officers.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100c.2(d))

§ 100a.566 Fixed charges.

As used in § 100a.564, "fixed charges" only include contributions of the grantee to:

- (a) Retirement, including State, county, or local retirement funds, social security, and pension payments; and
- (b) Property, employee, and liability insurance.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100c.2(e))

§ 100a.567 Other expenditures.

(a) As used in § 100a.564, "other expenditures" means the grantee's total expenditures for its Federal and non-Federal activities in the most recent year for which data are available.

(b) The term does not include:

- (1) Administrative charges determined under § 100a.565;
- (2) Fixed charges determined under § 100a.566;
- (3) Capital outlay;
- (4) Debt service;
- (5) Fines and penalties;
- (6) Contingencies; and
- (7) Election expenses.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100c.2(c))

§ 100a.568 Using the restricted indirect cost rate.

(a) Under the programs referenced in § 100a.563, the maximum amount of indirect costs under a grant is determined under the following formula:

Indirect costs = (Indirect cost rate) × (Total direct costs of the grant minus any costs

for capital outlay, debt service, or election expenses).

(b) If a grantee uses an indirect cost rate, the administrative and fixed charges covered by that rate must be excluded from the direct costs it charges to the grant.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100c.2(f) + (g))

Coordination

§ 100a.580 Coordination with other activities.

(a) A grantee shall, to the extent possible, coordinate its project, with other activities that serve similar purposes.

(b) The grantee shall continue this coordination during the entire project period.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100a.275)

§ 100a.581 Methods of coordination.

Depending on the objectives and requirements of a project, coordination could include one or more of the following:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Using the grant funds so as not to duplicate or counteract the effects of funds made available under other programs.

(d) Using the grant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e-3(a)(1))

Evaluation

§ 100a.590 Evaluation by the grantee.

A grantee shall evaluate at least annually:

(a) The grantee's progress in achieving the objectives set forth in its approved application;

(b) The effectiveness of the project in meeting the purposes of the program; and

(c) The effect of the project on persons being served by the project, including persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.276; 121b.11(b) (2nd sent.); 121b.13(a); 121c.34(b); 121e.5; 123.23(a)(5); 127.8(d); 155.9(a)(5); 160b.53(f); 178a.4(c)(5); 187.81(d))

§ 100a.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary or the appropriate official of the Education Division.

(20 U.S.C. 1226c, 1231a)

(Sources: 123.14(b)(7)(i); 123.24(b)(7)(i); 123.53(b)(2)(i); 158.3(b); 160b.3(b)(7)(i); 160c.14(g); 160c.15(g); 160c.31(d); 160f.8(g); 162.38(b); 162.40(a)(3); 185.13(d); 187.81(d)(2))

§ 100a.592 Federal evaluation—satisfying requirement for grantee evaluation.

If a grantee cooperates in a Federal evaluation of a program, the appropriate

official of the Education Division may determine that the grantee meets the evaluation requirements of the program, including § 100a.590.

(20 U.S.C. 1226c, 1231a)

Construction

§ 100a.600 Use of a grant for construction—purpose of §§ 100a.601–100a.615.

Sections 100a.601–100a.615 apply to:

(a) An applicant if it requests funds for construction; and

(b) A grantee if its grant includes funds for construction.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.155; 105.507; 1422.1(a) + (d))

§ 100a.601 Applicant's assessment of environmental impact.

The applicant shall provide the HEW regional office with its assessment of the impact of the project on the quality of the environment in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 and Executive Order No. 11514 (34 FR 4247).

(42 U.S.C. 4332(2)(c).)

(Sources: 100a.185; 1422.7)

§ 100a.602 Preservation of historic sites must be described in the application.

(a) The applicant shall describe in its application the project's relationship to and probable effect on any district, site, building, structure, or object that is included in the National Register of Historic Preservation of the National Park Service.

(b) In deciding whether to make a grant, the appropriate official of the Education Division considers:

(1) The information provided by the applicant under paragraph (a) of this section; and

(2) Any comments by the advisory council on historic preservation.

(16 U.S.C. 470f)

(Sources: 100a.186; 1422.41)

§ 100a.603 Grantee's title to site.

The grantee must have or get a full title or other interest in the site, including right of access, that is sufficient to insure the grantee's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.161; 170.53(a); 1422.3)

§ 100a.604 Availability of cost-sharing funds.

(a) The grantee shall insure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.171; 1422.15)

§ 100a.605 Beginning the construction.

(a) The grantee shall begin work on the project within a reasonable time after the grant is made.

(b) The grantee shall get approval by the appropriate official of the Education Division of the final working drawings and

specifications before the construction is advertised or placed on the market for bidding.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.158; 100a.159(a); 1422.13; 1422.35)

§ 100a.606 Completing the construction.

(a) The grantee shall complete the project within a reasonable time.

(b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.158; 100a.159(b); 1422.13; 1422.35)

§ 100a.607 General considerations in designing facilities and carrying out construction.

(a) The grantee shall insure that the construction is—

(1) Functional;

(2) Economical; and

(3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.

(b) The grantee, shall, in developing plans for the facilities, consider excellence of architecture and design, and inclusion of works of art. The grantee may not spend more than 1 percent of the cost of the project on inclusion of works of art.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.157; 112.2(h); 1422.1(c); ESEA section 502(b)(c))

§ 100a.608 Areas in the facilities for cultural activities.

The grantee shall make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities which are adaptable for artistic and other cultural activities.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.173; 1422.11)

§ 100a.609 Comply with safety and health standards.

In planning for and designing facilities the grantee shall observe nationally recognized safety and health standards and codes, including:

(a) National Fire Protection Association standards;

(b) Standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576); and

(c) State and local codes, to the extent that they are more stringent.

(29 U.S.C. 651)

(Sources: 100a.184; 1422.5)

§ 100a.610 Access by the handicapped.

Each grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities. These regulations are—

(a) For residential facilities—24 CFR Part 40; and

(b) For non-residential facilities—41 CFR Subpart 101-19.6.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.189; 105.503(e); 1422.33)

§ 100a.611 Avoidance of flood hazards.

In planning the construction, the grantee shall, in accordance with the provisions of Executive Order No. 11988 of February 10, 1978 (43 FR 8030) and such rules and regulations as may be issued by the Secretary to carry out those provisions—

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with its construction.

(E.O. No. 11296.)

(Sources: 100a.190; 112.2(e)(2); 1422.37)

§ 100a.612 Supervision and inspection by the grantee.

The grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.172; 1422.25)

§ 100a.613 Relocation assistance by the grantee.

The grantee is subject to the regulations on relocation assistance and real property acquisition in part 15 of this title.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.191; 1422.39)

§ 100a.614 Grantee must have operational funds.

The grantee shall insure that sufficient funds will be available when construction is completed for effective operation and maintenance of the facility.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.171; 1422.15)

§ 100a.615 Operation and maintenance by the grantee.

The grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements for the operation and maintenance of those facilities.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.170; 1422.31)

Equipment and Supplies

§ 100a.618 Charges for use of equipment or supplies.

A grantee may not charge students or school personnel for the ordinary use of equipment or supplies purchased with grant funds.

(20 U.S.C. 1221e-3(a)(1))

(Source: 134.82)

Publications and Copyrights

§ 100a.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published. However, the grantee shall avoid race stereotype or sex bias in project materials, as used in this section—

(1) "Race stereotype" means an assumption that members of a racial group share common abilities, interests, values, or roles because they are members of that group; and

(2) "Sex bias" means an attitude that supports structuring the educational development of boys and girls differently on any basis other than physiological differences.

(b) *Required statement.* The grantee shall insure that any publication that contains project materials also contains the following statements:

"The contents of this (insert type of publication: e.g., book, report, film) were developed with financial assistance from the (insert name of agency in the Education Division that provided the grant), Department of Health, Education, and Welfare. However, those contents do not necessarily represent the position or policy of that agency and a reader should not infer endorsement by the Federal Government."

(20 U.S.C. 1221e-3(a)(1))

§ 100a.621 Copyright policy for grantees and contractors.

(a) A grantee may copyright project materials in accordance with Part 74 of this title.

(b) A contractor may not copyright any project materials developed under the contract unless specifically permitted in the contract.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.622 Definition of "project materials."

As used in § 100a.620 "project materials" means copyrightable work developed with funds from a grant or contract of the Education Division.

(20 U.S.C. 1221e-3(a)(1))

Inventions and Patents

§ 100a.625 Invention and patent policy.

Grantees and contractors are subject to the HEW policy regarding inventions and patents in 45 CFR Parts 6 and 8.

§ 100a.626 Show federal support; give papers to vest title.

(a) Any patent application filed by the grantee for an invention made under a grant shall include the following statement in the first paragraph:

"The invention described in this application was made under a grant from the (insert name of agency in the Education Division that gave the grant), Department of Health, Education, and Welfare."

(b) On request, the grantee shall furnish HEW with executed instruments prepared by the Federal Government, and other papers that may be necessary, to vest in the Federal Government the rights reserved to it in accordance with a determination made in accordance with Part 8 of this title. These instruments and papers enable the Government to apply for and prosecute a patent application, in any country, to cover each invention for which the Federal Government has the right to file an application.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100-100d App. A para. 12; 1409.5; 1415.17)

Other Requirements for Certain Projects

§ 100a.680 Participation of children enrolled in private schools.

If the authorizing statute for a program requires that a grantee must provide an opportunity for participation by children enrolled in private schools, the grantee shall provide that opportunity in accordance with the requirements that apply to subgrantees under §§ 100b.650-100b.663 of this title.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 123.16(d); 158.29; 158.30; 160b.25(b) + (c); 162.12(c)(2)(i)(C) + (c)(2)(ii)(B); 162.40(b)(2)(ix); 185.42(a) + (b)(2) + (e) - (h); 185.95-6)

§ 100a.681 Indian Self-Determination and Education Assistance Act.

The Indian preference provisions of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) apply to the following programs:

(a) Vocational education—The contract program for Indian Tribes and Indian Organizations (see Subpart 2 of Part 105 of this title).

(b) The Indian Education Act (Part B) (See Part 187 of this title).

(c) The Indian Education Act (Part C) (See Part 188 of this title).

(25 U.S.C. 450e(b))

(Sources: 105.202; 187.3; 188.4)

§ 100a.682 Protection of human research subjects.

If a grantee uses a human subject in a research project, the grantee shall protect the person from physical, psychological, or sociological harm.

(20 U.S.C. 1221e-3(a)(1))

(Source: 1410.2)

§ 100a.683 Treatment of animals.

If a grantee uses an animal in a project, the grantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89-544, as amended).

(Sources: 100a.270; 100-100d App. A para. 24; 1410.3)

§ 100a.684 Health or safety standards for facilities.

A grantee shall comply with any Federal health or safety requirements that apply to the facilities that the grantee uses for the project.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100-11d App. A para. 16)

§ 100a.685 Day care services.

(a) If a grantee uses program funds to provide day care services, the grantee shall comply with the Federal Interagency Day Care Regulations in Part 71 of this title.

(b) The appropriate official of the Education Division may waive this requirement by publication of a notice in the Federal Register.

(20 U.S.C. 1221e-3(a)(1))

Subpart F—What are the Administrative Responsibilities of a Grantee?**General Administrative Responsibilities****§ 100a.700 Compliance with statutes, regulations, and applications.**

A grantee shall comply with applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100-100d App. A para. 2a; 153.16(b)(2); 183.4(b)(3); 185.13(m); 1405.1)

§ 100a.701 The grantee administers or supervises the project.

(a) A grantee shall directly administer or supervise the administration of the project.

(b) The grantee may not transfer responsibility to others, in whole or in part, for using program funds or for carrying out of project activities.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.18(a); 100a.30; 100-100d App. A para. 15, 105.604(b); 105.624(a); 121c.10(b)(5)-(c); 123.14(b)(1); 123.24(b)(1); 123.33(b)(1); 132.7(c); 148.16(a); 148.26(a); 160a.21(a); 160b.22(e); 160c.11(d)(2); 162.11(b)(4)(i)-(iii); 162.61(d)(1)-(3); 183.4(b)(1); 185.13(b); 188.12(a); 1400.5; 1403.5(a); 1414.1(b))

§ 100a.702 Fiscal control and fund accounting procedures.

A grantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100-100d App. A para. 5a; 123.14(b)(3); 123.24(b)(3); 123.33(b)(3); 169.26(a)(15); 169.36(a)(12); 170.4; 171.7(a); 186.12(e); 192.4(i))

§ 100a.703 Obligation of funds during the grant period.

A grantee may only use grant funds for obligations it makes during the grant period.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.707 When obligations are made.

The following table shows when a grantee makes obligations for various kinds of property and services.

<i>If the obligation is for—</i>	<i>Then the obligation is made—</i>
(a) Acquisition of real or personal property	On the date the grantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the grantee	When the services are performed.
(c) Personal services by a contractor who is not an employee of the grantee	On the date the grantee makes a binding written commitment to get the personal services.
(d) Performance of work other than personal services	On the date the grantee makes a binding written commitment to get the work.
(e) Public utility services	When the grantee receives the services.

(f) Travel

When the grantee's personnel take the travel.

When the grantee uses the property.
On the date the grant was made.

(g) Rental of real or personal property
(h) A preaward cost that was properly approved by the appropriate official of the Education Division under the cost principles in Appendices C-F to Part 74 of this title.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100a.55)

§ 100a.708 Prohibition of subgrants.

A grantee may not make a subgrant under a program listed in 100a.1 unless specifically authorized by statute.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 160c.11(d)(1); 162.61(d)(2))

Reports**§ 100a.720 Financial and performance reports.**

(a) This section applies to the reports required under Subpart I (Financial reporting) and J (Performance reporting) or Part 74 of this title.

(b) A grantee shall submit these reports annually, unless the appropriate official of the Education Division allows less frequent reporting. However, a grantee of the National Institute of Education shall submit these reports quarterly.

(c) The appropriate official of the Education Division may, under § 74.7 (Special grant or subgrant conditions) or § 74.72(e) (Grantee accounting systems), require a grantee to report more frequently than annually.

(20 U.S.C. 1221e-3(a)(1))

Records**§ 100a.730 Records related to grant funds.****A GRANTEE SHALL KEEP RECORDS THAT FULLY SHOW—**

- (a) The amount of funds under the grant;
- (b) How the grantee uses the funds;
- (c) The total cost of the project;
- (d) The share of that cost provided from other sources; and
- (e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

(Sources: 100a.477; 100-100d App. A para. 5a-b; GEPA Section 437(a))

§ 100a.731 Records related to compliance.

A grantee shall keep records to show its compliance with Federal statutes and regulations that apply to the grant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.732 Records related to performance.

- (a) A grantee shall maintain records of significant project experiences and results.
- (b) The grantee shall use the records under paragraph (a) to—

- (1) Determine progress in accomplishing project objectives; and

- (2) Revise those objectives, if necessary.

(20 U.S.C. 1221e-3(a)(1))

(Source: 172.52)

(Cross-reference: Procedures for revising objectives—See 45 CFR 74.103 (b) and (c))

§ 100a.733 Records related to State approval of applications.

(a) This section applies to programs that require State approval of applications.

(b) The State shall establish a complete case file on each application it receives.

(c) The State shall keep a full record of—
(1) Any hearing related to an application; and

(2) Any proceeding by which the State establishes relative priorities or recommends Federal shares for eligible projects.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 170.5; 171.9)

§ 100a.734 Record retention period.

A grantee is subject to the requirements in Subpart D of Part 74 of this title with respect to records that it must keep. However, Section 437(a) of the GEPA requires that a grantee must keep records for five years after the completion of the activity for which it uses grant funds.

(20 U.S.C. 1232c)

(Sources: 100a.477(a); 100-100d App. A para. 5e; 119.61; 170.5; 171.9; 192.12; GEPA Section 437(a))

Privacy**§ 100a.740 Protection of and accessibility to student records.**

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under Part 99 of this title. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231g)

(Sources: 185.91-3(c); GEPA Section 438)

§ 100a.741 Protection of students' privacy in research and testing.

(a) Section 439(a) of GEPA provides that parents or guardians of children who participate in a research or experimentation project funded by the Office of Education must be given access to instructional material used in that project; and

(b) A grantee shall comply with Section 439(b) of GEPA with respect to psychiatric or psychological examination, testing, or treatment of students as part of a project funded by the Office of Education.

(20 U.S.C. 1232h)

(Source: GEPA Section 439)

Data Collection by a Grantee**§ 100a.750 Approval by the Education Division.**

A grantee does not have to get approval from the Education Division for the use of a data collection instrument unless—

(a) Approval is specifically required under the grant; or

(b) Approval by OMB is required for some other reason under OMB Circular A-40.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.263(d)(1); 100-100d App. A para. 21)

Note.—The OMB review will be replaced by review by the Secretary under the "paperwork control" requirement in Pub. L. 95-561. Procedures for that review are being developed separately and may be incorporated in EDGAR at a later date. That review will cover activities of all Federal agencies whenever—

- (a) The respondents are primarily educational agencies or institutions; and
- (b) The purpose of these activities is to request information needed for the management of, or the formulation of policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

§ 100a.751 Procedures if approval is required.

If approval of a data collection instrument is specifically required under a grant, or if approval by the Office of Management and Budget is required under OMB Circular A-40 for some other reason, the grantee shall submit seven copies of each of the following to the appropriate official of the Education Division:

- (a) The proposed data instrument.
 - (b) A completed Office of Management and Budget Standard Form 83.
 - (c) The supporting statement required in the "Instructions for Requesting OMB Approval under the Federal Reports Act," as set forth in Standard Form No. 83A.
- (20 U.S.C. 1221e-3(a)(1))
(Source: 100a.263(d)(2))

§ 100a.752 Responsibility for data collection.

Unless the Office of Management and Budget approves a data collection instrument, the grantee may not in any way represent or imply that the data is being collected by or for the Federal Government. This does not preclude the grantee from acknowledging the assistance it received under the grant.

(20 U.S.C. 1221e-3(a)(1))
(Source: 100a.263(e))

§ 100a.753 Confidentiality of response.

In using data collection instruments, a grantee shall provide for anonymity and confidentiality of responses from individuals.

(20 U.S.C. 1221e-3(a)(1))
(Sources: 100a.263(c)(2); 1410.1)

§ 100a.754 Exception from coverage.

The regulations in §§ 100a.750—100a.753 do not apply to instruments that deal solely with—

- (a) Functions of technical proficiency, such as scholastic aptitude, school achievement, and vocational proficiency;
- (b) Routine demographic information; or
- (c) Routine institutional information.

(20 U.S.C. 1221e-3(a)(1))
(Source: 100a.263)

§ 100a.755 Definitions used in §§ 100a.750—100a.753.

As used in §§ 100a.750—100a.753:

"Data collection instrument" means a report form, application form, schedule, questionnaire, or similar instrument for getting answers to identical questions from ten or more respondents.

"Respondent" is an individual or organization from whom information is collected either directly or indirectly.

(20 U.S.C. 1221e-3(a)(1))
(Source: 100a.263(a))

Subpart G—What Procedures Does the Education Division Use to Get Compliance?

§ 100a.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of HEW may waive any regulation that applies to an Education Division program, unless the regulation specifically provides that it may be waived.

(b) No act or failure to act by an official, agent, or employee of HEW can affect the right of the appropriate official of the Education Division to enforce a regulation.

(43 Dec. Comp. Gen. 31 (1963))
(Source: 100a.483)

§ 100a.901 Suspension and termination.

(a) The appropriate official of the Education Division uses the Department's Grant Appeals board to resolve disputes within the jurisdiction of that board. The regulations governing the Grant Appeals board are in Part 16 of this title (See 45 CFR 16.5 for jurisdiction of the board).

(b) The Commissioner may use the Education Appeals Board to resolve disputes that are not within the jurisdiction of the Grant Appeals Board.

(c) The following regulations in Part 74 of this title apply to suspension and termination of a grant:

- (1) Section 74.113 (Violation of terms).
- (2) Section 74.114 (Suspension).
- (3) Section 74.115 (Termination).
- (4) The last sentence of § 74.73(c) (Financial reporting after a termination).
- (4) Section 74.112 (Amounts payable to the Federal Government).

(20 U.S.C. 1221e-3(a)(1))
(Sources: 111.1; 111.2(b)(c); 111.3; 111.4; 111.5; 111.8; 111.7; 111.8; 111.9; 111.10; 111.69(a) (third sent.) and (b)-(h))

§ 100a.902 Informal procedures.

Although either the appropriate official of the Education Division or the grantee may request an informal meeting regarding a proposed termination, the grantee is considered, for purposes of § 16.5(b)(2) of this title, to have exhausted Education Division informal procedures when the grantee receives the notice of termination.

(20 U.S.C. 1221e-3(a)(1))
(Source: 100a.495(g)(2))

§ 100a.903 Effective date of termination.

Termination is effective—

- (a) On delivery to the grantee of the notice of termination; or
 - (b) If the Grant Appeals Board takes jurisdiction of the termination proceeding, on final decision under § 16.10 of this title.
- (20 U.S.C. 1221e-3(a)(1))

PART 100c—GENERAL

Sec.

100c.1 Definitions that apply to all Education Division Programs.

100c.2 Records under the Freedom of Information Act.

Authority: Sec. 408(a)(1) of Pub. L. 90-247, as amended, 88 Stat. 559, 560 (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

PART 100c—GENERAL

§ 100c.1 Definitions that apply to all Education Division programs.

(a) Unless a statute or regulation provides otherwise, the definitions in this section apply to the regulations for—

- (1) The Museum Services Program (Part 64 of this title);
- (2) Programs of the Office of Education (Parts 100-199 of this title);
- (3) Programs of the National Institute of Education (Parts 1400-1499 of this title); and
- (4) Programs of the Office of the Assistant Secretary for Education (Parts 164 and 1501 of this title).

(b) The following definitions in Part 74 of this title apply to the regulations listed in paragraph (a) of this section. The section of Part 74 which contains the definition is given in the parentheses.

Budget (74.104)
Contract (includes definition of SUBCONTRACT) (74.3)
Equipment (74.132)
Federally recognized Indian tribal government (74.3)
Grant (74.3)
Grantee (74.3)
HEW (74.3)
Local government (74.3)
Personal property (74.132)
Real property (74.132)
Recipient (74.3)
Subgrant (74.3)
Subgrantee (74.3)
Supplies (74.132)

(c) The following definitions also apply to the regulations listed in paragraph (a) of this section:

"Acquisition" means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

(Sources: 134a.5; 117.20; 100.1; 131.2)

"Applicant" means a party requesting a grant or subgrant under a program of the Education Division.

(Sources: 100.1; 114.1(b); 115.3(b); 1400.1)

"Application" means a request for a grant or subgrant under a program of the Education Division.

(Sources: 100.1, 1400.1, 115.3(c), 114.4)

"Appropriate Official of the Education Division" means the official that has overall administrative responsibility for an Education Division program. For each program, that official is one of the following—

- (a) The Assistant Secretary;
- (b) The Commissioner;
- (c) The Director of the National Institute of Education; or

(d) The Director of the Institute of Museum Services.

"Assistant Secretary" means the Assistant Secretary for Education of the Department of Health, Education, and Welfare or an official or employee of the Education Division to whom the Assistant Secretary has delegated authority.

(Source: 185.02(a))

"Award" means an amount of funds that the Education Division provides under a grant or contract.

(Source: 1400.1)

"Budget Period" means an interval of time into which a project period is divided for budgetary purposes.

(Sources: HEW GAM 1-85; 100.1; 1400.1)

"Commissioner" means the U.S. Commissioner of Education or an official or employee of the Office of Education to whom the Commissioner has delegated authority.

(Sources: 100.1; 105 App A; 100-100d App A para. 1(2); 190.2(d); 116.2(b))

"Department" means the U.S. Department of Health, Education, and Welfare.

(Sources: 100-100d App A para. 1(b); 1400.1)

"EDGAR" means the Education Division General Administrative Regulations (parts 100a, 100b, and 100c of this title).

"Director of the Institute of Museum Services" means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services to whom the Director has delegated authority.

"Director of the National Institute of Education" means the Director of the National Institute of Education or an officer or employee of the National Institute of Education to whom the Director has delegated authority.

"Education Division" means the HEW agency, headed by the Assistant Secretary, that is composed of—

(a) The Office of the Assistant Secretary (which includes the National Center for Education Statistics);

(b) The Office of Education;

(c) The National Institute of Education; and

(d) The Institute of Museum Services.

(Source: GEPA Section 401)

"Elementary school" means a day or residential school that provides elementary education, as determined under State law.

(Sources: 160f.2; 191.12; 100.1; 116.2(b) App. sec. 403)

"Facilities" means one or more structures in one or more locations.

(Sources: 153.3; 1422.1(b); 100b.156)

"Fiscal year" means a period beginning on October 1 and ending on the following September 30.

(Source: 100.1; 1400.1; 1501.3)

"GEPA" means The General Education Provisions Act.

"Grant period" means the period for which funds have been awarded.

(Sources: HEW GAM 1-85; 100-100d App A para. 1(h); 1400.1; 100.1)

"Local educational agency" means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control or

direction of, or to perform service functions for public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties as a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary schools.

(Sources: 129.1(j); 127.1(j); 121.2; 121a.8; 160f.2; 116.2(b); 181.2; 141.1; 104 App A; 197.2; 123.02(d); 196.12; 160.3; 123.02(d); 144.2; 166.73(a); 162.2; 160b.2; 124.2; 112.1; 160a.3; 185.02; 160g.2; 127.2; 113.1; 172.3; 134.2; 114.1(m); 158.2; 118.2; 117.2; 160.2; 160c.2; 186.2; 118.23)

"Minor remodeling" means minor alterations, in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repair.

(Sources: 1400.1, 100.1, 134.2; 141.1; 142.3; 186.2)

"Nonprofit", as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

(Sources: 160f.2, 175.2, 190.2, 100.1, 1501.3)

"Nonpublic" as applied to elementary or secondary school means nonprofit elementary or secondary school that is operated or controlled by an organization that is not a public agency.

(Sources: 160.62, 191.12, 160b.2, 197.2)

"Preschool" means the educational level from a child's birth to the time at which the State provides elementary education.

(Source: 100.1)

"Private" as applied to an agency, organization, or institution, means that it is not under public supervision or control.

(Sources: 1401.1; 1501.3)

"Project" means the activity described in an application.

(Source: HEW GAM 1-85)

"Project period" means the period for which the appropriate official of the Education Division approves a project.

(Source: HEW GAM 1-85, 1400.1)

"Public", as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

(Source: 1400.1; 1501.3)

"Secondary school" means a day or residential school that provides secondary education, as determined under the State law. In the absence of State law, the Commissioner determines whether the term includes education beyond the twelfth grade.

(Sources: 155.4(f); 159.2; 160f.2; 100.1; 141.1; 191.12; 116.2(b))

"Secretary" means the Secretary of the Department of Health, Education, and Welfare, or an official or employee of the Department to whom the Secretary has delegated authority.

(Sources: 1400.1, 105 App A; 100.1)

"Service function", with respect to a local educational agency—

(a) Means an educational service that is performed by a legal entity, such as an intermediate agency—

(1)(i) Whose jurisdiction does not extend to the whole State; and

(ii) That is authorized to provide consultative, advisory, or educational program services to public elementary or secondary schools; or

(2) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.

(b) The term does not include a service that is performed by a cultural or educational resource.

(Source: 100.1)

"State" includes each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Sources: 107.1(h); 117.2; 119.1(n); 123.02(h); 129.1(n); 130.3; 141.1; 148.2; 154.2; 155.2; 157.2; 159.2; 160.3; 160c.2; 180.3; 189.1; 192.2; 121a.15; 105 App. A; 153.3; 158.2; 178a.2; 187.2; 193.2; 191.12; 175.2; 176.2; 190.2; 172.3)

"State educational agency" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

(Sources: 197.1; 107.1(1); 121.2; 134.2; 160a.3; 160g.2; 185.02; 158.2; 197.2; 164.03; 117.1; 123.02(1); 141.1; 160b.2; 162.2; 186.2; 187.2; 116.2(b); 160f.2; 172.3; 166.73(a); 119.1(0); 129.1(1); 160.3; 160d.2; 191.12)

"Work of art" means an item that is incorporated into facilities primarily because of its aesthetic value.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100.1)

§ 100c.2 Records under the Freedom of Information Act.

The Education Division makes records available in accordance with the Freedom of Information Act and the Department's regulations in part 5 of this title. The Education Division uses the fee schedule in § 5.1.

(5 U.S.C. 552)

(Sources: 100.5; 100.6; 100.7)

[FR Doc. 79-36293 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-02-M

Social Security Administration**45 CFR Part 205****Aid to Families with Dependent Children; Increased Federal Financial Participation**

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These regulations provide the rules we will use in the Aid to Families with Dependent Children (AFDC) program to increase our Federal matching payments to States with low error rates. Increased Federal Financial Participation (FFP) is available to States with a dollar error rate of less than 4 percent in any 6 month sample period. The "dollar error rate" includes the value of payments to ineligible families, overpayments and underpayments to eligible families, and estimated nonpayments to families incorrectly terminated or denied assistance. For each one-half percentage point below 4 percent in which a State's dollar error rate falls, we will give the State 10 percent of the Federal share of money saved, up to a maximum of 50 percent. The 50 percent maximum will apply if a State's dollar error rate is below 2 percent.

EFFECTIVE DATE: The regulations are effective November 26, 1979. However, in accordance with the law which these rules reflect, increased FFP for States with low error rates is available beginning January 1, 1978.

FOR FURTHER INFORMATION CONTACT: Sean Hurley, Division of AFDC Quality Control 202-245-8999.

SUPPLEMENTARY INFORMATION:**Introduction**

We require the States to operate a quality control (QC) system for the AFDC program. The primary purpose of this system is threefold: (1) to supply State and Federal administrators with information concerning the correctness of eligibility determination and payment amounts; (2) to evaluate the correctness of actions taken to deny or terminate assistance; and (3) to provide information on the nature and cause of error so that corrective action and other administrative improvements may be made.

The AFDC quality control system is essential for promoting correct expenditures of public assistance funds. Since the inception of the current quality control program in AFDC, incorrect expenditure error rates have declined dramatically. The AFDC erroneous

payment error rate (payment to ineligible families and overpayments to eligible families) declined from 16.5 percent in 1973 to 8.6 percent in 1977. To encourage further improved State management of the program, Congress in the 1977 amendments to the Social Security Act, provided for an increase in Federal matching for States with error rates below 4 percent. In order to ensure that State error rate reduction would not result in underpayments or indiscriminate denial of applications or terminations of assistance, the 4 percent error rate includes incorrect denials and terminations as well as underpayments.

Response to Public Comments

The Notice of Proposed Rulemaking was published in the Federal Register on November 20, 1978 (43 FR 54105). Comments were received from 33 State and local welfare departments, 3 legal aid organizations and 2 private individuals, and other public and private organizations. The significant comments and our responses follow:

Appropriateness of 4 Percent Standard

Comment: Most States were against use of a 4 percent dollar error rate as the standard below which increased FFP would be provided. Their reasons ranged from the belief that the 4 percent standard provided little incentive for error reduction because potential increased FFP would be offset by cost of reducing error rates below 4 percent, to the need for several standards to recognize variation in program complexity between States. Some States suggested that the 4 percent dollar error rate standard include only payments to ineligible families and overpayments to eligible families.

Response: The 4 percent standard and the component error rates that make it up are specified in section 403(j) of the Social Security Act. We have no discretion in the application or the amount of the incentive payment. We have proposed a statutory amendment (section 123 of H.R. 4321, "The Social Welfare Reform Amendments of 1979") to provide for a separate case error rate tolerance for incorrect negative case actions. States would be required to achieve both error rate standards to receive increased FFP. This proposed amendment would serve the purpose of retaining a review of negative case action and would make the 4 percent standard a more achievable goal since the negative case error rate would not be added to the payment error rate for active cases. The Congressional intent that error reduction would not be accomplished through incorrect denial

of applicants or termination of recipients would be retained.

Use of Average Payment

Comment: A number of States expressed concern about the proposed use of the average amount of payment to sampled cases receiving AFDC in a 6-month quality control period in calculating the dollar error value of negative case action errors. States view this proposed method as overstating the dollar error rate since erroneously denied and terminated cases would more likely have an average lower dollar entitlement than the average for all sampled active cases. Some commenters suggested that States close to the 4 percent standard determine the actual amount of payments erroneously denied or terminated.

Response: The Social Security Act (section 403(j)) requires that we provide increased FFP to States with error rates below 4 percent beginning with the January-June 1978 sample period. We recognize that use of an average payment may over or underestimate the actual amount of dollars that should have been paid. Any alternative short of re-creation of the data would be subject to the same bias. We do not believe that re-creation of the January-June 1978 sample data or the conduct of a full eligibility review for subsequent periods is a viable alternative since it would require considerable Federal and State staff resources.

Use of QC System

Comment: A number of States commented that the quality control system was developed as a State management tool and should not be used to adjust FFP. The system to be used for both purposes should be modified or redesigned. Several States suggested that any incentive payments should not be made until the QC system is modified.

Response: The quality control system is the only existing system that generates State and national error rates. Congress has determined that incentive payments would be based on State performance as indicated by the QC system. These payments are required to be made beginning with the January-June 1978 period.

Timely Notice Errors

Comment: States objected to calculating dollar amounts of error for error due to failure to comply with timely notice and hearing requirements since these were viewed as procedural omissions.

Response: The hearing regulations require that recipients receive timely

notice of intended State action to terminate assistance. Where a State does not comply with the timely notice or hearing requirements, the recipient is denied assistance which the agency is required to provide.

Alternative Methods for Calculating Incentive Payments

Comment: States and other commenters suggested a variety of different methods for determining the basis for and extent of increased FFP. These alternatives included excluding negative case action errors and underpayments from the calculation of the incentive amount; crediting an amount when assistance was correctly denied or terminated; and adding an assigned positive dollar value for underpayments and negative case action errors to the erroneous payment rate.

Response: The proposed alternatives would have the effect of increasing the amount of the incentive as well as eligibility of States for an incentive payment contrary to section 403(j) of the Social Security Act. As previously discussed, we have proposed a statutory amendment to provide for a separate case error rate tolerance for incorrect negative case actions.

Description of Incentive Calculation

Comment: Several States said that the final regulation should provide a detailed description of how we would calculate incentives.

Response: The final rule includes a detailed description.

Counting Procedural Eligibility

Comment: Some States objected to including procedural errors like the absence of Work Incentive (WIN) program registration or social security number in the calculation of the dollar error rate and the erroneous payment rate. They argue that since these errors do not result in a dollar loss when the error is corrected, they should not be included in the calculation of these error rates.

Response: The dollar error rate and the erroneous payment error rate will include these errors. These are basic statutory eligibility requirements and we must ensure that all eligibility requirements are met.

Agency Errors Only Should Be Counted

Comment: Some commenters suggested that only agency errors, not those caused by recipients, should be counted in determining the payment error rate.

Response: We believe that many recipient errors are controllable as

shown by the more than 50 percent reduction in these errors since 1973. If we do not include these errors in the dollar error rate, the States would not have as great an incentive to develop systems that are responsive to nonreporting and incorrect reporting errors. Moreover, the statute does not make any distinctions based on the cause of errors.

The \$5 Disregard

Comment: Several States objected to the \$5 disregard before we cite an incorrect payment as an error. The States contended that in disregarding incorrect payments of less than \$5, we overlook incorrect payments of more than 6 percent of the average payment in States with the smallest payment levels, while overlooking incorrect payments of only 1 percent of the average payment in States with the highest payment levels.

Response: While this ratio will always exist between the largest and smallest average payment States as long as there is an error dollar tolerance in individual cases, the impact of such a tolerance on the 4 percent dollar standard error rate will be negligible. We do not believe we should distort the analysis of case or payment error rates with insignificant error amounts. Therefore, we will retain the less than \$5 error disregard.

Recoupment

Comment: One State suggested that the amount of a State's recoupment of misspent monies from sample cases should be used to lower its payment error rate.

Response: The payment error rate in the QC sample measures the rate of error in the entire caseload. The adjustment of misspent dollars by the amount of recoupment of these sampled cases distorts the extent of influence such adjustments have on misspent dollars in the entire caseload. For example assume that 10 percent of the misspent dollars in the sample were recouped. By adjusting the error rate we assume that 10 percent of all misspent dollars are recouped.

The Final Rules

Section 403(j) of the Act provides for increased FFP to States for any 6-month period beginning January 1, 1978. In the Notice of Proposed Rulemaking we established the QC sample period on a calendar year basis, i.e., January-June, July-December. In these final regulations, we have shifted the QC sample period to the Federal fiscal year cycle, i.e., April-September, October-March beginning with April 1978. We are making this change so these

regulations will conform with the fiscal year cycle contained in the QC regulations published in the *Federal Register* on March 7, 1979 (44 FR 12579). Since FFP is paid on a quarterly basis, both the January-June 1978 and April-September 1978 dollar error rates apply to the April-June 1978 calendar quarter. The smaller of the two reporting period dollar error rates will be used in determining a State's eligibility for and amount of increased FFP for that quarter.

In addition, for greater clarity and easier reading we have provided an introductory paragraph, rearranged the rules in a more logical sequence and included an example of how States receive increased FFP for low error rates. Finally, we have renumbered the new section as 205.43, rather than 205.42 which was used in the NPRM. Accordingly, with these clarifying and editorial changes this regulation is adopted as set forth below.

(Sections 403, 407, and 1102 of the Social Security Act, as amended; 49 Stat. 628 as amended, 75 Stat. 75 as amended; 49 Stat. 647 as amended; 42 U.S.C. 603, 607, and 1302.)

(Catalog of Federal Domestic Assistance Programs No. 13.761—Public Assistance—Maintenance Assistance (State Aid))

Dated: October 22, 1979

Stanford G. Ross,

Commissioner of Social Security.

Approved: November 7, 1979.

Patricia Roberts Harris.

Secretary of Health, Education, and Welfare.

45 CFR Part 205 is amended by adding a new § 205.43 to read as follows:

§ 205.43 Increase in Federal financial participation (FFP) for States with low error rates.

(a) *Purpose.* (1) This section provides the rules we will use to determine whether we will increase the amount of Federal matching funds (Federal financial participation or FFP) we give to a State and, if so, the amount of the increase. Basically, we will increase the amount of matching funds to States with low error rates in their AFDC program as allowed under rules in this section. These rules apply to all States which have an AFDC program.

(2) We will use the data from the quality control system (see § 205.40) in each State and the Federal monitoring system in determining the amount of incorrect payments and payments that should have been made. The quality control (QC) system provides data on incorrect payments and nonpayments for every 6-month period.

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

"Assistance payment error rate" means the combined dollar amounts of a State's incorrect payments to ineligible families receiving assistance and overpayments and underpayments to eligible families receiving assistance, expressed as a percentage of the State's total payments.

"Dollar error rate" means the error rate obtained by combining the assistance payment error rate for ineligible, overpaid and underpaid cases with an estimated nonpayment error rate that results from incorrect terminations and denials.

"Erroneous excess payments" means the total of erroneous payments to ineligible families receiving assistance and overpayments to eligible families receiving assistance.

"Nonpayment error rate" means the estimated dollar amounts of a State's incorrect terminations and denials, expressed as a percentage of a State's total payments.

"Termination and denial error rate" means the number of a State's incorrect actions to terminate or deny assistance, expressed as a percentage of a State's total number of terminations and denials.

"We" means the Department or the Social Security Administration, as appropriate.

(c) *General.* In these rules we are establishing the basis under which States will receive increased FFP for dollar error rates below 4 percent. The increased FFP will be available beginning with the January-June 1978 quality control sample period and for subsequent periods. Beginning April 1978 the 6-month QC sampling periods will conform with the Federal fiscal year cycle, i.e., April-September, October-March. For each one-half percentage point below 4 percent, in which a State's dollar error rate falls, a State will receive an additional 10 percent of the Federal share of money saved, up to a maximum of 50 percent if the State's dollar error rate is below 2 percent. To figure the amount of increased FFP requires a two step computation. We first establish the dollar error rate. This rate determines a State's eligibility for increased FFP and, for eligible States, the percentage adjustment, between 10 and 50 percent, that will be applied in the 6-month period. The next step is to determine the State's erroneous excess payments and what those payments would have been at a rate of 4 percent. The percentage adjustment is applied to the difference. We describe this process in detail in the following paragraphs of this section.

(d) *How we establish a dollar error rate.*—(1) *Information we will use.* We will use the information provided by the Federal/State quality control system. This system measures the dollar amount of incorrect payments and the number of incorrect terminations and denials for every 6-month period.

(2) *How we use the information.* We will obtain a dollar error rate of incorrect payments and nonpayments in the following manner:

(i) We will figure the dollar amount of incorrect payments by multiplying the State assistance payment error rate for ineligibility, overpayments and underpayments by the total of State expenditures to AFDC families subject to sampling under the AFDC QC system in the 6-month period.

(ii) We will figure the dollar amount of incorrect nonpayments as follows:

(A) Obtain a total number of incorrect terminations and denials by multiplying the State's termination and denial error rate by the total number of terminations and denials subject to sampling under the AFDC QC system in the 6-month period; and

(B) Obtain a dollar amount for incorrect nonpayments by multiplying the total number of incorrect terminations and denials in step (A) by the average monthly cash payment made to AFDC QC sample cases in the 6-month period.

(iii) We will obtain the dollar error rate by dividing the sum of the dollar amounts of incorrect payments and nonpayments in steps (i) and (ii) by the total of State expenditures to AFDC families subject to sampling under the AFDC QC system in the 6-month period.

Example

The total State payments made to AFDC families subject to sampling under the AFDC QC system in a 6-month period are \$1,000,000. The assistance payment error rate for ineligibility (1 percent), overpayments (1.4 percent), and underpayments (0.1 percent) is 2.5 percent. This equates to incorrect payments of \$25,000 (2.5 percent \times \$1,000,000). The termination and denial error rate is 0.5 percent. There were 4,000 terminations and denials subject to sampling in the 6-month period and the average monthly cash payment made to AFDC sample cases in the period was \$250. Therefore, the estimated incorrect nonpayment dollar amount would be \$5,000 (0.5 percent \times 4,000 \times \$250). The dollar error rate is the sum of \$25,000 and \$5,000 divided by \$1,000,000, or 3 percent.

(e) *How increased FFP will be determined.*—(1) *What percentage*

adjustment is applied. We will apply the following percentage adjustment:

If the dollar error rate is—

	Percentage adjustment applied
4 percent or greater	0
at least 3.5 percent but less than 4 percent	10
at least 3 percent but less than 3.5 percent	20
at least 2.5 percent but less than 3 percent	30
at least 2 percent but less than 2.5 percent	40
Less than 2 percent	50

(2) *How the percentage adjustment is applied.* States with a dollar error rate of less than 4 percent will receive increased FFP. The adjustment percentage provided in paragraph (e)(1) of this section will be applied to the difference between a State's erroneous excess payments and what those payments would have been at a rate of 4 percent.

Example

Using the example in paragraph (d)(2) of this section, the amount of increased FFP would be determined as follows. The amount of erroneous excess payments is obtained by multiplying the combined payment error rate for ineligibility and overpayments (2.4 percent) by the total payments made to AFDC families (\$1,000,000). This equates to \$24,000. If the combined payment error rate for ineligibility and overpayments were 4 percent the erroneous excess payments would have been \$40,000, or \$16,000 more. Assuming the Federal share is 50 percent the Federal share of the \$16,000 difference would be \$8,000. Since the State has a 3 percent dollar error rate the percentage adjustment is 20 percent. The increase in FFP would therefore, by \$8,000 \times 20 percent, or \$1,600.

[FR Doc. 79-35939 Filed 11-21-79; 8:45 am]

BILLING CODE 4110-07-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1067

Revision Access to Publications: Federal Register and the Code of Federal Regulations

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: Since 1972 the Community Services Administration (CSA) has utilized a dual issuance system or all rules; publication of its rules in the Federal Register and distribution of these same rules as CSA Instruction. CSA is now moving towards using the Federal Register and the Code of Federal Regulations as its sole issuance

system for all rules and will discontinue issuing CSA Instructions early in 1980. CSA now requires that all grantees purchase copies of the Code of Federal Regulations in addition to subscribing to the Federal Register. Based on CSA's published rules, CSA has determined that this is not a significant rule.

EFFECTIVE DATE: This rule is effective December 26, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Rita C. Kane, 1200 19th Street, NW., Washington, D.C. 20506. Telephone: (202) 254-5047.

SUPPLEMENTARY INFORMATION: Prior to 1972 the Community Services Administration (CSA), formerly the Office of Economic Opportunity, was not required by statute to codify and publish its regulations in the Federal Register. Between 1964 and 1968 CSA issued its regulations in booklets known as Community Action Guides Volumes I and II and through Community Action Memos. Beginning in 1968 all directives were issued in the form of OEO/CSA Instructions.

In 1972 Section 623 [redesignated Section 622, November 2, 1978] of the Economic Opportunity Act of 1964, as amended, required that all new rules, regulations, guidelines, instructions and application forms be published in the Federal Register. Since 1972 CSA has utilized a duplicate issuance system for all rules: Publication of its rules in the Federal Register and distribution of these same rules as CSA Instructions to its grantees. CSA now is moving towards use of the Federal Register as the sole source of publication of its rules. As of October 1, 1979 all CSA Rules (except CSA Instruction 6710-1) have been published in the Federal Register.

The Code of Federal Regulations (CFR) is a codification of the general and permanent Rules published in the Federal Register by the Executive departments and agencies of the Federal Government. Each Volume of the Code is revised at least once each calendar year. The Code is kept up to date by the individual issues of the Federal Register. These two publications, used together, determine the latest version of any given Rule. Each annual volume of the Code contains amendments published in the Federal Register since the last publication.

Upon publication of the October 1, 1979 Volume of the Code of Federal Regulations (CFR), Title 45, Part 500 to end, which will be available for distribution (and purchase) in the Spring of 1980, CSA will use the CFR and the daily issues of the Federal Register as the systems for making available for

public use its rules and regulations. At that time CSA will discontinue the issuance of its Instructions.

Grantees will be required to purchase a copy of the CFR, Title 45, Part 500 to end in addition to subscribing to the Federal Register which they are already required to do.

Each grantee should assure that at least one copy of all Community Service Administration Rules are forwarded to the Director of each of its delegate agencies, CAA Board Members, and that CSA Rules are available to the general public.

Graciela (Grace) Olivarez,
Director.

45 CFR §§ 1067.6-1—1067.6-4 and the Subpart heading are revised as follows:

Subpart 1067.6—Access to Publications: Federal Register and the Code of Federal Regulations (CSA Instruction 7000-1a)

Sec.

1067.6-1 Applicability.

1067.6-2 Policy.

1067.6-3 Procedures.

1067.6-4 Allowable Cost.

Authority: Sec. 602, 78 Stat. 530, 42 U.S.C. 2974.

Subpart 1067.6—Access to Publications: Federal Register and the Code of Federal Regulations (CSA Instruction 7000-1a)

§ 1067.6-1 Applicability.

This subpart applies to all grants funded under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1067.6-2 Policy.

(a) CSA publishes all proposed and final rules in the Federal Register (Monday and Thursday). CSA's General Conditions Governing Grants states that "Program funds expended under authority of this funding action are subject to the provisions of * * * Community Services Administration (CSA) directives." Therefore in order to have available these directives (rules and regulations) CSA requires grantees to subscribe to the Federal Register at \$50 a year. (This subscription includes the monthly publication list of CFR sections affected (LSA) and the index to the Federal Register.)

(b) Grantees are also required to purchase the Code of Federal Regulations (CFR), Title 45, Part 500 to end, (only) beginning with the October 1, 1979 edition which should be available in the spring of 1980. The price of this edition and the subscription form will be

published in the Federal Register. These two publications, the Federal Register and the Code of Federal Regulations will provide grantees with a complete and up-to-date set of all current CSA rules.

(c) In the interim period, between October 1, 1979 and publication of the 1979 edition of the Code of Federal Regulations (CFR) in the Spring of 1980, new grantees are required to purchase the October 1, 1978 edition of the CFR, Title 45, Part 500 to end, at \$8.25 per copy in addition to subscribing to the Federal Register.

(d) CSA will automatically forward to these new grantees the October 1, 1979 issue of the Federal Register and copies of all other rules published in the Federal Register since October 1, 1978 which, combined with the CFR will make up a complete set of CSA rules.

(e) Each grantee should assure that at least one copy of all CSA's Rules are forwarded to the Director of each of its delegate agencies, CAA Board Members, and that CSA Rules are available to the general public.

(f) CSA urges all grantees to purchase "The Federal Register: What It Is And How To Use It" at \$2.40 per copy. This Handbook is a guide for the user of the Federal Register and the Code Of Federal Regulations.

§ 1067.6-3 Procedures.

The Federal Register, the Code of Federal Regulations, and the "Federal Register: What It Is And How To Use It" (Stock No. 022-003-00953-1) can be purchased from: The Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

§ 1067.6-4 Allowable cost.

Costs for these publications are an allowable cost charged to grant funds. They should be included under "Other Costs" on the budget form.

[FR Doc. 79-36383 Filed 11-23-79; 8:45 am]

BILLING CODE 6315-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[No. 32153 (Sub-No. 7)]

Rebuilding Rule for Railroad Property Units¹

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is revising its accounting

¹ This proceeding also embraces part of Docket No. 33145, Railroad Freight Car Per Diem Charges.

regulations for identifying railroad rebuilding expenditures (commonly referred to as the Rebuilding Rule, Instruction 2-11(b) of 49 CFR, Part 1201, Subpart A). The objective in revising the Rebuilding Rule is to provide more realistic guidelines for distinguishing railroad rebuilding expenditures from normal maintenance and repairs.

DATES: Effective January 1, 1979.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275-7448.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking and Order (NPR) served on April 24, 1979, and published in the *Federal Register* on April 30, 1979 (44 FR 25256), we made public that we had under consideration a revision to our accounting regulations for identifying railroad rebuilding expenditures. The existing Rebuilding Rule consists of quantitative criteria for use in distinguishing rebuilding expenditures for road and equipment property from ordinary repair and maintenance expenditures. Under this rule, a unit of road or equipment property is accounted for as rebuilt if the project costs exceed more than 50 percent of the current price of a comparable new unit of property. The current accounting regulation would lead to distortion of reported earnings by recognizing only the quantitative nature of repair expenditures and not the underlying benefits.

The revised Rebuilding Rule adopts the criteria required under generally accepted accounting principles (GAAP). GAAP differentiates between a repair and capital expenditure by analyzing the benefits of the expenditure. Restoration expenditures are capitalized if they appreciably extend the service life of the asset or expand its utility; otherwise, the expenditures are considered as merely maintaining or restoring the asset to normal operating condition and are accounted for as an expense. We received seven responses to the NPR. Five responses generally favored the new Rebuilding Rule and two opposed it.

The discussion which follows is arranged according to the subject matter of the various arguments raised by the respondents.

Need for the Accounting Change

Union Pacific (UP) and Southern Railway (Southern) oppose the accounting change because they believe the present regulations provide a sufficient accounting distinction between rebuilding expenditures and repair and maintenance expenditures. Southern believes the current regulations meet the requirements of

generally accepted accounting principles (GAAP).

We disagree. The present rule is based solely on a percentage criterion which does not always reflect the underlying benefits of an expenditure. Under the present rule, a rebuilding expenditure which extends the life of an asset will be accounted for as an expense if it does not exceed 50% of the current price of new comparable units of property. This is not the intent of GAAP. The proposed rule meets the intent of GAAP by distinguishing rebuilding expenditures from repair and maintenance expenditures by considering whether an expenditure substantially extends the life of an asset or merely maintains the asset. We believe this is an important distinction which is not provided for in the present rule.

Use of General Guidelines

UP and Southern believe the use of general guidelines leads to subjective judgments and different ledger values for similar equipment. UP and Southern believe using the general guidelines will make accounting control over these expenditures much more difficult.

We recognize that judgments are generally necessary in accounting processes. However, the life analysis techniques (Actuarial, Simulated Plant Record, etc.) currently used in determining the service lives of railroad properties would be helpful in assessing whether an expenditure substantially extended the life of a property. We do not believe this adopted GAAP would prove to be more difficult to audit than any other GAAP's adopted by the Commission previously on other subjects.

Association of American Railroads (AAR), Consolidated Rail Corporation (Conrail), Chessie System (Chessie), Richmond, Fredericksburg and Potomac (RF&P) believe the words "materially" and "substantially" cannot be quantified and should not be used in the proposed rule. Southern disagrees with their views and points out that deleting the materiality guideline would eliminate any remedy against flagrant abuses.

We agree with Southern on the need to maintain the references to materiality. The concept of materiality has long been considered a fundamental part of financial accounting. Numerous references to materiality may be found in accounting literature, including pronouncements of the Financial Accounting Standards Board, Securities and Exchange Commission and other institutions. The American Institute of Certified Public Accountants (AICPA)

stated in its Accounting Research Bulletin No. 1:

The committee contemplates that its pronouncements will have application only to items large enough to be material and significant in the relative circumstances. It considers that items of little or no consequence may be dealt with as expediency suggests.

It is in the same context that we have used the word "material" in our proposed rule.

On the other hand, examples of costs which would be expensed under the existing rule, but which will be capitalized under the new rule, include: (1) Rebuilding a boxcar by (a) reconditioning running gear, (b) strengthening underframe; and (c) replacing side panels, end panels and doors; (2) strengthening the undercarriage of flatcars to permit the carrying of additional weight; (3) rebuilding a diesel locomotive by replacing engines, generator, and traction motors; (4) increasing capacity of an open hopper car by inserting additional side and end panels; and (5) complete rehabilitation of draft and cushion underframe components of a boxcar.

Accounting Safeguards

AAR, Conrail, Chessie and RF&P believe the present Authority for Expenditure (AFE) procedures are adequate to account for capitalized rebuilding costs.

We agree that the AFE procedures are adequate to allow the necessary control over rebuilding expenditures. In keeping with our policy of minimizing the accounting and reporting burden, where they are unnecessary, we have deleted the additional accounting safeguards.

AAR Circular OT-37-B

AAR and the Chicago and Northwestern Transportation Company (C&NW) do not believe the proposed rebuilding rule would conflict with AAR Circular OT-37-B which provides guidelines for determining value and age of rebuilt, rehabilitated and secondhand cars for car-hire purposes. Chessie and Southern believe AAR should review the provisions of Circular OT-37-B. In light of these differences of opinion, we suggest that any differences be resolved to protect the intent of the circular for car-hire purposes.

Tax Consequences

AAR and UP have indicated that there may be tax consequences associated with the proposed accounting change. AAR believes the Internal Revenue Service may, because of our accounting change, revert to the use of the

extension of life test for use in distinguishing between capital and repair expenses which it used prior to 1971.

We have no evidence other than the statements made by AAR and UP to support this contention. We believe the accounting change will provide the Commission with improved information on accounting for rebuilding versus repair costs. We would not anticipate any major changes in present tax laws as a result of this accounting change.

Dismantling Costs

AAR and Conrail believe dismantling costs should be capitalized as a cost of the new unit. No reason was given.

We disagree. Dismantling costs are associated with the services of the old unit. Consequently, expenses associated with removal of the old unit should be expensed.

This rule does not significantly affect the quality of the human environment or energy consumption.

Accordingly, 49 CFR Part 1201, Subpart A, is revised as shown below.

This revision is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553 and 559.

Decided: November 7, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis.

Agatha L. Mergenovich,
Secretary.

Appendix A

The text of instruction 2-11 "Units of Property rebuilt or converted" is revised as follows:

2-11 *Units of Property rebuilt or converted.*

(a) *Rebuilding expenditures.* Carriers shall be governed by the following provisions when determining and accounting for depreciable road and equipment property rebuilding expenditures:

(1) Rebuilding expenditures are those cost actually incurred which substantially extend the service life or substantially increase the utility of depreciable road and equipment property. The rebuilding expenditures shall be material in nature relative to the current replacement cost of a similar new unit of road or equipment property. Expenses resulting from delayed maintenance and repairs shall not be considered in determining materiality.

(2) The phrase "extend the service life" means to extend the life of a property unit past its estimated service life.

(3) The term "increased utility" means that the road or equipment property has

become more useful, more efficient, more durable, or has greater capacity.

(4) Rebuilt or converted road or equipment property shall be accounted for as an addition to the appropriate property accounts, with the old units accounted for as retired from service. The charge to the appropriate property accounts shall be composed of (i) the cost (estimated if necessary) less a fair allowance for depreciation, or salvage value, whichever is lower, of the parts reused, (ii) the cost of labor expended in rebuilding or in the conversion process, (iii) the cost of additional materials applied, and (iv) any other expenses incurred directly with the rebuilding or conversion. In no case shall the total amount charged to the property accounts for these units exceed the current replacement costs of similar new units that would be used for the same purpose. When a unit of road property or equipment is transferred from one class of service to another, with or without physical conversion, the unit shall be accounted for as retired from its original account and be recorded in a primary investment account appropriate to its new class of service.

(5) If it is necessary to repair the secondhand or reused parts remaining in a rebuilt unit, the repair cost may be added to the value assigned parts in determining the related cost to be capitalized. Associated dismantling costs shall be included in operating expenses.

(b) *Repair expenses.* Expenses pertaining to road and equipment property, which represent normal or delayed repairs and maintenance, shall be expensed in the year incurred.

(c) *File and Storage.* Carriers shall keep records of each rebuilding program readily available. These records shall be provided to representatives of the Commission when requested. The retention period shall be as required by 49 CFR Part 1220, Preservation of Records.

[FR Doc. 79-36313 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 44, No. 228

Monday, November 26, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO-160-A56]

Milk in the Middle Atlantic Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the present order provisions based on industry proposals which were considered at a public hearing held July 10, 1979. The recommended amendments provide for changing the funding rate for the advertising and promotion program from a fixed level to a rate tied to the level of producers' pay prices in the market. The funding level would be increased from seven cents to an initial level of twelve cents per hundredweight. Producers who do not want to participate in the program would submit one refund request for the year's remaining calendar quarters. Refunds to producers would be made on a monthly basis rather than quarterly. A penalty charge of 1 percent on any overdue obligation of a handler would be due to the administrative expense fund. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

DATE: Comments are due on or before December 11, 1979.

ADDRESS: Comments (five copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing

Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6273.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: issued June 20, 1979; published June 25, 1979 (44 FR 36985).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Middle Atlantic marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et. seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by December 11, 1979. Five copies of the exceptions should be filed. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing conducted at Philadelphia, Pennsylvania, on July 10, 1979. Notice of such hearing was issued June 20, 1979 (44 FR 36985).

The material issues on the record of the hearing relate to:

1. Funding rate for the advertising and promotion program.
2. Revision of administrative provisions of the advertising and promotion program.
3. Charges on overdue accounts.
4. Date payments are made from the producer settlement fund.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Funding rate for the advertising and promotion program.* The funding rate for the advertising and promotion program should be modified by changing the present 7-cent rate to a rate determined yearly by multiplying the simple average

of the monthly "weighted average prices" for the six-month period ending September 30 by one percent. The resulting figure would be the funding rate for the following calendar year.

Under the revised funding formula, a simple average of the "weighted average prices" for the six-month period ending September 30 would be computed by the market administrator as soon as possible after September 30. The average price would be multiplied by .01 and rounded to the nearest whole cent to determine the actual rate of assessment for the following calendar year (one percent of the producer pay price). As soon as possible after the rate of withholding is computed, the market administrator would notify in writing all producers currently on the market and any new producer that subsequently enters the market of the new withholding rate. This notification would be repeated annually thereafter only if there was any change in the rate from the previous period.

The advertising and promotion program was established under the Middle Atlantic order effective April 1, 1972. The program has been funded since its inception through a monthly assessment on milk delivered during the month by participating producers. The assessment rate was 5 cents per one hundred pounds of milk until January 1, 1977 when the rate was increased to 7 cents per hundredweight. The funds are deducted by the market administrator from the producer-settlement fund and turned over to an agency organized by producers and producers' cooperative associations. Certain reserves are withheld by the market administrator to cover refunds to producers and administrative costs.

The advertising and promotion agency is responsible for the development and implementation of programs and projects approved by the Secretary and designed to carry out the purposes of the Act. The scope of the agency's activities may include the establishment of research and development projects, advertising on a non-brand basis, sales promotion, and educational and other programs designed to improve or promote the domestic marketing and consumption of milk and its products.

The advertising and promotion program is a voluntary program. Accordingly, each producer, on a quarterly basis, is given an opportunity

to request a refund of the money withheld from his pool proceeds. About 11 percent of the producers in the market received a refund for the last quarter of 1978.

On behalf of four of its member-cooperatives that supply the majority of the milk regulated under Order 4, a federation of cooperative associations proposed that the funding rate for the advertising and promotion program be increased from 7 cents to one percent of the producer pay price. Another cooperative proposed that the deduction for advertising and promotion be increased to three-quarters of one percent of the average of the monthly weighted average prices for the twelve-month period ending September 30, rounded to the nearest whole cent (three-quarters of one percent of the producer pay price). The resulting figure would be the funding rate for the following calendar year. Proponents of both levels of increased funding contended that the program has contributed to an increase in Class I sales during various periods and has minimized declining sales during times of rising milk prices. It was their position, however, that the current funding rate is no longer adequate because inflation has caused the cost of the advertising and promotion activities to rise significantly faster than the program's resources. They also contended that inflation has caused a reduction in the amount of advertising and promotion and, thus, has reduced the effectiveness of the program.

The Order 4 advertising and promotion agency disburses the bulk of its available funds through Dairy Council, Incorporated (DCI) and the United Dairy Industry Association (UDIA). A spokesman for DCI presented information at the hearing regarding the Council's organizational structure, its activities and its need for additional funds to operate a more effective program.

During its 60 years of operation, DCI has provided nutritional education, including the support of milk and milk products, to consumers and professional leaders in medicine, education, nutrition, communications and the dairy industry. This has been accomplished through the use of films, radio, literature, personal contact and a staff of nutritionists.

In recent years DCI's primary source of support in the Middle Atlantic area has been Order 4 dairy farmers. The Council's witness stated that per capita funding has increased 13.6 percent since 1977. During this same period, however, inflation has eroded the buying power of these funds by 17 percent. While the

cost of films, literature, and labor have increased, the demand for DCI's services have not slackened. Over 600,000 people saw Dairy Council films in 1978. The distribution of National Dairy Council technical publications doubled between 1976 and 1978. In 1978, DCI distributed over a million pieces of this literature, 93 percent free of charge. The spokesman for DCI concluded his statement by noting that it has become more and more difficult to maintain a qualified staff unless wage levels and employee benefits progress at rates similar to competing organizations. He indicated that since people are the backbone of the Dairy Council program, increased funding is essential.

At the proponent's request, a representative of UDIA presented data in support of the federation's proposed funding rate. These data indicate that from 1972 to 1978 inflation has been rapid, with the Consumer Price Index (CPI) increasing 56 percent. The witness stated that in the Middle Atlantic area the cost of media advertising, particularly television advertising, has increased significantly faster than producer milk prices. It was estimated that by the end of 1979 television advertising costs will have increased 125 percent over 1974 costs. He further testified that while the cost of scientific research has been increasing, UDIA has been forced to decrease the actual dollars spent in this area. When adjusted by the CPI, only about half as many dollars are available for research in 1979 as were available when the program began in 1972.

Proponent of the funding rate equal to three-quarters of one percent of the producer pay price contended that the current rate is no longer generating revenues adequate to support advertising and promotion activities at the level contemplated by producers when the program was adopted. In April 1972, when the order's advertising and promotion provisions became effective, the five-cent rate was equal to 0.76 percent of the weighted average price for that month. At that time, the cooperative's proposed formula also would have generated a five-cent funding rate. The cooperative's witness stated that when the order was amended effective January 1, 1977 the rate adopted at that time, seven cents per hundredweight, equaled 0.68 percent of the simple average of the weighted average prices of the preceding months of October 1975 through September 1976. He contended that the formula proposed by his cooperative to determine the funding rate was in line with the rate at which producers originally funded the

program in 1972 and that this formula would provide adequate funding for the advertising and promotion program in the years to come.

The federation which proposed a funding rate of 1% of the producer pay prices contended that any rate less than 1% would not generate the funds necessary to carry out the intended advertising and promotion program in the Order 4 area. It is their position that basing the rate upon one percent of the weighted average price would allow the level of funds available for the agency to keep up to date on a continual basis.

An increase in the funding rate for the advertising and promotion program is warranted in view of the increased costs of the program's activities that have occurred over its duration. Inflation has impacted on every area of activity pursued by the program. The Consumer Price Index increased 56% between 1972 and 1978 and is expected to rise sharply again this year. The cost of labor, research, and printing has increased substantially over this period. In terms of a dollar's worth of advertising in 1974, radio advertising in the Middle Atlantic area currently costs about \$1.53. The greatest cost increase has occurred in local television advertising. One dollar's worth of television advertising in 1974 cost \$1.73 in 1978 and is expected to average \$2.26 during 1979.

In 1972, when the advertising and promotion program was adopted, the 5-cent rate was equal to 0.77 percent of the weighted average prices for the six-month period ending September 30, 1971. On January 1, 1977, when the order's funding rate was amended, the adopted 7-cent rate equaled 0.70 percent of the weighted average prices for the six months ending September 30, 1976. It can therefore be concluded that a funding rate equal to three-quarters of one percent of producer pay prices, as noted by its proponent, would be more in line with the rates Order 4 producers favored in 1972 and 1977 than a one percent funding rate. Cooperatives representing a large proportion of the Middle Atlantic producers, however, now favor expanding their support of the advertising and promotion program to one percent of producer pay prices. If this rate were now in effect, the assessment for 1979 and 1980 would be 11 cents and 12 cents per hundredweight, respectively. In view of the substantial producer support in the market for the higher funding rate, and in light of the voluntary nature of the program, it is reasonable that the rate of funding be increased to one percent of the producer pay prices.

Due to the voluntary nature of the program, a producer who wants to

participate at a lower funding level than provided in the order may do so by electing to participate only intermittently. For example, a producer could participate in the program for the first three quarters of a year and request that his money be refunded for the last quarter. By such means a producer could fund the program at whatever level he believes to be appropriate.

Conforming changes have been made in the order to recognize that the current references in some sections to "weighted average price plus 7 cents" will no longer be appropriate. In implementing the revised funding rate for the advertising and promotion program, the order has been modified so that the weighted average price would be computed without deducting the amount of money to be withheld for such program. Thus, the current references to "weighted average price plus 7 cents" are changed to read "weighted average price". Under the adopted changes, the computation of the uniform prices for base milk and excess milk will continue, however, to reflect the deduction applicable for funding the advertising and promotion program.

Because of the quarterly budgeting periods under the terms of the advertising and promotion provisions of the order, it would facilitate the budgeting process to change the funding rate at the beginning of a calendar quarter. It is anticipated that the change in the funding rate will become effective starting the 2nd quarter of 1980.

2. Revision of administrative provisions of the advertising and promotion program. A dairy farmer who does not want to participate in the Order 4 advertising and promotion program should have to submit to the market administrator only one request to obtain a refund for the year's calendar quarters that remain at the time of the request. Such requests should be submitted within the first 15 days of December, March, June or September. Also, the producer's deductions for advertising and promotion should be refunded by the market administrator on a monthly basis.

Under the current provisions of the order, the advertising and promotion Agency conducts its operation on a quarterly basis. Producers who participate in the program fund it for a calendar quarter. Those producers who do not want to participate in the program during a calendar quarter must submit a refund request to the market administrator during the first 15 days of the month preceding such quarter. The nonparticipating producers receive their refund from the market administrator

shortly after the quarter during which such deductions are made.

An Order 4 cooperative association proposed amendments that would allow a producer not wishing to participate in the advertising and promotion program to obtain a refund by filing a request with the market administrator during the first 15 days of any month. Unless rescinded by the producer, the refund request would apply from the first day of the month in which filed to the end of that calendar year. However, if a dairy farmer acquired producer status for the first time under Order 4 after the 15th day of the month, he would not be subject to the 15-day filing limit during that month. The cooperative also proposed that refunds be made by the market administrator on or before the 20th day of the second month after the milk is delivered. In its brief, another Order 4 cooperative association endorsed these procedures.

The proponent cooperative's witness stated that it was Congress' intention that producers not wishing to participate in the promotion program could get their money refunded without unnecessary impediments. He contended that because producers had to request a refund every 3 months some producers who had wanted refunds had forgotten to notify the market administrator at the proper time. Consequently, they had to participate in the program for an entire quarter. He also contended that his cooperative's proposal would simplify the method of obtaining refunds and make them more prompt.

On behalf of four of its member cooperatives, a federation of cooperative associations opposed any change in the order's procedure for requesting refunds. The federation's witness noted that the provisions of Order 4 require the advertising and promotion Agency to prepare and submit to the Secretary for approval, prior to each quarterly period, a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the agency. He contended that the proposed amendments would make it more difficult for the agency to predict the level of funding and thus make budgeting harder. The federation was also in opposition to the market administrator refunding advertising and promotion deductions on a monthly basis. It argued that monthly refunds would increase administrative costs. The witness stated that the present ask-out and refund procedures are necessary for the effective and efficient expenditure of the funds collected under Order 4 for advertising and promotion.

Proponent on the other hand, maintained that its amendments would not significantly increase budgeting problems. In fact, the cooperative claimed that over time these amendments would make participation in the program more stable and would therefore make it easier to estimate funding and plan a budget. It also contended that monthly refunds would not generate any undue expenses because producers who do not want to participate in the program should not have their funds withheld any longer than necessary.

The order should be amended to allow a producer to request a refund during the first 15 days of the month immediately preceding any calendar quarter, with such request applying for the remainder of the calendar year. This order modification would simplify the procedure for requesting refunds and decrease administrative costs. Producers would only have to submit and the market administrator would only have to process approximately one-fourth as many refund requests as is presently the case.

Producers should not, as proposed by an Order 4 cooperative association, be allowed to obtain a refund by filing a request with the market administrator during the first 15 days of any month. The refund request periods should be limited to the first 15 days of the month preceding each calendar quarter, as is presently the case. Allowing producers to request refunds during any month for the rest of the calendar year would make it more difficult for the advertising and promotion Agency to forecast its funding and plan its budgets; because producer participation could fluctuate after the budget had to be submitted to the Secretary for approval. By only requiring producers to request a refund once a year, while limiting the request periods to the first 15 days of the month preceding each calendar quarter, administrative costs and producer inconvenience could be minimized without increasing the Agency's budgeting problems.

A minor change should be made in the refund procedure with respect to new Order 4 producers. Presently, a dairy farmer who first acquires producer status under Order 4 after the 15th of December, March, June, or September and prior to the start of the next refund notification period may, upon application filed with the market administrator, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This

should be changed to allow a new producer who submits a request by the end of the month following the month in which producer status is first acquired to be eligible for a refund on all marketings against which an assessment is withheld during the current calendar year. If producer status is first acquired in December, such producer should be eligible for a refund on all marketings during December and the following calendar year. These changes will coordinate the procedure through which new Order 4 producers may request refunds with the refund procedure adopted herein for producers already on the Middle Atlantic market.

Compared to the present quarterly refunds, monthly refunds would increase administrative mailing costs. When the Order 4 advertising and promotion program was initiated, the cost of monthly refunds was high relative to its value to non-participating producers. Since then, however, monthly production per producer¹ and interest rates have increased significantly. Changing the rate of deduction to one percent of the producer pay price, as herein adopted, will substantially increase the amount of money to be refunded. For these reasons monthly refunds are more valuable to non-participating producers than ever before and should be provided.

3. *Changes on overdue accounts.* The order should provide for the application of a late-payment charge of 1 percent per month on handler obligations that are overdue. Such obligations to the market administrator would be those due the producer settlement fund, the administrative expense fund, and the marketing services fund. Any overdue payments by handlers due to producers and cooperative associations would be subject to the late-payment charge. Any such unpaid obligation should be assessed a charge of 1 percent on the first day after the due date of the obligation and on the same day of each succeeding month until the obligation is paid. Any such assessed charges shall be due to the administrative expense fund maintained by the market administrator.

The institution of a late-payment charge on all handler obligations under the order was proposed by cooperative associations representing over 80 percent of the producer supplying the market. The initial proposals by cooperatives, as included in the hearing notice, would provide a late-payment charge of 1 percent beginning the first

day the obligation is overdue. At the hearing and in briefs, the cooperatives supported a modification of the charge. As modified, the proposed charge would be at the rate of 1.5 percent per month prorated on a daily basis. No handlers, other than cooperatives, offered proposals, or testified, or filed briefs in this proceeding. One cooperative filed a brief in support of the proponent cooperatives.

Witnesses for proponents indicated that the institution of a charge on overdue obligations of handlers is necessary to encourage prompt payments by regulated handlers. They cited the collection problems being experienced by the market administrator and cooperatives and indicated that producers have an interest in timely payments by handlers. It was pointed out that if producers or their cooperative associations are not paid by the due date they are forced to draw upon their own equity or borrow from commercial sources in order to meet their money obligations. In addition, the spokesmen indicated that those handlers making late payments have a competitive advantage in their business operations relative to handlers making timely payments.

In support of the proposed late-payment charge, the witnesses for the proponent cooperatives contended that the should be related to current interest rates since delinquent handlers are, in effect, borrowing money from producers. Proponents indicated that most country banks now charge 11.5 to 12 percent interest per annum on well-protected, short-term borrowing. They noted that local Production Credit Associations in the Order 4 production area currently charge interest rates varying from 10.5 to 11.5 percent per annum for short-term operating capital. In addition, farm suppliers such as Agway and Southern States Cooperative, petroleum suppliers, farm equipment dealers, and truck companies in the production area assess finance charges or late-payment charges ranging from 1 to 1.5 percent per month.

In urging that the late-payment charge be 1.5 percent per month apportioned on a daily basis, proponents contended that it would be more equitable for handlers. Also, they believed there would be an incentive on the part of a delinquent handler to delay payment for a full month if the full monthly charge was assessed on the first day the payment was overdue.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the market-wide pooling arrangement, it is necessary that handlers with Class I

utilization higher than the market average pay part of their total use value of milk to the producer settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform prices for base milk and excess milk. The success of this arrangement depends on the solvency of the producer settlement fund. Also, the prompt payment of amounts due the administrative expense fund and the marketing service fund is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner. Payment delinquency also results in an inequity among handlers. Handlers who are late in paying any of the obligations required under the order are, in effect, borrowing money. In the absence of any late-payment charge that is comparable to the cost of borrowing from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Data placed in the record by a representative of the market administrator's office indicate a late-payment experience of a serious and continuing nature on the part of handlers in the Middle Atlantic market. During those months from April 1978 through June 1979 when the payment date did not fall on a weekend or holiday, 67 percent of the moneys owed to the producer-settlement fund were received by the market administrator after the due date. Such delinquent payments ranged from a low of 57 percent of the amount owed by handlers in January 1979 to a high of 79 percent in February 1979. Even for those months in which the payment date fell on a weekend or holiday, nearly 43 percent of the moneys owed were not received by the first working day thereafter. Also, for the period April 1978 through June 1979, nearly 40 percent of the moneys owed to the producer-settlement fund were not received by the 17th of the month or the first working day thereafter when the market administrator must make payments from the fund. Moneys still not received by the prescribed pay-out date ranged from a low of 18 percent in March 1979 to a high of 50 percent in July 1978. The respective amounts involved were \$418,902 in March 1979 and \$1,202,603 in July 1978.

¹ Official notice is taken of Federal Order Market Statistics, Annual Summary for 1972, issued June 1973.

With respect to handler obligations due the administrative assessment fund, during the period June 1978 through February 1979, 24 percent of the handlers failed to make such payments by the due date. Such delinquent payments ranged up to 18 days late for December 1978 obligations and 68 days late for August 1978 obligations. (Assessments were waived during March through May 1978 and for the same months in 1979.)

For the period of June 1978 through May 1979, nearly 38 percent of the handlers who made marketing service deductions from payments to producers failed to remit the deductions to the market administrator by the due date. Such delinquencies ranged up to as many as 18 days late in June and December 1978 to 68 days late for August 1978.

In addition to this late-payment information on handler obligations to the market administrator, since October 1978 the market administrator has obtained reports from cooperative associations concerning the date by which cooperatives receive and deposit payments owed to them by handlers. A table based on such reports was placed in the record by a representative of the market administrator's office. The table demonstrates that handlers still have the use of a large proportion of the money owed to cooperatives beyond the due date for making such payments. For example, in April 1979 milk handlers owed cooperatives \$12.9 million in partial payments for milk received during the first fifteen days of the month and only \$7.3 million were deposited by cooperatives as of the due date. With respect to the final payment for April milk deliveries, handlers owed \$13.1 million to cooperatives and cooperatives had deposited only \$4.8 million as of the due date.

A further indication of a late-payment problem with respect to milk supplied by cooperatives was entered into the record by a cooperative association. During the eight-month period of October 1978 through May 1979, all partial payment moneys owed to the cooperative by Order 4 handlers were received late; nearly 89 percent were late by eight days or more. All but 0.3 percent of the final payments owed to the cooperative during that period were received after the due date; nearly 62 percent were late by eight days or more. The cooperatives witness stated that for the eight-month period, the value of the late-payments, at an interest cost of 12 percent per year, would total more than \$39,000.

On the basis of this payment experience, it is appropriate to institute

a late-payment charge on all handler obligations under the order that are overdue. In the absence of a late-payment charge, handlers have little incentive to make their payments on time. Enforcement action may be taken, of course, to seek strict handler compliance with the payment dates. However, this is a cumbersome administrative route, and the practicalness of such action become questionable in the case of handlers who are only several days late. While the charge adopted herein may not result in strict compliance by all handlers, it should provide handlers a substantial inducement to make their payments on time.

The late-payment charge should be established at the rate of 1 percent per month of the unpaid balance. If the charge is to have any impact on handlers in terms of encouraging prompt payments, it must be an amount that is at least comparable to what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. If this is not so, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate. Under the conditions indicated in the record, a monthly charge of 1 percent should provide reasonable assurance that order obligations do not represent a cheap source of money.

As noted earlier, the proponents modified their proposals to apply a higher charge to be apportioned on a daily basis so that handlers would be assessed for only the value of borrowed money for the number of days that the payment is late. These modifications of the proposal should not be adopted. If late-payment charges were treated strictly on a money market basis, the order would merely represent a banking service for handlers who desire to use order obligations as a source of borrowed funds. This is not the intended purpose of the late-payment charge. Rather, it is to be a penalty, in effect, that will induce handlers to pay their obligations under the order on time.

Experience under orders has demonstrated that a late-payment charge applied on the day after the obligation is due is effective in inducing handlers to pay on time. For example, a late-payment charge of 1 percent on the day after the due date was adopted under the neighboring New York-New Jersey order effective November 1, 1977. An exhibit placed in the hearing record contains information as to the timeliness

of payments to the producer-settlement fund and administrative fund before and after the late-payment charge was adopted. The exhibit shows that in March 1977—before the late-payment charge was in effect—only 6 of the 79 handlers having obligations to the producer-settlement fund and administrative fund made their payments on time and only 5.3 percent of the total handler obligations to the funds was paid by the due date. In March 1979—18 months after the late-payment charge was instituted—95.2 percent of the total handler obligations to the producer-settlement fund and the administrative fund had been paid to the market administrator on or before the due date.

Under the cooperative's proposals late-payment charges would accrue to the respective person or fund that was paid late. If a handler's payment obligation directly to a producer or cooperative was not paid on time, the late-payment charge would accrue to such producer or cooperative. If a handler is late in paying an obligation to the producer-settlement fund, administrative assessment fund or marketing service fund the late-payment charge assessed would accrue to the particular fund not paid on time.

As further inducement to make payments to producers and cooperatives on time, the late-payment charges should accrue to the order's administrative assessment fund, which is the market administrator's source of funds for activities involved with collections and noncompliance. If the late-payment charge were to be added to the amount owed by handlers to producers and cooperatives, it would likely result in such producers and cooperatives being less concerned whether they are paid on time. Thus, it could be counterproductive to the purpose sought to be achieved by the institution of the late-payment charge. Moreover, if a charge of 1 percent were made with respect to a payment that was only a few days late, it would represent a significantly higher value than the cost of money borrowed from commercial sources for such a short time span. Thus, cooperatives and producers would be placed in a position where they would prefer to be paid several days late and get the late-payment charge. In addition, in a circumstance where a handler buys milk from a cooperative handler on a classified use basis, the obligation on such milk would not be the same as its value at the uniform prices for base milk and excess milk, which is the value the cooperative is entitled to after

equalization with the producer-settlement fund. Thus, it would unduly complicate the terms of the order to construct order provisions that would return to producers and cooperatives an equitable late-payment value for their milk if, in fact, such value could be determined.

The late-payment charge on obligations due the producer-settlement fund, marketing services fund, and administrative assessment fund also should accrue to the order's administrative assessment fund. In the case of delinquent handlers, money is spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments or inducing noncomplying handlers to pay on time. The money for expenditures of this type, of course, comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handlers. Thus, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

The late-payment charge provisions as proposed by proponents provide that such charge be applied if payment is not received by the due date. Proponents stated that they consider the present payment dates in the order to be receipt dates and contended that if they were to be postmark dates that such dates should be advanced by two days. In view of the need to make timely payments to handlers from the producer settlement fund, it is essential that money due such fund be received by the due date. Also, since a payment cannot be converted to "good money" by the recipient until it is physically received, more uniform application of the payment schedules to handlers would be effected if the payment dates are applied as receipt dates. Additionally, it is desirable to give handlers all the time possible for submitting their payments and the flexibility of using whatever payment means they wish. This can be achieved best by merely specifying the date by which payment is to be received. Obviously, payment cannot be received on a non-business day. Thus, if a due date falls on a Saturday, Sunday, or national holiday, the due date of the payment should be the next day that the market administrator's office is open for business, for the purpose of applying a late-payment charge.

An additional exception in applying a late-payment charge with respect to any payment sent through the U.S. Postal

Service was proposed by a cooperative association. This exception would consider such payment to be made on time if the envelope has a postage cancellation date not later than the second day preceding the due date. Such a provision would enable a handler to have greater assurance that a payment is made on a timely basis. An exhibit in the record indicates that with respect to payments mailed to the market administrator, they are often received within two days of the postmark date. However, the exhibit indicates also that on occasion, such as around Christmas time, some payments are received more than two days after the postmark date.

It is a common practice in the market to send payments through the mail. Handlers would have greater control over knowing whether they are complying with the payment dates if postmark dates applied by the U.S. Postal Service can be used in determining whether a payment is made on time. Moreover, postmark dates would provide reliable evidence for the market administrator to use in verifying the timeliness of payments. Since it would be helpful to handlers and to the market administrator in the determination of when a late-payment charge is to be applied, the proposal relative to postmark dates should be adopted. A postage date applied by a handler's postage meter, however, would not be an acceptable indication of a timely payment, since a handler would be able to predate the envelope.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1 percent on the first day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The additional late payment charge would apply not only to the original obligation but to any unpaid late-payment charges previously assessed.

At the time the adopted provisions become effective, there may be handlers with obligations already overdue. In such cases, the newly adopted late-payment charge should apply even though the obligation was incurred prior to the institution of the charge under the order. For transitional purposes, obligations that are outstanding on the effective date of the amended order should not be increased until the day after such type of obligation would be overdue under the amended order.

The provision adopted herein would provide a late-payment charge in the case of an unpaid obligation that was

determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due. Such obligation should be considered to have been payable by the date it would have been due if the report had been filed when due.

Proponents recognized that it may be necessary for the market administrator to require handlers and cooperatives to maintain specific records or make special reports for the purpose of verification of the timeliness of payments made by handlers directly to producers and cooperatives. The attached amendments do not prescribe the specific means by which he shall verify such transactions. The need for such specification should be based on actual experience in the market.

Under the terms of the order, the market administrator has authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be need for more specificity with respect to carrying out the provisions adopted herein, this may be accommodated through the promulgation of appropriate administrative rules with the approval of the Director of the Dairy Division and in consultation with the local industry.

If the purpose of the late-payment provisions adopted herein is to be fully accomplished, it is necessary that payments not only be made on time but must be deposited in the recipient's account as promptly as possible. The proposals considered at the hearing did not encompass new provisions that would assure the prompt deposit of payments received. If serious problems exist with respect to the timely deposit of payments, it may be necessary for the market administrator to promulgate appropriate rules with respect to the deposit of payments received by cooperative associations.

4. *Date payments are made from the producer-settlement fund.* The order should be amended to provide that payments to handlers from the producer-settlement fund should be made on or before the 16th day after the end of the month. However, if the 16th should fall on a Saturday, Sunday or national holiday, the market administrator may delay payments from the fund until the next day his office is officially open for business.

Currently, the order provides that payments from the producer-settlement fund be made on or before the 17th day after the end of the month. Cooperatives proposed that this payment date be advanced one day. In support of the proposal, cooperatives contended that with the adoption of a late-payment

charge, as provided herein, it can be expected that the payments to the producer-settlement fund will be received by the due date, the 15th, and therefore, the market administrator would be able to make payments from the fund by the next day.

As previously indicated, it can be expected that the adoption of a late-payment charge will be sufficient inducement for handlers to pay their producer-settlement fund obligations on time. In this circumstance, the market administrator would have sufficient funds to enable him to make the prescribed payments from the fund by the day after payments are due.

The market administrator makes it a practice to notify handlers by telephone on the date the uniform prices are announced of their producer-settlement fund obligation. Such announcement date has not been later than the 12th day after the end of the month. In some cases the postmark dates on envelopes containing handler payments to the producer-settlement fund are the same dates that handlers are notified by telephone of the amount of their obligation. Thus, it is apparent that handlers can make their payments to the producer-settlement fund on or before the due date if they are sufficiently induced to do so.

It is desirable that payments be made from the producer-settlement fund as promptly as possible so that those handlers who receive the funds can make their required payments to producers. Payments to producers are due on or before the 20th day after the end of the month. Thus, adoption of the earlier payment date for payments from the producer-settlement fund will tend to better assure that all producers are paid by the due date.

The order provides that if the balance in the producer-settlement fund is insufficient to make all the prescribed payments, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. This procedure would involve two series of payments and should be avoided when practicable. Advancing the pay-out date could involve the use of this procedure in the case where the date for payments from the fund falls on a Saturday, Sunday or national holiday when the market administrator's office is not open for public business. Therefore, the order should provide that the required pay-out date may be delayed until the next date the market administrator's office is open for business when the pay-out date falls on Saturday, Sunday or national holiday.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby

proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Middle Atlantic marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Section 1004.61 is revised to read as follows:

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

(a) For each month the market administrator shall compute the "weighted average price" per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1004.60 for all handlers who filed the reports prescribed by § 1004.30 for the month and who made the payments pursuant to § 1004.71 for the preceding month;

(2) Add an amount equal to the total value of the location differentials commuted pursuant to § 1004.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section; and
(ii) The total hundredweight for which a value is computed pursuant to § 1004.60(e); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

(b) Subject to paragraph (c) of this section, for each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price;

(ii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iii) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and round to the nearest cent;

(3) Subtract the withholding rate for the advertising and promotion program

as computed in § 1004.121(e). The result shall be the uniform price for excess milk;

(4) From the amount resulting from the computations of paragraphs (a) (1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(5) Subtract the aggregate value of excess milk determined in paragraph (b)(1) of this section;

(6) Divide the result obtained in paragraph (b)(5) of this section by the total hundredweight of base milk for handlers included in the computations pursuant to paragraph (a) of this section and subtract not less than 4 cents nor more than 5 cents per hundredweight; and

(7) Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e). The result shall be the uniform price for base milk.

(c) If the base milk price obtained in paragraph (b)(7) of this section should exceed the Class I price, the aggregate amount in excess thereof shall be included in the computation of the excess milk price pursuant to paragraph (b)(1) of this section, except that if by such addition the excess milk price should exceed the base milk price then the aggregate amount of the excess shall be prorated to the aggregate values of base milk and excess milk on the basis of the respective volumes of base and excess milk.

2. In § 1004.71, paragraph (b)(2) is revised to read as follows:

§ 1004.71 Payments to the producer settlement fund.

(b) * * *

(2) The value at the weighted average price, adjusted by the applicable location differential on nonpool milk pursuant to § 1004.75(b), with respect to other source milk for which a value was computed pursuant to § 1004.60(e).

3. Section 1004.72 is revised to read as follows:

§ 1004.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1004.71(b) exceeds the amount computed pursuant to § 1004.71(a), subject to the following conditions:

(a) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section,

the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

(b) If the 16th day after the end of the month is a Saturday, Sunday, or national holiday, the market administrator may delay payments pursuant to this section until the next day his office is open for public business.

4. In § 1004.73, paragraph (a)(2) is revised to read as follows:

§ 1004.73 Payments to producer and to cooperative associations.

(a) * * *

(1) * * *

(2) On or before the 20th of the following month at not less than the uniform price for base milk computed pursuant to § 1004.61(b) with respect to base milk received from such producer and not less than the uniform price for excess milk computed pursuant to § 1004.61(b) for excess milk received from such producer, subject to the following adjustments:

(i) Proper deductions authorized in writing by such producer;

(ii) Partial payment made pursuant to paragraph (a)(1) of this section;

(iii) The butterfat differential computed pursuant to § 1004.74;

(iv) Less the location differential applicable pursuant to § 1004.75; and

(v) If by such date such handler has not received full payment from the market administrator pursuant to § 1004.72 for such month he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

5. In § 1004.75, paragraph (b) is revised to read as follows:

§ 1004.75 Location differentials to producers and on nonpool milk.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class II price.

6. In § 1004.76, paragraph (b)(5) is revised to read as follows:

§ 1004.76 Payments by a handler operating a partially regulated distributing plant.

(b) * * *

(5) From the value of such milk at the Class I price, subtract its value at the weighted average price, and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price less the value of such milk at the Class II price (except that the Class I price and the weighted average price shall be adjusted for the location of the nonpool plant and shall not be less than the Class II price).

7. A new § 1004.78 is added to read as follows:

§ 1004.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1004.71, 1004.73, 1004.76, 1004.77, 1004.79, 1004.85, or 1004.86 shall be increased 1 percent beginning on the day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) The amount payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section and all such amounts shall be paid to the administrative assessment fund maintained by the market administrator;

(b) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) Payments shall be deemed not to have been made until such payments have been received, except:

(1) Any payment received after the due date in an envelope that is postmarked not later than the second day prior to the due date shall be considered to have been received by the due date; and

(2) If the date by which payments must be received falls on a Saturday or Sunday or on a national holiday, payments shall be considered to have been received by the due date if received not later than the next day on which the market administrator's office is open for public business.

8. In § 1004.120, paragraphs (b), (c) and (d) are revised to read as follows:

§ 1004.120 Procedure for requesting refunds.

* * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted within the first 15 days of December for milk to be marketed during the following calendar year and during the first 15 days of March, June, or September for milk to be marketed from the first of the immediately following month through the remainder of the calendar year.

(c) Upon first acquiring producer status under this part, a dairy farmer shall, upon application filed with the market administrator pursuant to paragraph (a) of this section by the end of the month immediately following the month in which producer status is acquired, be eligible for refund on all marketings against which an assessment is withheld during the current calendar year and if producer status was first acquired in December such producer shall be eligible for a refund on all marketings during December and the following calendar year. This paragraph also shall be applicable to all producers during the period between the effective date of this paragraph and the beginning of the first quarterly period for which the opportunity exists for such producers to obtain a refund pursuant to paragraph (b) of this section.

(d) A producer, located in a State which has a State advertising and promotion program in which producers are required to participate unless they are participating in an advertising and promotion program under a Federal order, may (in lieu of a refund request) authorize the market administrator to pay to the State the amount of his required participation not in excess of the rate computed pursuant to § 1004.121(e).

9. In § 1004.121 the introductory text of paragraphs (b) (2), (3), and (4), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1004.121 Duties of the market administrator.

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the computation of uniform prices for such month. The amount set aside shall be disbursed as follows:

(2) To producers, a refund of the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in

amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) To any State, a payment on behalf of any producer for which a specific authorization has been received pursuant to § 1004.120(d), but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producers for which deductions were made pursuant to this paragraph.

(4) After the end of each month, make a refund to each producer who made application for such refund pursuant to § 1004.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to, or on behalf of, the producer pursuant to paragraph (b) (2) and (3) of this section.

(c) Promptly after the issuance of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1004.110 through 1004.122).

(e) In October of each year compute the rate of withholding as follows:

(1) Compute the simple average of the monthly weighted average prices for the six-month period ending September 30; and

(2) Multiply the price computed pursuant to paragraph (e)(1) of this section by one percent and round to the nearest full cent. This rate shall apply during the following calendar year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

Note.—This recommended decision has been reviewed under USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this decision should not be classified "significant" under those criteria. This decision constitutes the Department's Draft Impact Analysis Statement for this proceeding.

Signed at Washington, D.C., on November 19, 1979.

William T. Manley,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-36311 Filed 11-23-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-NE-15]

Airworthiness Directives; General Electric Co. CT58 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require an inspection for an undersized radius of certain stage one turbine wheels used in General Electric CT58 engines. The proposed AD is prompted by a report of an undersized radius which contributed to a stage one turbine wheel failure.

DATES: Comments must be received on or before January 28, 1980.

ADDRESSES:

Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attention: Rules Docket, 12 New England Executive Park, Burlington, Massachusetts 01803.

The applicable service bulletin may be obtained from: General Electric Company, 1000 Western Avenue, Lyon, Massachusetts 01910.

Copies of the service bulletin are contained in the Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Ralph S. Hawkins, Propulsion Section, ANE-214, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7347.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All

communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

There has been a report of a stage one turbine wheel failure in a General Electric CT58 engine. The fatigue crack, which progressed to failure, originated in an undersized radius on the forward cooling plate locating ring rabbet groove on the front side of the turbine wheel. Since this condition is likely to exist on other stage one turbine wheels from the same manufacturing lot, the proposed AD would require inspection of certain serial numbered CT58 stage one turbine wheel rabbet groove radii in accordance with General Electric Alert Service Bulletin CT58 (A72-159) CEB-255. Turbine wheels with rabbet groove radii less than 0.010 inch shall be removed prior to further flight.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

General Electric Company: Applies to all General Electric CT58 turboshaft engines incorporating stage one turbine wheel, part number 4002T17P02, with the following wheel serial numbers: 7753, 7761, 7762, 7767, 7768, 7783, 7799, 7803, 7811, 7815, 7817, 7819, 7820, 7823, 7824, 7828, 7839, 7845, and 7846.

Compliance required as indicated, unless already accomplished.

To prevent failure of stage one turbine wheels due to cracks originating from undersize rabbet groove radii, inspect forward and aft radii in accordance with the procedures contained in the accomplishment instruction section of General Electric Alert Service Bulletin CT58 (A72-159) CEB-255, dated July 9, 1979, or later FAA approved revision, or equivalent means approved by the Chief, Engineering and Manufacturing Branch, New England Region.

Inspect in accordance with the following schedule:

1. Turbine wheels with 3,950 hours or 7,900 cycles, or more, in service on the effective date of this AD, must be inspected within the next 50 hours or 100 cycles.

2. Turbine wheels with less than 3,950 hours or 7,900 cycles in service, on the effective date of this AD, must be inspected prior to exceeding 4,000 hours or 8,000 cycles, whichever comes first.

Stage one turbine wheels with forward or aft rabbet groove radii of less than 0.010 inch must be removed and replaced with serviceable turbine wheels prior to further flight.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910. These documents may also be examined at Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and at FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C.

A historical file on this AD, which includes the incorporated material in full, is maintained by the FAA at its Headquarters in Washington, D.C., and at FAA, New England Region Headquarters, Burlington, Massachusetts.

(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 11.85)

Note.—The Federal Aviation Administration 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 draft evaluation prepared for this document is contained in the docket.

Issued in Burlington, Mass., on November 15, 1979

Robert E. Whittington,
Director, New England Region.

Note.—The incorporation by reference provisions of this document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 79-36314 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ANW-01]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: On Monday, March 26, 1979, an NPRM was published in the Federal Register (44 FR 18041) covering the establishment of airspace at Klamath Falls, Oregon. The proposal was to

lower airspace to provide for minimum holding at a fix and to lower minimum vector altitudes (MVA) for more efficient air traffic handling. Study subsequent to the issuance of the MPRM disclosed that lowering of MVA is all the airspace encompassed in the proposal would not be necessary. Therefore, the notice is being withdrawn. The withdrawal of this notice, however, does not preclude the future issuance of a similar notice by the FAA.

EFFECTIVE DATE: Airspace Docket Number 79-ANW-01 withdrawal is effective November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Operations, Procedures and Airspace Branch, Air Traffic Division, ANW-534, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington, 98108; telephone: (206) 767-2610. Accordingly, pursuant to the authority delegated to me by the Administrator, the NPRM published in Federal Register (44 FR 18041) is hereby withdrawn.

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

Note.—The Federal Aviation Administration has determined that this document 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 the 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 Seattle, Wash., on November 5, 1979.

C. B. Walk, Jr.,
Director, Northwest Region.

[FR Doc. 79-36324 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 792 3058]

Nolan's R.V. Center, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent

order, accepted subject to final Commission approval, among other things, would require a Denver, Colo. retailer of motor homes, campers, and travel trailers to cease failing to place inside each vehicle it offers for sale, all applicable written warranties; and a sign giving the location of such warranties, and stressing the importance of comparing warranty terms before making a purchase. The firm would be required to instruct its employees as to their specific obligations and duties under federal law, and to institute a surveillance program designed to detect violators of the order.

DATE: Comments must be received on or before January 25, 1980.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Paul C. Daw, Director, 6R, Denver Regional Office, Federal Trade Commission, Suite 2900, 1405 Curtis St., Denver, Colo. 80202. (303) 837-2271.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

United States of America Before Federal Trade Commission

In the matter of Nolan's R.V. Center, Inc., a corporation, file No. 792 3058, Agreement Containing consent order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nolan's R.V. Center, Inc., and it now appearing that Nolan's R.V. Center, Inc., sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Nolan's R.V. Center, Inc. and counsel for the Federal Trade Commission that:

(1) Proposed respondent Nolan's R.V. Center, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Colorado.

Its principal office and place of business is located at 6935 Federal Boulevard, Denver, Colorado 80221.

(2) Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

(3) Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirements that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(4) This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34 will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

(6) This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

(7) Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount

provided by law for each violation of the order after it becomes final.

Order

I. Definitions

For the purpose of this order the definitions of the terms "consumer product," "warrantor," and "written warranty" as defined in Section 101 of the Warranty Act (15 U.S.C. § 2301 (1976)) shall apply. The definition of the term "binder" as defined in Section 702.1(g) of the Pre-Sale Rule (16 CFR 702 (1979)) shall apply.

II

It is ordered that respondent Nolan's R. V. Center, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, and sale of motor homes, campers, recreational vehicles, travel trailers, or other consumer products, do forthwith cease and desist from:

(1) Failing to make available in respondent's display area for prospective buyers' review prior to sale, the text of any written warranties offered or granted by the manufacturers of motor homes, campers, recreational vehicles, travel trailers, and other consumer products sold by respondent. With respect to motor homes, campers, recreational vehicles and travel trailers "display area" means a prominent location inside each motor home, camper, recreational vehicle, and travel trailer.

(2) Maintaining a binder or series of binders to satisfy the requirements of Paragraph 1, above, unless such binder or binders are located in each motor home, camper, recreational vehicle, and travel trailer being displayed for sale by respondent, and such binder or binders include at least one copy of each written warranty applicable to the motor home, camper, recreational vehicle, travel trailer and the consumer products contained in such motor home, camper, recreational vehicle, and travel trailer.

In utilizing any such binder or binders respondent shall:

(a) provide prospective buyers with ready access thereto; and

(b)(1) display such binder(s) in a manner reasonably calculated to elicit the prospective buyers' attention; or

(2)(i) make such binder(s) available to prospective buyers' on request; and

(ii) place signs reasonably calculated to elicit the prospective buyers' attention in prominent locations within each motor home, camper, recreational vehicle or travel trailer advising such prospective buyers' of the availability of the binder(s), including instructions for obtaining access; and

(c) index such binder(s) according to product or warrantor; and

(d) clearly entitle such binder(s) as "Warranties" or other similar title.

III

It is further ordered that respondent shall post, in a prominent location in each motor home, camper, recreational vehicle, and

travel trailer being displayed for sale, a sign, eleven inches (length) by seventeen inches (width), reasonably calculated to elicit prospective buyers' attention, which contains a verbatim reproduction of the following language:

IMPORTANT!

NOT ALL WARRANTIES ARE THE SAME

We provide warranties for you to compare before you buy

- Please ask to see them
- Check: Full or limited?
- What costs are covered?
- What do you have to do?
- Are all parts covered?
- How long does the warranty last?

Such sign shall be posted for a period of not less than three years from the effective date of this order. The language in such sign shall be unencumbered by other written or visual matter, shall be indented and punctuated as indicated in this paragraph, above, and shall be printed in black against a solid white background, as follows:

(a) The word "Important" shall serve as the title of the notice and shall be printed in capital letters in 60 point boldface type followed by an exclamation point.

(b) The next phrase shall be printed on a separate line in capital letters and in 42 point boldface type.

(c) The next two phrases shall be printed on separate lines and in 36 point medium face type.

(d) Each succeeding phrase shall be printed on a separate line and in 24 point medium face type.

IV

(1) It is further ordered that respondent shall deliver a copy of this order to cease and desist to all present and future employees, salespersons, agents, independent contractors, and other representatives of respondent engaged in the sale of motor homes, campers, recreational vehicles, travel trailers or other consumer products on behalf of respondent, and secure a signed statement acknowledging receipt of the order from each such person.

(2) It is further ordered that respondent shall instruct all present and future employees, salespersons, agents, independent contractors, and other representatives of respondent, engaged in the sale of motor homes, campers, recreational vehicles, travel trailers or other consumer products on behalf of respondent, as to their specific obligations and duties under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (Public Law 93-637, 15 U.S.C. 2301 et seq.), all present and future implementing Rules promulgated under the Act, and this order.

(3) It is further ordered that respondent shall institute a program of continuing surveillance to reveal whether respondent's employees, salespersons, agents, independent contractors, or other representatives are engaged in practices which violate this order.

(4) It is further ordered that respondent shall maintain complete records for a period of not less than three (3) years from the date of the incident, of any written or oral information received which indicates the

possibility of a violation of this order by any of respondent's employees, salespersons, agents, independent contractors, or other representatives. Any oral information received indicating the possibility of a violation of this order shall be reduced to writing, and shall include the name, address, and telephone number of the informant, the name and address of the individual involved, the date of the communication and a brief summary of the information received. Such records shall be available upon request to representatives of the Federal Trade Commission during normal business hours upon reasonable advance notice.

(5) It is further ordered that respondent shall maintain, for a period of not less than three (3) years from the effective date of this order, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relating to the manner and form of their continuing compliance with all terms and provisions of this order.

(6) It is further ordered that the respondent notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries of any other change in obligations arising out of this order.

(7) It is further ordered that respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nolan's R.V. Center, Inc. of Denver, Colorado.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Nolan's R.V. Center, Inc., a retailer of motor homes, campers, and travel trailers, has failed to make the text of written warranties available to prospective purchasers in violation of the Rule Concerning the Pre-Sale Availability of Written Warranty Terms, 16 CFR 702. Under this Rule, the seller of warranted consumer products may make the terms of written warranties available to prospective buyers prior to sale through one or more of the following methods.

(a) Clearly and conspicuously displaying the text of the warranty in close conjunction to each warranted product;

(b) Maintaining a binder system which is readily available to prospective buyers, along with conspicuous signs indicating the availability and identifying the location of such binders when the binders are not prominently displayed;

(c) Displaying the package containing the consumer product on which the text of the written warranty is disclosed in such a way that the warranty is clearly visible to prospective buyers at the point of sale; or

(d) Placing a sign which contains the text of the written warranty in close proximity to the product to which it applies.

According to the complaint allegations, Nolan's has not used any of these methods to make warranty texts available to consumers prior to sale.

The order in this matter requires the respondent to place copies of all written warranties applicable to the vehicles it sells inside those vehicles. In addition, the order requires the respondent to place a sign in each vehicle indicating where the applicable warranties may be found and stressing the importance of comparing warranty terms before making a purchase.

The order will benefit consumers by giving them an opportunity to examine and compare prior to purchase the texts of warranties applicable to the products respondent offers for sale. Since all warranties are not the same, this examination and comparison should aid prospective consumers in making a purchasing choice among alternative products.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-36346 Filed 11-23-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Human Prescription Drugs in Oral Dosage Forms; Proposed Exemption of Pancrelipase Preparations in Tablet, Capsule, or Powder Form From Child-Protection Packaging Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes for public comment an exemption from child-protection packaging requirements for pancrelipase preparations in tablet, capsule, or powder form. Pancrelipase provides additional pancreatic enzymes, and is particularly used in the treatment of children with cystic fibrosis. Commission studies suggest that child-protection packaging for this drug may be unnecessary to protect children from serious illness or injury, because of the low toxicity of pancrelipase and the lack of adverse human experience associated with the drug. Johnson & Johnson Baby Products Company, manufacturer of a capsule form of pancrelipase, petitioned

the Commission to exempt its pancrelipase product.

DATE: Comments on this proposed exemption must be received by January 25, 1980. Comments received after this date will be considered to the extent practicable.

If the Commission issues a final regulation exempting this product, the Commission proposes that the exemption become effective on the date the final regulation is published in the Federal Register.

ADDRESSES: Comments, preferably in five copies, should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Third Floor, 1111 18th Street, NW., Washington, D.C. 20207. Comments received may be seen in the Office of the Secretary during working hours Monday through Friday.

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:

Background

On April 26, 1979, the Commission received a petition (PP 79-3) from Johnson & Johnson Baby Products Company, of Raritan, N.J., requesting an exemption from child-protection (special) packaging requirements for pancrelipase in 100 and 250 capsule containers. A large amount of the drug is regularly used as replacement therapy for pancreatic enzyme insufficiency in children with cystic fibrosis. Such children are taught to self-administer the drug at an early age (5-8 years) because the medication must be taken at all meals and snacks.

The exemption was specifically requested for containers of 100 and 250 capsules. Pancrelipase is also prescribed in powder and tablet form and may be enteric coated to prevent destruction of a portion of the pancrelipase in the stomach. Regardless of the form of the product, however, it appears unlikely that a child would ingest a quantity of the drug sufficient to cause serious personal injury or serious illness.

Based upon the low toxicity of pancrelipase preparations, the Commission is considering an exemption for pancrelipase on a generic basis for all dosage forms (tablets, capsules, and powders).

Grounds for Exemption

The petitioner contends that an exemption for pancrelipase is justified based upon the low toxicity of the drug

as shown by the lack of adverse human experience data. Data from the National Clearinghouse for Poison Control Centers (NCPCC) indicate that only two ingestions of pancrelipase products occurred during the period from 1969 through 1976. These two ingestions occurred in 1974, and no symptoms of hospitalization were involved in either case. In addition, a medical literature search back to 1950 does not reveal any articles on the accidental ingestion of pancrelipase. Physicians' reports that are included in the petitioner's supporting material reveal that no adverse reactions occurred in patients taking the petitioner's pancrelipase preparation during clinical studies. Also, animal toxicity studies could not determine the Median Lethal Dosage of pancrelipase in rats and mice, as doses up to 9.336 grams per kilogram did not produce death in any of the animals tested. Another study cited by the petitioner demonstrates that the single dose ingestion of an entire container of 250 capsules by each of four beagle dogs did not produce any toxic effects.

An examination of the most current data sources available to the Commission staff reveals no reports of pancrelipase ingestion other than the two reports in 1974 (neither involving symptoms nor hospitalizations) which are cited in the petition and referenced above. The staff examined the data supplied by the petitioner, the statistics of the National Clearinghouse for Poison Control Centers from 1969 through 1976, the National Electronic Injury Surveillance System Comments for 1978, in-depth investigations, injury and potential injury information poison control statistics for 1975 and 1976, and the Commission's consumer complaint and death certificate files.

Johnson & Johnson also contends that an exemption for pancrelipase is justified because special packaging could adversely compromise the utility and stability of the drug. According to the petitioner, because the cystic fibrotic children who need access to the drug are not physically strong, opening the child-resistant closure is especially difficult, and special packaging could interfere with self-administration of the medication. In addition, if such difficulty causes the children to leave the closure loosened, then the capsules would be exposed to moisture in the air which could result in a loss of product potency.

The Commission solicited the opinion of its Technical Advisory Committee (TAC) on Poison Prevention Packaging. Of the 14 members who commented on the petition, 10 members recommended

granting the petition and 4 members recommended denial.

The 10 members who recommended granting the petition cited the need to make access to the medication less difficult for the cystic fibrotic children who constitute a majority of the product's users, and the unlikelihood that the drug would cause any serious toxic effects if accidentally ingested by young children.

One of the 4 members who recommended denial expressed concern "if there is any possibility of ingestion of the product harming a child" and noted that, in his opinion, child-resistant packaging on today's market is no more difficult to open than standard conventional closures. In response to this concern, the Commission observes that the pancrelipase product has a low toxicity, and that the accidental ingestion of such a product would be highly unlikely to result in serious illness to the children involved. With respect to the allegation that child-resistant closures are no more difficult to open than conventional closures, the Commission notes that the protocol test used to determine the child-resistance of special packaging stipulates that no more than 20 percent of children between the ages of 42 months and 51 months be able to open a package within a 10 minute test period (16 CFR 1700.15, 1700.20). Further, the adult protocol test allows up to 10 percent of adults to fail to gain entry to the special packaging. Thus, the Commission observes that a certain percentage of children who are slightly older than the test group is likely to encounter difficulties in opening such packaging as well, and this percentage is likely to be higher for cystic fibrotic children. Due to the physical weakness associated with the disease, the Commission notes that these children who are expected to self-administer pancrelipase are placed at a particular disadvantage when asked to use child-resistant packaging.

A second TAC member expressed concern about the warning on the pancrelipase package that high doses of pancreatic enzymes can cause hyperuricosuria (high levels of uric acid in the urine). In response to this concern, the Commission notes that although reports of hyperuricosuria involving cystic fibrotic children taking pancrelipase have been found in medical journals, the children involved were found to be taking larger than normal doses of medication at each meal, and the condition required several days or weeks to develop. In addition, the condition was completely reversed once normal doses of the medication

were administered. Thus, the Commission observes that it is highly unlikely that hyperuricosuria would occur in an accidental overdose situation. The Commission also notes that even if hyperuricosuria results in the formation of kidney stones, which would occur only if the uric acid level is quite high and of long duration, the stones would be medically treatable either through drug therapy or, if larger, by minor surgery.

A third TAC member suggested that an exemption was not necessary because under section 4(b) of the PPPA, 15 U.S.C. 1473(b), the prescribing physician may direct, or the consumer may request, that the drug be supplied in conventional packaging. In response to this suggestion, the Commission notes that the fact that the "non-complying provision" is available is not a sufficient reason to justify denial of such exemption requests. The evaluation of exemption petitions is based upon the toxicity of the product involved and the potential for serious injury or illness in cases of accidental overdose.

A fourth TAC member expressed concern that the amount of the product available per package was such that some risk of adverse effects might result in cases of accidental ingestion. In response to this concern, the Commission notes that the injury and ingestion data, as well as the animal toxicity studies, referenced above reveal that accidental ingestion is unlikely to result in serious injury or illness in children under 5 years of age.

The Commission also solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. Based upon the low toxicity of pancrelipase and upon the absence of reported adverse symptoms from ingestions of the drug, FDA concludes that the exemption should be granted.

Findings

Based on currently available information showing the low toxicity of pancrelipase and the lack of adverse human experience reported from ingesting pancrelipase, the Commission preliminarily finds that pancrelipase preparations in tablet, capsule, or powder form do not pose a risk of serious personal illness or serious injury to children. Accordingly, the Commission is proposing to exempt pancrelipase preparations from the child-resistant packaging requirements. This action constitutes the granting of petition PP 79-3.

The Commission emphasizes that this proposed exemption is limited to pancrelipase preparations containing no other substances subject to the

requirements for special packaging under 16 CFR 1700.14(a)(10).

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 that, therefore, environmental review of exemptions is 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 pancrelipase preparations in tablet, capsule, or powder form from poison prevention packaging, the Commission finds that the rule will have no significant effect on the environment and that no environmental review is necessary.

Conclusion

Having considered the petition, the human experience data and the animal toxicity studies submitted by the petitioner, the poison control statistics of the National Clearinghouse for Poison Controls Centers from 1969 through 1976, medical and scientific literature, and other Commission data sources, and having consulted, pursuant to section 3 of the Poison Prevention Packaging Act of 1970 (PPPA), with Technical Advisory Committee on Poison Prevention Packaging established in accordance with section 6 of the PPPA, the Commission concludes that an exemption from the special packaging requirements for pancrelipase preparations in tablet, capsule, or powder form should be proposed as set forth below. Accordingly, pursuant to the provisions of the PPPA (Pub. L. 91-601, sections 2, 3, 5; 84 Stat. 1670-72; 15 U.S.C. 1471, 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(a)(10) be amended by adding subparagraph (ix), as follows:

§ 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:

(ix) Pancrelipase preparations in tablet, capsule, or powder form and containing no other substances subject to this § 1700.14(a)(10).

(Secs. 2, 3, 5, Pub. L. 91-601, 84 Stat. 1670, 1671 (15 U.S.C. 1471, 1472, 1474))

Dated: November 19, 1979.

Sadye E. Dunn,
Secretary, Consumer Product Safety
Commission.

[FR Doc. 79-38222 Filed 11-23-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for
Neighborhoods, Voluntary
Associations and Consumer
Protection

24 CFR Part 3282

[Docket No. R-79-743]

Mobile Home Procedural and Enforcement Regulations; Disqualification and Requalification of Primary Inspection Agencies

AGENCY: Assistant Secretary for
Neighborhoods, Voluntary Associations
and Consumer Protection, HUD.

ACTION: Proposed Rule.

SUMMARY: This proposed rule amends the Mobile Home Procedural and Enforcement Regulations to provide for automatic disqualification of any primary inspection agency [Production Inspection Primary Inspection Agency (PIPA) or Design Approval Primary Inspection Agency (DAPIA)] if such agency has been inactive for a period of one year. This disqualification is based upon the Department's belief that a primary inspection agency may lose expertise and may fail to keep abreast of changes in the regulations if it is not actively engaged in the performance of its functions. In addition, the required annual monitoring cannot be done for an agency which is not performing.

DATES: Comments must be received on or before January 25, 1980.

ADDRESSES: Comments must be sent to the Rules Docket Clerk, Office of the Secretary, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: John Mason, Chief, Enforcement Branch.

Mobile Home Standards Division, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-7970.

SUPPLEMENTARY INFORMATION:

Regulations dealing with primary inspection agencies (both IPIA's and DAPIA's) were promulgated pursuant to the Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* In order for a primary inspection agency to provide services pursuant to the Mobile Home Procedural and Enforcement Regulations, it must be approved by the Department pursuant to these regulations.

The present rule 24 CFR 3282.356 deals with disqualification of a primary inspection agency where such agency is not adequately carrying out one or more of its functions. It does not address the issue of disqualification of an inactive primary inspection agency.

The Department believes that a primary inspection agency may lose expertise and may fail to keep abreast of changes in the regulations if it is not actively engaged in the performance of its functions. In addition, the performance of each primary inspection agency must be monitored at least once a year pursuant to 24 CFR 3282.453(b). It is, of course, impossible to monitor the performance of an agency which is not performing. In order to deal with these concerns this proposed rule has been prepared. The rule would automatically disqualify any primary inspection agency which has been inactive for a period of one year. The proposed rule also permits any agency which has been disqualified because of inactivity to resubmit an application in order to be requalified.

The Department has determined that an Environmental Impact Statement is not required with respect to this proposed rule. A copy of the Finding of Inapplicability is available for inspection and copying according to Department rules and regulations during business hours at the Office of the Rules Docket Clerk, whose address is stated above.

Accordingly, it is proposed that 24 CFR 3282.356(e) be added as follows:

§ 3282.356 Disqualification and requalification of primary inspection agencies.

(e) Both provisional and final acceptance of any IPIA (or DAPIA) automatically expires at the end of any period of one year during which it has not acted as an IPIA (or DAPIA). An IPIA (or DAPIA) has not acted as such unless it has actively performed its services as an IPIA (or DAPIA) for at

least one manufacturer by which it has been selected. An IPIA (or DAPIA) whose acceptance has expired pursuant to this provision (§ 3282.356(e)) may resubmit an application under § 3282.353 in order to again be qualified as an IPIA (or DAPIA), when it can show a bona fide prospect of performing IPIA (or DAPIA) services.

(Sec. 625, National Mobile Home Construction and Safety Standards Act of 1974, (42 U.S.C. 5424); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)))

Issued at Washington, D.C., November 1, 1979.

Richard C. D. Fleming,

General Deputy Assistant Secretary for
Neighborhoods, Voluntary Associations, and
Consumer Protection.

[FR Doc. 79-36050 Filed 11-23-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 139

[LR-61-78]

Excise Tax on Coal; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to excise tax on coal.

DATES: The public hearing will be held on January 10, 1980, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by December 27, 1979.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-61-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 4121 of the Internal Revenue Code of 1954, as added

by section 2 of the Black Lung Benefits Revenue Act of 1977. The proposed regulations appeared in the *Federal Register* for Monday, August 27, 1979, at page 50065 (44 FR 50065).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by December 27, 1979.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

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.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 79-36376 Filed 11-23-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Gateway National Recreation Area; Use of Metal Detecting Device

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: Regulations in effect at the Gateway National Recreation Area prohibit the possession or use of mineral or metal detecting devices. This rule will allow the possession or use of such a device on Jacob Riis Beach.

DATES: Written comments, suggestions or objections will be accepted on or before December 26, 1979.

ADDRESSES: Comments should be directed to: Superintendent, Gateway National Recreation Area, Building No. 69, Floyd Bennett Field, Brooklyn, N.Y. 11234.

FOR FURTHER INFORMATION CONTACT: Herbert S. Cables, Jr., Superintendent, Gateway National Recreation Area, Telephone: (212) 252-9150.

SUPPLEMENTARY INFORMATION:

Background

Present regulations (36 CFR 2.20(b)(6)) prohibit the possession or use of a mineral or metal detecting device in areas of the National Park System. The intent of this action is to allow the possession or use of mineral or metal detectors in one well defined area of public beach. The sand for this beach was hauled in by truck, and has been held in place by groins placed for that purpose. Thus, there is no possibility that historic or archeological resources are present to be disturbed by metal detecting activity.

Use of metal detectors was a recreational pursuit in this area until the National Park Service assumed ownership some time after 1972.

Authority: Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 3); P.L. 92-592 of October 27, 1972 (85 Stat. 1311, 16 U.S.C. 460cc.); Title 36 CFR 1.1(c).

In consideration of the foregoing, it is proposed to amend § 7.29 of Title 36, Code of Federal Regulations by addition of a new paragraph (d) as follows:

§ 7.29 Gateway National Recreation Area.

(d) *Possession or Use of Mineral or Metal Detecting Device.* Possession or use of a mineral or metal detecting device is allowed at Jacob Riis Park in the beach area between the boardwalk and the water line, from Beach 149th Street to Beach 169th Street, commonly known as Bays One through Fourteen. Possession or use of a mineral or metal detecting device at any other location is prohibited: *Provided*, That possession of such a device within a motor vehicle is permitted if the device is broken down or packed in such a way as to prevent its use while in the park areas: *Provided further*, That the provisions of this section shall not apply to (1) fathometers, radar equipment and electronic equipment used primarily for the navigation and safe operation of boats and aircraft, and (2) mineral or metal detecting devices used in pursuit of authorized mining activities.

Drafting Information

The following persons participated in the writing of this regulation: Leonard A.

Frank and Donald L. Jackson, North Atlantic Regional Office, and Robert Cunningham, Gateway National Recreation Area, all of the National Park Service.

Impact Analysis

The National Park Service has determined that this document is not a significant rule requiring preparation of a regulatory analysis under Executive Order 12044 and Part 14 of Title 43 of the Code of Federal Regulations; nor is it a major Federal action significantly affecting the quality of the human environment, which would require preparation of an Environmental Impact Statement.

L. J. Hovig,

Acting Regional Director, North Atlantic Region, National Park Service.

[FR Doc. 79-36256 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 120

[FRL 1365-6]

Water Quality Standards; Surface Waters of the State of Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules.

SUMMARY: This action proposes water quality standards to reestablish previously approved use classifications for segments of four navigable waterways, Five Mile Creek, Opossum Creek, Valley Creek, Village Creek, and upgrade the use designation of a segment of Village Creek from river Mile 30 to its source, where available information indicate that alternative use designations consistent with the Clean Water Act are attainable. This action is separate from final EPA rulemaking relating to the State of Alabama, in which EPA proposed use classifications for 23 stream segments (43 FR 43741, September 27, 1978). Final action on these streams is expected soon.

DATES: All written comments received on or before January 25, 1979 will be considered in the preparation of the final rule. Public hearing will be held on January 17, 1980, at 7:00 p.m.

ADDRESSES: Written comments should be addressed to R. F. McGhee, Water Quality Standards Coordinator, EPA, 245 Courtland Street, NE., Atlanta, Georgia, 30308. The hearing will be held in the North Meeting Room D-J, 1 Civic Center Plaza, Birmingham, Alabama.

FOR FURTHER INFORMATION CONTACT: R. F. McGhee at the above address, telephone (404) 881-3012.

SUPPLEMENTARY INFORMATION: Statutory requirement: Section 303(c) of the Clean Water Act, as amended (Pub. L. 95-217) (hereinafter the Act) provides that whenever a state revises its water quality standards, or adopts new standards, such standards must be submitted to EPA for approval. If EPA determines that the revised standards are not consistent with the requirements of the Act, it must notify the state within 90 days and specify the changes necessary to comply with the Act. If the state's water quality standards are not brought into compliance with the Act within 90 days after the date of notification, the EPA must promulgate water quality standards consistent with the Act after proposal and public comment.

The Agency's regulations for implementing Section 303(c) of the Act are codified at 40 CFR 35.1550. Guidance for these regulations has appeared in Chapter 5 of EPA's "Guidelines for State and Areawide Water Quality Management Program Development" (November 5, 1976; 40 FR 43777; "Guidelines"), and in a Federal Register Notice (43 FR 29588—July 10, 1978).

Background

On October 15, 1976, and March 17, 1977, the Alabama Water Improvement Commission (AWIC) held public hearings to receive comments on Alabama's water quality standards relative to the requirements of the Act, the 40 CFR 35.1550 regulations and the Guidelines. Since these hearings, seven distinct actions have occurred, either by the State or EPA, leading to this proposed rulemaking.

First, on May 30, 1977, the AWIC adopted substantive revisions to the Alabama water quality standards including changes in the antidegradation policy, mixing zone criteria, waste treatment requirements, temperature criteria, use classifications and their associated criteria and 175 designated beneficial use classification assignments.

Second, on August 29, 1977, in accordance with Section 303(c)(3) of the Act, the EPA Regional Administrator, Region IV, approved the revised water quality standards adopted on May 30, 1977, except for specific use designations for 57 stream segments, and for Section V, Waste Treatment Requirements pending further evaluation.

Third, on September 17 and 20, 1977, EPA Region IV held public meetings to

provide information to interested persons on the Agency's action of August 29, 1977, and to receive public comments on the sections of the water quality standards which were excepted from EPA's approval.

Fourth, on September 28, 1977, the Regional Administrator disapproved 50 beneficial use designations which are the subject of another rulemaking (43 FR 43741; September 27, 1978). The Regional Administrator approved seven beneficial stream use designations for which he had previously withheld approval including the assignment of the Agricultural and Industrial Water Supply Use to segments of Five Mile, Opossum, Valley and Village Creeks in Jefferson County, Alabama.

Fifth, on December 19, 1977, among other actions, the AWIC adopted a revised beneficial use classification, Industrial Operations, for segments of Five Mile, Opossum, Valley and Village Creeks.

Sixth, on January 5, 1978, the AWIC submitted to the Regional Administrator the revised water quality standards adopted on December 19, 1977.

Finally, on April 13, 1978, the Regional Administrator disapproved the assignment of the Industrial Operations use to Opossum Creek and portions of Five Mile, Valley and Village Creeks. Because of this determination and because the State has failed to take appropriate action to justify the downgrading of beneficial use designations previously approved for the four stream segments listed herein, the Agency is proposing appropriate stream use designations in accordance with Section 303(c)(4) of the Act.

The State may: (a) Submit adequate justification as provided by 40 CFR 35.1550(c) for the use classifications disapproved by the Regional Administrator; or (b) adopt appropriate use classifications for the waters listed in this proposed rule. If the State fails to act in either manner (a or b), the Administrator in accordance with Section 303(c)(4) of the Act will promulgate the water quality standards proposed herein, or other standards which EPA determines are consistent with the requirements of the Act after considering public comment.

Statutory Basis and Purpose

Section 303(c) of the Act requires that State water quality standards " * * * protect the public health and welfare, enhance the quality of water and serve the purposes of this Act." The purpose of water quality standards, as with other sections of the Act, is to achieve the 1983 national goal, wherever attainable, " * * * of water quality

which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water * * * (Section 101(a)(2)).

A water quality standard for a particular water body basically consists of two parts: a designated "use" for which the water body is to be protected (such as "agriculture," "recreation," or "fish and wildlife") and a numerical or qualitative pollutant concentration limit (or "criterion") which will support that use. (A more detailed discussion of water quality standards is presented in EPA's policy statement, 43 FR 29588, July 10, 1978, and in regulations at 40 CFR 35.1550.)

As noted in EPA's July 10, 1978 statement, EPA's policy with respect to the designation of individual water segments for one or more uses is based on the goal set forth in Section 101(a)(2) of the Act. It is EPA's policy that uses consonant with the 1983 goal are the norm, and that less protective uses may be allowed only in carefully limited circumstances related to the determination of attainability. Thus EPA's regulations require that States establish water quality standards that will achieve the 1983 goals where attainable and maintain water uses currently being attained (40 CFR 35.1550(c) (1) and (2)). If the currently designated use cannot be attained, however, that use may be downgraded, but only upon a demonstration that the designated use is "unattainable" because:

- (1) Of natural background;
- (2) Of irretrievable man-induced conditions; or
- (3) Achievement of the designated use would require application of effluent limitations for existing sources more stringent than those required pursuant to section 301(b)(2) (A) and (B) of the Act (even assuming implementation of "best management practices" for nonpoint sources) and imposition of such extra controls would result in substantial and widespread adverse economic and social impact (40 CFR § 35.1550(c)(3)).

As explained below, EPA's action today follows these policies. Since the State has not submitted information to demonstrate that water quality consistent with the Agricultural and Industrial use classification is not attainable in these segments in accordance with 40 CFR 35.1550(c)(3), EPA is proposing to reinstate the former designated uses except for the segment of Village Creek from River Mile 30 to its source. For that segment of Village Creek, site specific studies indicate that the higher use classification of Fish and Wildlife is attainable, at no extra cost,

through the application of minimum technology-based treatment requirements and improved operation of existing treatment facilities. EPA is, therefore, proposing to upgrade that segment to a Fish and Wildlife classification. EPA will review all information that Alabama may submit in support of the downgradings, as well as all public comments, before promulgating a final rule.

The Agency's Proposed Rule

The proposed rule would reestablish designated use classifications downgraded by the State without adequate justification, and upgrade one segment which available scientific and technological data indicate can achieve the higher use with current treatment requirements.

Three water use classifications are of concern with respect to the four creeks evaluated: (1) Fish and Wildlife (2) Agricultural and Industrial Water Supply and (3) Industrial Operations. The Fish and Wildlife classification established in Alabama's standards requires that "the waters will be" suitable for fish, aquatic life and wildlife propagation." With respect to toxic substances attributable to sewage, industrial wastes or other wastes, the requirements incorporated in Alabama's standards are that such substances be limited to "only such amounts, whether alone or in combination with other substances, as will not be injurious to fish and aquatic life including shrimp and crabs in estuarine or salt waters or the propagation thereof; not to exceed 1-10th of the 96-hour median tolerance limit for fish and aquatic life including shrimp and crabs in salt and estuarine waters, except that other limiting concentrations may be used when factually justified and approved by the Commission."

Requirements of the Agricultural and Industrial Water Supply classification provide that "the waters except for natural impurities which may be present therein, will be suitable for agricultural irrigation, livestock watering, industrial cooling waters, and fish survival." Toxic substances are limited to "only such amounts as will not render the waters unsuitable for agricultural irrigation, livestock watering, industrial cooling, and industrial process water supply purposes, and fish survival, nor interfere with downstream water uses."

The Industrial Operations classification applies to those waters used as "industrial cooling and process water supplies and any other usage, except fishing, bathing, recreational activities including water contact sports or as a source of water supply for

drinking, or food-processing purposes." Toxic substances are limited to "only such amounts as will not render the waters unsuitable for industrial cooling, and industrial process water supply purposes nor interfere with downstream water uses."

The most important differences between the three alternative designated uses are that concentrations of the toxic substances (1) cannot interfere with aquatic life or wildlife propagation in fish and wildlife streams; (2) cannot interfere with fish survival in agricultural and industrial water supply streams; (3) cannot interfere with downstream uses in industrial operation streams. The Fish and Wildlife designated use for a portion of Village Creek requires more stringent water quality criteria than the Agricultural and Industrial Water Supply use and both of these designated uses require more stringent water quality criteria than the Industrial Operations designated use.

From January 1978 through September 1978 the Surveillance and Analysis Division of EPA, Region IV conducted biological and chemical studies of the four streams subject to this rulemaking. The purpose of the studies was to characterize and test the quality of Five Mile, Opossum, Valley, Village creeks, and wastewater discharges they receive. EPA used the data from these studies to identify and quantify significant toxic compounds and to develop in-stream criteria concentrations which would reflect the degree of protection associated with the designated uses under consideration. Following the determination of maximum pollutant concentrations for critical parameters, allowable quantities and needed reductions in critical pollutants were determined for each point-source discharge. EPA then compared the treatment necessary to achieve these reductions and the costs involved, and determined that the designated uses proposed in this rule are attainable.

EPA's analysis indicates that water quality levels supporting Agricultural and Industrial uses in Opossum and Valley Creeks, plus Village Creek from Bayview Lake to River Mile 30 can be achieved with improved operation of existing facilities and the application of minimum technology-based controls. In Five Mile Creek, achievement of this water quality may also require installation of activated sludge processes by two discharges. Finally, EPA's review indicates that the Fish and Wildlife classification can be achieved in the segment of Village Creek from River Mile 30 to its source with minimum treatment requirements. No

information is available to refute this conclusion. Since the Fish and Wildlife classification can be achieved in this segment of Village Creek without placing additional restrictions on the dischargers, EPA is proposing that this segment of Village Creek be so designated.

Economic Impacts

Assessment of the estimated economic impact of projected point source abatement controls necessary to achieve the proposed designated uses was based on an analysis of projected reductions in pollutants for certain affected dischargers and the estimated costs of necessary controls. The state provided no economic justification for establishing the less stringent use that it adopted.

Based upon available information, EPA determined that two dischargers, located on Five Mile Creek where the Agency is proposing to reinstate the previous Agricultural and Industrial Water Supply use designation, may be affected by the proposed rulemaking. These point source dischargers may have to install additional wastewater treatment technology to meet the proposed water quality standards.

If additional treatment becomes necessary, it is estimated that costs for such improvements could amount to approximately \$600,000—\$1.4 million in construction costs and \$300,000 to \$900,000 per year in total annual costs.

Under Executive Order 12044 EPA is not required to perform a regulatory analysis (43 FR 12661; March 24 1978) on this proposed regulation.

Public Hearings

The Agency plans to hold a public hearing in Birmingham, Alabama.

The hearing will be held from 7:00 pm on January 17, 1979, in the North Meeting Room D-J, 1 Civic Center Plaza. Requests to make oral statements should be forwarded to: R. F. McGhee, Water Quality Standards Coordinator, EPA, 345 Courtland Street, NE, Atlanta, Georgia, 30308. Both oral and written comments will be accepted at the

hearing. The hearing officer reserves the right to fix reasonable limits on the time allowed for oral presentations.

Availability of the Record

The entire administrative record concerning the Alabama water quality standards described in this preamble is available for public inspection and copying at the Environmental Protection Agency, Region IV Office, Water Division, 345 Courtland Street, NE, Atlanta, Georgia, 30308, during normal business hours of 8:00 am to 4:30 pm. The water quality standards for Alabama, detailed analyses on each stream segment mentioned herein, the correspondence between the AWIC and Region IV, EPA, the proposed standards and other supporting technical information are available for inspection and copying at the U.S. EPA Public Information Reference Unit (Room 2922), 401 M Street, SW., Washington, D.C. 20460, during normal business hours of 8:00 am to 4:30 pm.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 101, 303, and 501 of the Clean Water Act, as amended (33 U.S.C. 1251, 1313, 1361)).

Dated: November 16, 1979.

Barbara Blum

Acting Administrator.

Part 120 of Chapter I, Title 40 of the Code of Federal Regulations is proposed to be amended by expanding § 120.10 as follows:

The beneficial uses identified in the water quality standards revisions adopted by the Alabama Water Improvement Commission on May 30, 1977, and revised on December 17, 1977, are amended as follows:

§ 120.10 Alabama.

(a) * * *

Basin	Stream	From	To	Classification
Warrior.....	Five Mile Creek.....	Coalburg.....	Kefone.....	Agricultural and Industrial.
	Opossum Creek.....	Valley Creek.....	Its Source.....	Agricultural and Industrial.
	Valley Creek.....	County Road, 1½ miles NE of Johns (River Mile 33).	Opossum Creek.....	Agricultural and Industrial.
	Village Creek.....	Bayview Lake.....	River Mile 30 (Republic Steel).	Agricultural and Industrial.
		River Mile 30 (Republic Steel).	Its Source.....	Fish and Wildlife.

40 CFR Part 250

(FRL 1363-7)

Hazardous Waste Guidelines and Regulations; Extension of Comment Period on and Clarification of Supplemental Proposed Rule**AGENCY:** United States Environmental Protection Agency (EPA).**ACTION:** Extension of comment period on and clarification of proposed rule.

SUMMARY: This notice further extends for sixty (60) days the deadline for commenting on EPA's August 22, 1979, proposal to list lead/phenolic sand casting waste from malleable iron foundries as a hazardous waste under Section 3001 of the Resource Conservation and Recovery Act, as amended. This notice also amends EPA's proposed listing for this waste to clarify the types of foundry wastes covered.

DATES: Comments on EPA's proposal to list lead/phenolic sand casting waste as a hazardous waste are now due no later than January 25, 1980.

ADDRESSES: Comments should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste [WH-565], U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. Communications should identify the regulatory docket "Section 3001".

The official record for this rulemaking and EPA's other hazardous waste regulations is available at: Room 2711, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alan S. Corson, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION: On August 22, 1979 (44 FR 49402-49404), EPA proposed to add "lead/phenolic sand casting waste from malleable iron

foundries" to the proposed list of hazardous wastes which the Agency published on December 18, 1978 (44 FR 58946, 58967-58959). The original deadline for commenting on this proposed listing was October 12, 1979. On October 12, 1979, EPA extended this deadline for forty-five (45) days to give the public an opportunity to review certain supporting technical data which were not expected to be available until mid-October, 1979 (44 FR 58923).

Because it now appears that these data will not be available until late November, EPA is extending the comment period on lead/phenolic foundry sand casting waste for an additional sixty (60) days.

Additionally, as a result of public comment on its proposed listing of "lead/phenolic sand casting waste from malleable iron foundries" and its review of its background data, EPA is making several changes in this listing. First, EPA has amended the listing description to make it clear that the waste stream which EPA is proposing to list as a hazardous waste is lead-bearing wastewater treatment sludges. Second, because the only data which EPA currently has suggesting that ferrous foundry treatment sludges contain high concentrations of lead is from gray iron foundries, the listing has been amended to include only gray iron foundry treatment sludges. Finally, because EPA has insufficient data on the phenol content of these sludges, the listing description has been amended to delete phenol.

Dated: November 16, 1979.

Barbara Blum,
Deputy Administrator.

It is proposed to further amend Title 40 CFR Part 250, Subpart A which was proposed at 43 FR 58946-58968 (December 18, 1978) and amended at 44 FR 49402-49404 (August 22, 1979) as follows:

1. In § 250.14(b)(2) delete "3322—Lead/phenolic sand casting waste from malleable iron foundries (T,O)" and insert in lieu thereof the following:

3321—Lead-bearing wastewater treatment sludges from gray iron foundries (T).

(FR Doc. 79-36200 Filed 11-23-79; 8:45 am)

BILLING CODE 6550-01-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 0, 61 and 63****[CC Docket No. 79-252; FCC 79-599]****Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor****AGENCY:** Federal Communications Commission.**ACTION:** Notice of Inquiry and Proposed Rulemaking.

SUMMARY: The FCC is proposing to reduce substantially the amount of information which certain non-dominant communications common carriers must include when they propose to change their charges or terms of service. It is also proposing to reduce the regulatory burdens on such carriers who seek to introduce new, or curtail existing, service. The Communications Act of 1934 requires that the charges and practices of communications carriers be just, reasonable, and not unduly discriminatory. Such charges and practices—or tariffs—are filed with the Commission and are accompanied by detailed support material to facilitate the Commission's analysis. Recently many new firms have begun to supply telecommunications services, making these markets competitive as between firms which do not have a dominant position. The FCC stated its belief that it can rely on marketplace forces to ensure that the rates and conditions of service by such firms are lawful, and therefore proposes to relieve these firms of the burdens of filing cost support material with tariff changes. In addition, the Commission would reduce the authorization procedures such firms must undergo to use new facilities or discontinue existing service. These proposed rules, when and if implemented, would free Commission resources to address questions raised by the filings of dominant carriers—such as AT&T and Western Union—and would relieve the non-dominant carriers of a burden which has delayed the introduction of innovative services. The Commission also is seeking comment on whether, and to what extent, it can and should free certain carriers from all regulation.

DATES: Comments on the specific deregulatory proposals must be received on or before February 1, 1980, and reply comments on or before March 14, 1980.

Comments on the further deregulatory proposals must be received on or before February 29, 1980, and reply comments on or before March 21, 1980.

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

FOR FURTHER INFORMATION CONTACT: Ken Levy, Tariff Division, Common Carrier Bureau, (202/632-6917).

In the matter of Policy and Rules concerning rates for competitive common carrier services and facilities authorizations therefor [CC Docket No. 79-252]

Adopted: September 27, 1979.

Released: November 2, 1979.

By the Commission: Commissioners Ferris, Chairman; and Fogarty issuing Separate Statements; Commissioner Lee absent.

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I. Introduction

1. Notice is hereby given of commencement of an inquiry into the ratemaking procedures and methods applied to competitive carriers providing domestic services and certain other aspects of our regulation of such carriers. Also, we are commencing a rulemaking proceeding pursuant to Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, to consider amendment of our tariff filing requirements for such common carrier services as well as other rule changes relating to facilities and service authorizations. While the established carriers¹ provide competitive

¹The term "established carriers" is used throughout this Notice to describe those interstate telephone and telegraph carriers which predominated in the industry prior to our

communications services in addition to those services which are essentially non-competitive, the primary focus of this proceeding will be on the so-called specialized common carriers (SCCs), domestic satellite carriers (Domsats), resale (including value-added) carriers, and miscellaneous common carriers (MCCs). For convenience sake, we shall often refer to these carriers throughout this proceeding as Other Common Carriers (OCCs). As will be discussed later, these carriers offer a variety of services and compete not only with each other but with the established carriers as well.

2. Commencement of this proceeding is deemed appropriate because of changes which have occurred in the domestic telecommunications industry in recent years. Primarily as a result of technological and regulatory developments, the telecommunications industry has evolved from one dominated by a few large entities where service was provided largely on a monopoly basis to one where a degree of competition now exists for the provision of some communications services. However, our efforts to assure just and reasonable and otherwise lawful rates in a competitive marketplace by applying the rules and procedures we established to regulate the rates charged by carriers operating in a monopoly market seem to have resulted in unnecessary regulatory burdens and retarded some of the cost and service benefits anticipated when we adopted our general policies favoring competition. In general, we propose the establishment of different regulatory rules, policies and practices to be applicable to carriers depending upon the extent of their market power, ability to cross-subsidize unlawfully among their services, and other relevant factors. We are also proposing certain changes in our Section 214 policies, practices and rules as applied to domestic competitive carriers which more accurately reflect the developing competitive realities.² Among our goals in this proceeding are to investigate and to deregulate so far as possible consistent with the public interest in the emerging competitive telecommunications market.

3. The first proposal would relieve the competitive carriers of the requirements of § 61.38 of the Rules which now mandates the submission of cost support data for all tariff filings. As explained more fully below, it appears that these requirements, as applied to non-

Specialized Common Carrier Services, 29 F.C.C. 2d 870 (1971), *recon.* 31 F.C.C. 2d 1106 (1971), *aff'd sub nom. Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975).

²See paras. 63-73, *infra*.

dominant carriers, are not only unnecessary but obstructive to our statutory responsibilities under the Act. Consistent with our tentative belief that competitive carrier rates are highly unlikely to contravene the Act, the second major proposal would create a presumption of lawfulness of these rates where a petition to suspend has been filed. The third principle change proposes to minimize the current burdens imposed on the non-dominant carriers under Section 214, and would permit these carriers to file for Commission certification for construction and circuit extensions in a single application. Burdens of discontinuance certification are also minimized. Fourth, questions are raised whether the current market structure of video relay carriage warrants different treatment of these carriers under these proposals. Finally, certain further options of a more fundamental deregulatory nature are opened for inquiry. These options raise issues of whether the Commission can and should forbear from regulation of the non-dominant carriers and (2) reconsider the definition of "common carrier" with the effect of excluding certain entities from the proscription of the Act.

4. Our First Report in Docket No. 20003, *Customer Interconnection*, 61 F.C.C. 2d 766 (1976),³ contains a detailed discussion of the emergence of competition in the domestic telecommunications industry. The record in that proceeding is incorporated by reference here, and we refer interested persons to it for background. Briefly, we note that prior to our recent policy of allowing competitive entry, the only significant entities providing domestic interstate telecommunications services had been the American Telephone and Telegraph Company (AT&T) which, through its Bell System companies in cooperation with the independent telephone companies, has provided interstate telephone service,⁴ the Western Union Telegraph Company (WU) which has provided public

³Docket No. 20003 is an on-going inquiry into the effects of our policies favoring competition in various segments of the telecommunications industry, including interconnection of customer provided terminal equipment and provision of private line services.

⁴In addition to providing virtually all interstate telephone service, AT&T and its associated operating companies remain the dominant communications entity providing most local and intrastate telephone service. However, approximately 1,600 non-Bell, independently owned telephone companies provide about 16% of the domestic telephone service in the U.S. They interconnect with the Bell System companies in providing toll telephone and other services on a non-competitive or cooperative basis. *Customer Interconnection*, *supra*, 61 F.C.C. 2d at 794-95.

message telegram service (PMS),⁵ and the MCCs which have provided video relay services primarily to CATV systems.⁶ In a series of decisions beginning with *Allocation of Frequencies in the Bands above 890 Mc*, 27 F.C.C. 359 (1959), *recon.* 29 F.C.C. 825 (1960), we have established a policy favoring alternatives to the services traditionally offered only by the telephone and telegraph companies. See *Microwave Communications Inc.*, 18 F.C.C. 2d 953 (1969), *recon.*, 21 F.C.C. 2d 190 (1970); *Specialized Common Carrier Services*, *supra*; *Domestic Communications Satellite Facilities*, 35 F.C.C. 2d 844 (1972), *recon.*, 38 F.C.C. 2d 665 (1972); *Packet Communications, Inc.*, 43 F.C.C. 2d 922 (1973); *Graphnet Systems, Inc.*, 44 F.C.C. 2d 800 (1974), *Resale and Shared Use*, 60 F.C.C. 2d 261 (1976), *recon.*, 62 F.C.C. 2d 588 (1977), *aff'd sub nom.*, *AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 99 S.Ct. 213 (1978).

5. In this Notice we set forth in some detail our observations, experience and analysis regarding the industry, the extent of competition, the problems which have occurred from application to competitive carriers of rules premised on monopoly conditions, and proposed changes in those rules and policies to reflect the emergence and developing nature of competition and the varying degrees of regulation needed within the present and reasonably foreseeable industry structure. We believe that the information received during the course of this proceeding will enable us to choose new approaches to rate, tariff and facilities regulation of carriers offering services where competition exists and which will promote, rather than hinder, the evolution of a more

competitive marketplace and related consumer benefits.

II. Current Tariff and Section 214 Requirements

6. Our authority to regulate the charges and services of communications common carriers is contained in Title II of the Communications Act of 1934 (hereinafter the Act). Section 201(b) of the Act, 47 U.S.C. § 201(b), provides that all charges, classifications, practices and regulations for such services shall be "just and reasonable."⁷ Section 202(a), 47 U.S.C. § 202(a), prohibits charges, classifications, and practices, that are unduly discriminatory or preferential.⁸ These sections contain the statutory standards by which we have judged the lawfulness of all carriers' rates and service regulations. Our current rules contain provisions which were adopted some time ago to assist us in our efforts to fulfill these statutory objectives.

7. For example § 61.38 of the Rules, 47 CFR § 61.38, "Material to be submitted with letters of transmittal by filing carriers," requires submission of certain support material and economic data. That rule was adopted in 1970, when very few services were offered on a competitive basis. See *Final Report and Order in Docket No. 18703, Tariffs-Evidence*, 25 F.C.C. 2d 957 (1970). As discussed in *Tariffs-Evidence*, § 61.38's cost support data requirements were enacted at that time to provide information to assist us in evaluating the lawfulness of tariff filings. 25 F.C.C. 2d at 965. The rule was, in part, a codification of existing informal policy or procedure whereby we would request cost information from certain carriers relative to their major tariff filings. At the time this rule was proposed (in 1969) the only carriers involved (except for the IRCs and the MCC video relay carriers) were the established carriers whose various services were offered essentially on a non-competitive basis. For those carriers, information with respect to revenue/cost relationships, as required

by § 61.38, was essential in evaluating the justness and reasonableness of rate levels and rate structures. By the time that we finalized our decision in Docket No. 18703, our initial policy of competitive entry for the SCCs had been adopted but, of course, not significantly effectuated by interested carriers. On reconsideration, we noted that the necessity for cost support data also existed where a carrier sought to offer a competitive service. However, we were careful to point out in this regard the circumstances where § 61.38 data might be most useful. Thus in *Tariffs-Evidence*, 40 F.C.C. 2d 149 (1973), we stated:

We have found that it is particularly important to obtain the data required by our rules where questions are raised as to whether a new or reduced rate competitive service is being cross-subsidized by other services and whether there is factual support for allegations of anti-competitive impact from such rates.

40 F.C.C. 2d at 153. We indicated in our orders adopting the rule we would either grant waivers or amend the rule based upon the experience gained with its application. See 25 FCC 2d at 966 and 40 FCC 2d at 154-155. In the several years since § 61.38's adoption and the emergence and continued development of competition, we have gained considerable experience with its application to the filings of the newly emerged SCC, Domsat, resale and MCC carriers, as well as its application to established carrier filings.

8. As set forth hereinafter,⁹ with respect to OCCs offering only competitive services, we have found that strict application of the requirements of § 61.38 has been of little use to the Commission in determining the lawfulness of their tariffs. This is due to the fact that for the competitive services offered by OCCs conditions in the marketplace usually play a determinative role in controlling the lawfulness of rate levels and rate structures within the meaning of Sections 201(b) and 202(a) of the Act. On the other hand, we have found § 61.38 data essential for holding accountable carriers offering both monopoly and competitive services.¹⁰ Because marketplace factors play such a large role in determining the rates that OCCs

⁵ Western Union has provided telegram service on a monopoly basis since 1943 when the Communications Act was amended to enable WU to merge with Postal Telegraph Cable Company, then a competing provider of telegraph service. However, the Commission recently concluded a rulemaking proceeding in which it decided to allow open entry into the domestic public message telegram service (PMS). See CC Docket No. 78-96, *Graphnet Systems Inc.*, 67 F.C.C. 2d 1059 (1978), *Report and Order*, 71 FCC 2d 471 (1979); *Notice of Inquiry*, FCC 79-442 [released July 23, 1979]. Also, WU has, since 1971, been the sole provider of domestic Telex and TWX services, having acquired AT&T's TWX service in addition to its own Telex service. The applicability of this proceeding to WU is discussed further at Part VIII, *infra*.

⁶ Aside from these carriers, the other major category of carriers whose rates have been subject to our regulation (prior to entry by the OCCs) are the international record carriers (IRCs) and the Communications Satellite Corporation (Comsat). Although international services may be, in some respects, competitive, their characteristics tend to be considerably different. Therefore, this proceeding will not address international policies (except to the extent that the domestic portion of international services may be affected).

⁷ Section 201(b) states, in pertinent part: All charges, practices, classifications and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.

⁸ Section 202(a) states that: It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

⁹ See Parts III, IV and V, *infra*.

¹⁰ Throughout this discussion, we generally use the term "monopoly" to refer to markets or services where there is little or no effective competition or where a carrier has substantial market power. As a result of *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978) (Execunet I), we recognize that, at this date, instances of legal monopoly, i.e. where entry into a market or initiation of a service is restricted by governmental authorities, are very limited.

can charge for competitive services, the amount and type of information that the Commission needs to fulfill its statutory obligation to insure that OCC rates are lawful is different from that it must receive from a carrier which offers both monopoly and competitive services. Thus, we propose herein to relieve OCCs of the requirement to file § 61.38 data but to retain that requirement for dominant carriers.

9. We have also found that strict application of the requirements of § 61.38 to the tariff filings by the OCCs has had inhibiting effects on their service offerings. In addition to the costs such regulation itself imposes (see para. 97 *infra*), our recent experience has shown that the OCCs' efforts to implement innovative services and pricing often have been impeded by petitions to reject or suspend their tariff filings. These petitions usually are filed by carriers offering comparable or competitive services. Indeed, the records of our Common Carrier Bureau reveal that approximately three-quarters of the petitions to suspend or reject filings of OCCs come from competing carriers, and not customers. The arguments made to support these requests are usually premised upon technical deviation from the cost support requirements of § 61.38. In many, if not most, cases, it is apparent that these petitions are being used by competitors as a dilatory tactic to postpone commencement of service or rate changes by competing carriers.

Our concern about this plethora of apparently protection motivated challenges to tariff filings was articulated recently in *RCA American Communications, Inc.*, 69 F.C.C. 2d 426 (1978), a case in which we consolidated for investigation tariff offerings of several domestic satellite carriers. There, we stated:

Generally, these transmittals propose either new services or lower rates for existing services. It has long been Commission policy to allow competition among carriers of this sort, to stimulate innovative techniques and services and lower rates. We have also stated our policy of exercising regulatory flexibility for these carriers, to permit reasonable freedom to compete. We have not, however, specified in any consistent way the limits of that flexibility, or which practices may be accepted as just and reasonable within the context of an orderly competitive market. Largely for that reason, we have instituted a number of investigations of proposed tariffs in response to petitions by competing carriers, including the investigations of the six tariffs captioned above. Some of the carriers' petitions have addressed issues of genuine concern to customers and to the public generally, but many others have challenged the details in the cost support material. Some petitions seem also to be filed to some degree as a sort

of competitive harassment. In any event, these filings and petitions impose major and costly burdens upon the carriers and the Commission, burdens which could be reduced substantially if the proper scope and limits for our exercise of regulatory concern toward the tariffs of these carriers were more clearly defined. We could reduce the burdens of regulation and give greater effect to fair competition, while directing our attention to matters of more substantial importance.

69 F.C.C. 2d at 433. In our judgment, it is an incongruous situation where entrants into the competitive portion of a regulated industry attempt to interfere with each other's efforts to compete in the marketplace by resorting to rules and procedures which should be used to aid the Commission in protecting the public from unjust, unreasonable and unduly discriminatory pricing by carriers with market power in those segments of the industry where competition is largely absent.

We believe, however, that this proceeding may result in an approach to regulating the OCCs' tariffs whereby legitimate questions concerning their lawfulness can be adequately resolved while relieving these carriers from the burden of having to withstand even the most specious challenges to their service offerings. Although we focus here on challenges to the OCCs' tariffs, we are also concerned, of course, with any tariff challenges that may be purely dilatory. We are not unaware that one effect of the proposals herein may be to continue to subject dominant carriers to such spurious petitions, while relieving the non-dominant carriers of this problem, and thereby working some asymmetry. We hope that resolution of two recently instituted proceedings will serve to remedy this in large part. Notice of Inquiry in CC Docket No. 79-245, *Manual and Procedures for the Allocation of Costs*, FCC 79-562 (released September 28, 1979); Notice of Inquiry and Proposed Rulemaking in CC Docket No. 79-246, *Private Line Rate Structure and Volume Discount Practices*, FCC 79-565 (adopted September 20, 1979). Also see discussion at para. 85, *Infra*.

10. In addition to addressing changes in § 61.38, we also intend to reduce the regulatory burdens related to Section 214 of the Act, 47 U.S.C. § 214, for competitive carriers.¹¹ To promote a

¹¹ Section 214 provides, in relevant part:

(a) No carrier shall undertake the construction of a new line or an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or

competitive market and the related consumer benefits, such as service diversity, we believe the Commission has considerable flexibility to reduce or eliminate many of the application requirements and constraints flowing from its past interpretations of Section 214. As discussed below, we propose to do this through modified notice or reporting procedures or other less costly alternatives which take into account the dynamics of the competitive marketplace. The barriers to free exit from the market posed by the present interpretations could also be altered so as to end yet another deterrent to competition by potential entrants. More specifically, under this option we would propose to reduce the Section 214 filing requirements to include only the initial authorization of a carrier and a listing of the communities to be served.

Additional channels could be added to those cities by filing reports but without additional authorization. Our detailed proposals in this regard are discussed at paras. 63-73 *infra*.

III. The Competitive Marketplace in General

11. Competition in the provision of telecommunications services and facilities has been steady growing as a result of Commission action.¹² In the past two decades, a number of telecommunications markets have been opened to competitive entry. In *Above 890* and in the *Specialized Common Carrier* decisions, *Supra*, firms have been authorized to enter certain intercity telecommunications markets by constructing terrestrial microwave facilities. The *Domsat* decision, *supra*, opened the way for satellite competition in voice, data and video markets. Our *Resale and Shared Use* decision, *supra*, and other prior decisions further broadened the possibility of competition

construction and operation of such addition or extended line. . . .

No carrier shall discontinue, reduce or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby. . . .

Basically, Part 63 of our Rules, which implements Section 214, requires carriers to obtain prior authorization from the Commission for the construction or lease of interstate lines and the initiation of service, or termination of service offerings. These requirements have been more or less applied uniformly to all carriers regardless of their industry position and competitive posture.

¹² For discussions of the concept of workable competition and its elements, see Clark, J.M., "Toward a Concept of Workable Competition," Vol. XXX, *American Economic Review*, June, 1940, pp. 241-256 and Scherer, F.M., *Industrial Market Structure and Economic Performance*, Rand McNally Publishing Co., Chicago, 1970, pp. 26-38.

in these markets by allowing brokerage and value-added communications services to be provided with a minimum of capital investment. Communications equipment competition has been fostered by the *Hush-a-Phone* and *Carterfone* decisions and the related equipment registration program. See *Hush-a-Phone v. U.S.*, 238 F. 2d 266 (D.C. Cir. 1956); *Carterfone*, 13 FCC 2d 420 (1968), *recon. denied*, 14 FCC 2d 571 (1969).

12. We expect this trend to continue. In *Computer Inquiry II*, 72 FCC 2d 358 (1979), among other proceedings, we hope to establish rules that will promote even more competition, diversity, and associated consumer benefits in the evolving market for data communications and equipment. MTS/WATS entry is an established fact (see the *Execunet* litigation, *supra*). Similarly, MTS/WATS Market Structure Inquiry, CC Docket No. 78-72, FCC 79-545, is an example of a proceeding where we may, among other things, determine MTS/WATS entry policy, and whether and to what extent MTS/WATS will be provided on a sole source or competitive basis, while proceeding to establish conditions necessary to ensure non-discriminatory access to local telephone exchanges by all intercity carriers.

13. In view of the dynamic nature of the industry and the changes it has caused we are addressing in this Notice the degree of regulation that is now needed to fulfill our statutory obligation to ensure that the rates charged by competitive carriers are just and reasonable and are not unduly discriminatory or preferential. Consequently, we are inclined to look at the market in terms of the existing market power of a carrier and the extent of actual and potential competition that exists. A carrier which provides a monopoly service has the ability in the absence of regulation, to set prices significantly above costs, limited primarily by the elasticities of demand for the service. Such carriers are not here being considered for deregulation.

14. On the other hand, carriers engaging only in the provision of competitive services do not normally possess market power, i.e., they do not have the ability to establish and maintain rates that are significantly above or below the marketplace price. If such a carrier attempts to sell at above the market price, it is likely to lose customers to its competitors. If a competitor's costs remain above the market price, which over the long run should be cost related, then that competitor will likely leave the market as an inefficient provider. Even on the

basis of successful product or service differentiation, such a firm's pricing is likely to be challenged by other competitors who attempt to match or surpass it in terms of product or service quality. Moreover, the competitive carrier has no incentive over the long run to price below its costs since it has (1) little expectation of achieving monopoly status and thus recoupling its losses through future monopoly rents and (2) no monopoly service from which to finance the necessary subsidization. Even where the competitive carrier is affiliated with a company having some market power in unregulated markets, cross-subsidization is not a costless strategy in the absence of effective rate base regulation. See discussion at ¶48, *infra*.

15. We recognize that there may be substantial differences among current and potential suppliers of interstate services in terms of market power, the ability to cross-subsidize unlawfully, and the range and characteristics of services offered. However, we believe we now have sufficient experience with competitive carriers and the markets in which they operate to draw meaningful distinctions such that we can initiate changes in rate and Section 214 regulation which more accurately reflect the emergence and developing nature of competition. We further believe these regulatory changes will result in greater competition, service diversity and related consumer benefits. To assist interested parties in framing comments we will first provide an analysis of the current and prospective industry structure (Part IV) and the extant and potential competition (Part V). Parties are to comment on this analysis and the proposals in Part VII, which we believe warrant prompt implementation. See Appendix C for details of the type of information we request. The deregulatory options in Part XI will be considered for longer term deregulation purposes. Based upon the record developed herein we will determine the maximum deregulation consistent with the public interest and our regulatory responsibilities set forth in the Communications Act of 1934.

16. Modern economic learning also affords us the opportunity to draw conclusions as to the need for continued regulation in this area. An examination of industry structure, based on our experience as well as relevant information expected to be received in the comments, should provide a sufficient basis upon which to make such judgments. We do not believe that complex performance analyses of each of the various markets would facilitate

or significantly enhance this process further. We also recognize that no matter how thorough an analysis is made that we are nonetheless dealing with a dynamic situation that is not susceptible to a precise, stable diagnosis. Despite such limitations, we believe that a sound decision, made in the public interest, can be reached based on our experience with the industry modern economic teachings, and the comments received in the course of this proceeding.

IV. Industry Structure

17. Any meaningful discussion of the domestic telecommunications industry must begin with the industry's dominant entity, AT&T. The Bell System, including its 23 associated telephone companies, Western Electric, Bell Laboratories and its Long Lines Department, had assets in 1978 totalling \$103.3 billion, operating revenues of \$41.0 billion, and net plant valued at \$90.4 billion.¹³ See our *Final Decision and Order* in Docket No. 19129, Phase II, *American Telephone and Telegraph Co.*, 64 F.C.C. 2d 1 (1977), for a description of the Bell System's corporate structure.

18. In addition to being the provider of local and toll telephone service, including interstate Message Telecommunications Service (MTS) and Wide Area Telecommunications Service (WATS) in conjunction with the independent telephone companies, it is by far the largest provider of private line telecommunications services, including point-to-point data transmission and transmission of television broadcast programming. Bell provides substitutes for virtually every service offered by the OCCs and dominates nearly every service market. Further, the Bell System Companies provide interconnection facilities used by the OCCs for delivery of many of their services. Hence, most OCCs who compete with AT&T also are reliant upon it for interconnection in order to originate and/or terminate their services. While the obligation of AT&T to provide the necessary interconnection facilities has been established, *Bell Telephone Company of Pennsylvania v. FCC*, 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026, *reh. denied*, 423 U.S. 886 (1975); *MCI Telecommunications Corp. v. FCC (Execunet II)*, 580 F.2d 590 (D.C. Cir.) *cert. denied*, 99 S.Ct. 733 (1978), the appropriate levels of charges and terms

¹³ *American Telephone and Telegraph Company (AT&T)*, 1978 Annual Report; *Statistics of Communications Common Carriers*, 1977, Federal Communications Commission. See also our discussions in Docket No. 20003, *Customer Interconnection*, *supra*.

of service for those facilities are often in dispute.

19. The only established carrier providing domestic telegraph communications services is the Western Union Telegraph Company (WU). WU has, until very recently (see note 5, *supra*) provided public message telegram service as a *de jure* monopoly. In addition, it has virtually no domestic competition in the provision of its switched record Telex-TWX services. Like A. T. & T., WU also offers various private line and video relay services¹⁴ in competition with the OCCs. Included among these are services provided over its Westar satellites and terrestrial microwave systems.

20. The OCC's are generally of four basic types. These are: (1) the SCC's (specialized common carriers, also referred to as terrestrial microwave carriers); (2) the Domsats (domestic satellite carriers); (3) resale (including value added) carriers; and (4) the MCC's (also known as miscellaneous common carriers or video relay carriers).¹⁵ For purposes of this discussion, we have chosen to describe these groups of carriers based primarily upon their methods of transmission. The nature of their services often overlap and often are competitive (to varying degrees) with one another and with the established carriers regardless of basic system characteristics. For example, the SCC's, Domsats and resale carriers all offer private line voice and data service. Both the Domsats and the MCC's provide transmission of video and audio signals. After discussing some of the entrants by facilities category, we shall discuss generally the services offered by the OCC's.

21. First, we shall consider the specialized common carriers. These carriers provide terrestrial point-to-point voice and data (analog and digital) communications primarily via their own microwave transmission facilities. Most of these carriers have also recently expanded their offerings to include

¹⁴By video relay service, we mean the transmission of the complete television signal including video and associated audio.

¹⁵In addition to the aforementioned classes of carriers, there are the radio common carriers (RCC's). However, they will not be included in this proceeding. The RCC's provide mobile radio telephone service in competition with Bell and the independent telephone companies. For the most part, the services provided by such carriers are exchange in nature and are not of the type being considered herein. Also, there are carriers in the Multipoint Distribution Service (MDS) which at the present time appear to be providing primarily local distribution of closed circuit video signals. To the extent that such service may be interstate and subject to our rate regulation, we may wish to conduct a separate proceeding at some future date to assess whether any of the changes proposed herein should be applicable to these carriers.

switched services and, in some cases, MTS/WATS equivalents. Non-telephone company common carriage by microwave transmission came into being in 1969 with our grant of the applications of Microwave Communications, Inc. (now MCI Telecommunications Corp.) to provide microwave transmission service between Chicago, Illinois and St. Louis, Missouri. *Microwave Communications, Inc.*, *supra*. MCI has grown to offer coast-to-coast service as has Southern Pacific Communications Co. (SPC). In addition, several others, e.g., United States Transmission Systems, Inc., Western Telecommunications, Inc. and CPI Microwave (now owned by WU), provide service on a regional basis.

22. Currently, three entities provide domestic satellite services entirely via their own facilities including satellites and earth stations. These are RCA American Communications, Inc. (RCA Americom), Western Union, and the jointly provided system of A. T. & T. and GTE Corporation (A. T. & T./GSAT). Both RCA Americom and WU provide a full complement of voice, data and video private line communications services.¹⁶ In addition, other entities provide domestic satellite service by combining their own earth stations with resale of satellite capacity obtained from the underlying satellite carriers. Examples include American Satellite Corporation, which has its own transmit and receive earth stations but leases transponder space from WU, Southern Satellite Systems, Inc. and United Video, Inc., both of which transmit distant television signals to cable television systems via satellite facilities leased from RCA Americom. Also, there exist receive-only earth stations whose facilities are made available on a common carrier basis and general purpose earth station segments are available.¹⁷

¹⁶In our *Domsat* proceeding, *supra*, we restricted A. T. & T./GTE service offerings to MTS, WATS and federal Government service until one of the following occurred: (a) transponder service on the other Domsat systems becomes substantially full, or (b) passage of 3 years from Comstar's commencement of operations. The restriction terminated on July 23, 1979. See *Establishment of Domestic Communications Satellite by Non-government Entities*, FCC 79-443 (released July 25, 1979).

¹⁷Satellite Business Systems, Inc. (SBS), a partnership of subsidiaries of IBM Corp., Comsat General Corp., and Aetna Life and Casualty Company, was also authorized to develop a Domsat system. The Commission's order is presently under appeal before the U.S. Circuit Court of Appeals for the District of Columbia Circuit. However, SBS is now in a pre-operational stage leasing transponder space from RCA Americom for use by IBM, its only current customer. See *United States v. FCC*, No. 77-1249 (D.C. Cir., decided August 29, 1978), petition for rehearing granted January 12, 1979, directing rehearing before the court *en banc*.

23. Unlike the specialized common carriers which transmit communications via terrestrial microwave, Domsat systems transmit signals between earth stations and satellites in geostationary orbit. Because of the costliness of developing and launching satellites (in addition to earth station construction costs), initial or start-up costs for Domsat systems normally are considerably higher than those for terrestrial microwave systems and they cannot so easily be phased in as can a microwave system. However, unlike microwave transmission, costs of transmission via satellite are insensitive to distance, therefore generally giving Domsat carriers a cost advantage over terrestrial transmission for communications over longer distances.

24. The next category of OCCs we turn to is the resale or value-added carriers. These carriers lease quantities of circuits from other carriers, primarily AT&T, and use them to provide service to their customers.¹⁸ As we note below, these carriers generally use these lines to make available through the use of their own switches and computers a special purpose network that can transmit data and facsimile with special features that are often attractive for business use. One of these carriers, ITT-USTS, also provides a service equivalent to MTS/WATS in competition with MCI, SPC, and AT&T. Included among the resale carriers are those entities that lease Domsat capacity from underlying Domsat carriers and resell the transmission of television signals primarily to cable television (CATV) systems. As compared to the SCC and Domsat networks, investment and construction delays for resale carriers are relatively less, thus tending to lower the entry barriers for this type of carrier.

25. The final category of OCCs to be discussed is the miscellaneous common carriers. These carriers, like the specialized common carriers, own their own microwave relay facilities. Their main service is one-way terrestrial transmission of television signals to cable television systems, although they also provide some service to television

¹⁸Presently, seven resale carriers' systems, other than Domsat video resale systems, have been authorized. These are ITT Corporate Communications Systems (now merged into ITT-USTS) and ITT Domestic Transmission Systems, wholly owned subsidiaries of ITT; Graphnet Systems, Inc., Telenet Systems, Inc., Tymnet, RCA Global Systems, Inc., and DHL Communications Inc. There are currently pending applications by several other entities for authorization to offer resale service. GTE Corporation was recently granted authorization to acquire Telenet. See *GTE Applications*, FCC 79-262 (released May 11, 1979), modified, FCC 79-380 (released June 13, 1979).

broadcast stations and a very limited amount of other point-to-point services including data, facsimile and voice transmission. These carriers, which usually are comparatively small entities, operate regionally, mostly in the western section of the United States. Typically, their trunk lines commence 20 to 50 miles from a major city, where they receive off-the-air television signals, and run to a number of smaller distant communities where they deliver the television signals. In 1978, fifty-five MCCs filed annual reports with the Commission. Although demand for the MCC's services, as reflected by their number of subscribers, increased throughout the 1960's and early 1970's, it appears that the market may now be rather stagnant or beginning to decline. Also we have noticed a general decline over the years in the number of operating MCCs which appears to be largely attributable to mergers.¹⁹ While MCCs do not usually compete with each other for customers since only one trunk line generally serves a community, the advent of transmission of television signals by domestic satellites is giving rise to competition between the MCCs and the Domsats for television signal transmission services. See paras. 34-37 *infra*, for a more complete discussion of the MCCs and their relationship to the satellite resale carriers in providing service to CATV systems.

26. As noted, the major private line service categories provided by common carriers (the established carriers as well as the OCCs) are voice, data, facsimile and video transmission. Although AT&T offerings in each category are extensive, the OCCs, as variously described above, provide essentially comparable services. In addition to the private line voice, facsimile and data services offered by the specialized common carriers, three carriers (MCI, SPC and ITT-USTS) now offer switched voice services which we have found to be functionally equivalent with the MTS and WATS offerings of AT&T.²⁰ Private line voice and data

services also are provided by the Domsat carriers. To date, no Domsat carrier is providing a switched voice service comparable to the MTS/WATS equivalents of the specialized carriers. However, Domsats are becoming increasingly involved in transmission of video signals. As indicated, because of the special characteristics of video transmission and the potential competition between Domsats and MCCs, that service will be discussed separately.

27. Currently, the resale carriers provide relatively little voice transmission, although ITT-USTS does provide some voice private line service in connection with another ITT common carrier subsidiary. The resale carriers offer data communications systems utilizing such technology as packet switching²¹ and store and forward transmission.²² Because these carriers lease existing transmission facilities of an underlying carrier and often utilize computer technology to modify the underlying services offered by the established carriers, they have been referred to in the industry as "value-added" carriers. An example of adding value to service would be permitting terminals which are disparate in transmission speeds, codes, line disciplines or display formats to communicate with each other. Telenet's and Graphnet's systems, for example, possess such capability. Although AT&T currently has no directly comparable service to those of the value-added carriers, it has announced plans for a sophisticated service to be called Advanced Communications Service (ACS).

28. Basically, the OCCs have modified marketing approaches and service conditions offered by established carriers. Examples include part time or shared private line service, where a customer can procure use of a private line only during that part of a day when it is needed; metered use service where a customer pays only for its actual use of channels; flexible bandwidth service tailored to meet a customer's specific needs; and switched digital networks which enable a customer to interconnect with a number of different locations and

terminals so as to use more efficiently its transmission and data processing facilities.²³

V. Current Competition

A. Voice-Data Market

29. Having discussed briefly the structure of the domestic telecommunications industry and competition in general, we now turn our attention to a more specific analysis of the state of current competition in the industry, both among the OCCs and between the OCCs and the established carriers. We first look at the voice/data market, which essentially encompasses all services except video transmission.²⁴ Reflecting a perhaps uniquely dynamic technology and expanding customer demand, the industry's competitive posture has been changing rapidly. What follows, however, are our observations and analysis as to the current and developing nature of competition. We expect that comments submitted in this proceeding will (a) address the accuracy of our observations and analysis, (b) provide us with additional information useful in evaluating more thoroughly the nature of current and prospective competition, both among the OCCs and between the OCCs and the established carriers, and (c) suggest appropriate regulatory actions in light of the actual and potential benefits and costs arising from such competition.

30. It is our observation that in order for the OCCs to attract and retain customers, particularly those with large communications needs, they must offer their services pursuant to terms as favorable to the customers as possible, taking into consideration numerous factors including customers' communications requirements. It appears that rates in some cases may be established by processes of negotiation between the carrier and the large potential customer with the negotiated terms being reflected in the carrier's tariffs. However, under our present rules and case precedents, the carrier must cost-justify those negotiated terms when it files its tariff containing those rates, or it must show that departure from cost

¹⁹Annual reports filed with the Commission indicate that in 1974 the eight largest MCCs controlled approximately 69% of the market as compared with 50% in 1970.

²⁰These are MCI's EXECUNET service, Southern Pacific's SPRINT IV and V services and City-Call of ITT-USTS. These services generally utilize the intercity facilities owned by the specialized carriers and are then connected to the exchange facilities of the local telephone company. Thus where the interstate city-pair routes of the specialized carriers parallel those of AT&T, their switched voice services can be said to compete with the MTS/WATS services of the Bell System. Because of the alleged benefits and detriments ascribed to such competition we are, in another proceeding, examining MTS/WATS entry policy and whether and to what extent interstate MTS and WATS should be provided on a sole source or competitive

basis. *MTS/WATS Market Structure*, CC Docket No. 78-72, 67 F.C.C. 2d 757 (1978), *Further Notice* FCC 79-515 (released August 30, 1979).

²¹In packet switching, a circuit is used to transmit small groups of digitized data (called "packets") over a network of lines to a designated recipient, usually a computer. These packets are stored and forwarded over the best available path to make more efficient use of the network. See *Packet Communications Inc.*, 43 F.C.C. 2d 922 (1973).

²²Store and forward capability enables data to be stored in a switch until the recipient is ready to receive the information.

²³For a more thorough discussion of services offered by the resale carriers, see *Report by the Federal Communications Commission on Domestic Telecommunications Policies*, September, 1976, Tab C, pp. 83-95.

²⁴Because of the special nature of the video relay services, particularly as it relates to competition between the terrestrial MCCs and the resale satellite carriers, we are addressing such service separately.

based rates is reasonable.²⁵ Other service arrangements include bulk discounts and long term service commitments often coupled with termination liability provisions. Also, we have received tariff proposals containing preferential or promotional rates for new customers and rate differentiation based upon supposed differences in service quality. For example, a Domsat carrier's tariff may contain varied rates for transponder service dependent upon whether the service is preemptible or non-preemptible, or protected or unprotected.²⁶ The type of service terms described above have often attracted petitions to suspend or reject from both competing OCCs and established carriers. As noted earlier, the OCCs appear to have channeled considerable efforts toward delaying each other's attempts to implement price and service innovation rather than attempting primarily to improve upon their own performance in the marketplace.

31. In order for the OCCs to compete successfully with the established carriers, particularly AT&T, they must either offer services unavailable from the established carriers or, more likely, offer services with rates, conditions and practices more favorable than those offered by the established carriers. Further, we note that AT&T has responded to the OCCs service offerings, in part, by offering comparable service alternatives of its own. Hence, as a practical matter, the OCCs must, more often than not, underprice the established carriers to compete successfully. In other words, the prevailing market price is established by the dominant carrier (normally AT&T), with the OCCs having to undercut this price in order to attract customers. Such pricing practices by the OCCs generally have not yielded excessively high rates of return or rate levels. To the contrary, the OCCs generally report very small or negative

rates of return.²⁷ Further, unlike the established carriers, the OCCs presently have no market power and thus, their ability and incentive to impose unjust or unreasonably low rates in order to drive out competition does not now appear to be a source of concern. See discussion at paras. 47-48, *infra*.

32. While a number of innovative services have been offered by the OCCs,²⁸ one of their primary innovations appears to have occurred in rate structures and pricing policies. Examples include rates based on fractions of a minute of use and distance insensitive rates. Thus rate and service innovation by the OCCs appears to be motivated by their desire to compete with each other as well as their efforts to undersell the established carriers. It is not surprising, therefore, that the OCCs' conduct has generated responsive activity by the established carriers. AT&T, for example, recently has increased its marketing efforts²⁹ and has begun offering new service packages to compete with those offered by the OCCs. Among what appears to be its competition-motivated recent service offerings are DDS/DSDS, data transmission services comparable to Datran's data service offering,³⁰ and Enhanced Private Switched Communications Service, designated to attract customers needing sophisticated switched private line networks. The most recent example of an AT&T service offering apparently responsive to OCC competition is its proposed ACS, which would compete more directly with the "value-added" services of the resale carriers. We discuss the data communications and resale market at length in our *Tentative Decision in Computer Inquiry II*, 72 F.C.C. 2d 358 (1979), where we note that this market may grow to be very competitive. See also the discussion of this market in *GTE Applications*, *supra*.

33. Based upon our experience with the OCCs thus far, we believe that their

presence has had a beneficial effect on the variety of communications services available as well as upon the rates and conditions of service. With respect to service quality, we note that the research available indicates that performance by the OCCs generally has been considered to be as good as that of the established carriers.³¹ As indicated above, the variety of service apparently has increased both as a direct result of the OCC service offerings and as a result of the established carriers' responses to those offerings. Further, the OCC portion of the industry in recent years appears to have gone through a "shake down" period in which their numbers have diminished, primarily through mergers and acquisitions, but the survivors seem to be more financially sound and able competitors. Indeed, it appears to be now attracting more financially able firms (e.g., OCCs backed in whole or in part by RCA, IBM, ITT and Xerox).³² We recognize that this relatively infant segment of the telecommunications industry may lack the maturity that characterizes certain other regulated industries for which there is considerable public sentiment for deregulation, indeed for that reason we are not proposing deregulation of the established carriers.³³ However, we believe that increased reliance upon market forces can afford a higher degree of ratemaking flexibility for nondominant carriers which will serve the public interest by encouraging and rewarding service and rate innovation.

B. Video Relay Market

34. Until recently, the MCC's have had little competition in the relay of distant broadcast television signals to CATV systems. The only practical alternative such a system had to MCC service was to build its own private CARS system.³⁴

²⁵ See *Computer World*, July 24, 1978, p. 27. The internal staff study of the Common Carrier Bureau, *Voice-Data Communications Users Survey*, April, 1976 also supports this conclusion.

²⁶ The Commission has initiated a notice of inquiry and proposed rulemaking into Xerox's request for reallocation of certain frequencies for XTEN service. See Docket No. 79-188 (RM-3247), FCC 79-464 (released August 29, 1979).

²⁷ Recently, the Civil Aeronautics Board concluded a rulemaking proceeding whereby it has modified ratemaking requirements applicable to passenger airlines serving routes that are competitive. *Domestic Passenger-Fare Level Policies*, et al., 43 Fed. Reg. 39522 (September 5, 1978). That industry structure is significantly different from the communications industry in that it is not dominated by a single carrier.

²⁸ CARS is the generally accepted acronym for Cable Television Relay Station. The Commission's Rules applicable to CARS service can be found at 47 CFR § 78. Such a system also can be built on a cooperative basis with other cable systems. A CATV system could also obtain video relay service from the Bell System (or other telephone company).

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²⁵ In *American Satellite Corp.*, 55 F.C.C. 2d 1 (1975), we allowed a new Domsat carrier initially to depart from cost supported rates, stating as follows:

In fostering the development of satellite, as well as terrestrial, specialized common carriers we recognized that some might not be profitable initially and some might fail. We also decided to maintain regulatory flexibility at the outset to encourage such carriers to undertake "service and technical innovation and to provide an impetus for efforts to minimize costs and charges to the public." [Citations omitted] 55 F.C.C. 2d at 2.

²⁶ The term "preemptible" generally means that a user of service may lose his service if the facilities used therefor become necessary to continue service to another user with a higher priority. "Protected" means that there exists the guaranteed availability of a backup facility to restore service in case of failure or outage, under specified conditions.

²⁷ As to SCCs, MCI's rates of return in recent years have been reported as 6.5% (1978), 1% (1977), -3% (1976) and -30% (1975). SPC's rates of return reports -2.3% (1978), -12% (1977) -13% (1976) and -22% (1975). Domsat, resale and MCC carrier returns are reported similarly low. For example, Telenet shows its returns to have been -49.6% (1978) -68% (1977), and -94.9% (1976). Most MCC returns are reported either negative or well under 10% for 1978 (Taken from F.C.C.'s annual Report, Form P's and Annual Stockholders Reports.)

²⁸ See, *Customer Interconnection*, *supra*, 61 F.C.C. 2d at 892.

²⁹ See "Behind AT&T's Change at the Top," *Business Week*, November 6, 1978, p. 115 for a description of AT&T's corporate response to competition.

³⁰ Datran, one of the earliest OCCs, is now out of business. Its assets were assumed by Southern Pacific, which now offers a comparable data transmission service.

However, genuine competition seems to be commencing with the recent entry and expansion into this market of the satellite resale carriers. Because penetration of this market is typically dependent upon a large number of customers having suitable receiving earth stations, the cost of such earth stations has been critical. With the more recent authorization of small aperture earth stations, satellite signal reception has been brought within the financial means and technical capabilities of many CATV systems.³⁵ To date, over one thousand receive-only earth stations serving CATV systems are in operation and that number is constantly growing. In addition, we have already authorized seven resale satellite common carriers to provide television broadcast signals to CATV systems throughout the country³⁶ and other applications are currently pending. Thus, not only has competition between terrestrial microwave carriers and satellite carriers offering video relay services apparently become a reality, but competition among satellite carriers offering such service seems also to have been established.

35. Notwithstanding the rapidly developing competitive pressures described above, we are also aware that not all cable systems may currently have realistic alternative sources of supply for signals, particularly smaller systems, either because they lack the financial resources or inclination to acquire and operate an earth station or because the signal they most desire or need is not offered by a satellite carrier. For example, in the more sparsely populated regions of the country, cable systems, particularly those serving smaller communities, may be totally dependent upon a terrestrial carrier in order to receive a full complement of the major television network signals.³⁷

Simply because a satellite carrier exists that can relay the signal of a distant independent station at a lower rate than could a terrestrial carrier, it does not necessarily follow that a cable operator would opt to take the satellite signal in place of the network or closer independent signals provided by the terrestrial carrier. Such decisions are dependent on consumer demand. Thus, for some CATV systems, satellite service may not now be a fully effective substitute for terrestrial service. This appears to be especially true where the signals of the three major commercial networks are required. In addition, we need to examine further the extent that cable systems are willing to import more distant independent station signals via satellite in lieu of more closely located independents, and how satellite and terrestrial charges are weighed in such decisions. In this respect, see *Economic Relationships Between Television Broadcasting and Cable Television*, Docket No. 21284, 65 F.C.C. 2d 9 (1977), Report, 71 F.C.C. 2d 632 (1979). Any significant deregulatory result of this proceeding should be a further stimulus to competition in the common carrier areas related to CATV and broadcasting. Whether significant deregulation will eventuate, of course, cannot be determined until all comments are received and analyzed.

36. Another possible reason why the forces of competition may not yet freely operate in all respects in the marketplace for video relay signals is the technical relationship between satellites and earth stations. An earth station must be positioned to "look" at a particular satellite and cannot simultaneously receive signals transmitted over any other satellite. Therefore, when any potential user wishes to communicate simultaneously with a number of existing customer-owned earth stations, that user is practically forced to utilize the same satellite to which those existing earth stations "look". This is currently the case with anyone wishing to communicate with CATV systems.³⁸ By comparison, if a provider of video relay services decided to lease uplink and transponder capacity from a competing satellite carrier (or on another satellite of the same carrier) cable operators would have to make a substantial investment to install an additional earth station in order to receive the signal provided over the other satellite.

³⁸ Because Home Box Office, Inc. first provided its programming for cable television systems over one of RCA Americom's SATCOM satellites, virtually all of the cable systems' earth stations initially oriented their receive antennas to that satellite due to the popularity of the Home Box Office signal.

Accordingly, we must recognize that the satellite of the underlying carrier to which most of these earth stations are pointed will possess a distinct economic advantage over competing satellite carriers.

37. As to the relay of television signals to the broadcaster, AT&T has been the traditional supplier. However, in recent years, the major commercial television networks have concluded agreements with various competitive MCCs to provide this service on a regional basis, thus supplanting AT&T in part. Moreover, in many cases, individual broadcasters have themselves employed MCCs, in lieu of AT&T or a telephone company, to deliver the network signals.³⁹ It would seem, however, that satellites may ultimately become even a stronger competitive alternative to the terrestrial systems of the MCCs and AT&T. Currently, a number of broadcasting systems, including the Public Broadcasting System, employ or are investigating a nationwide system of earth stations for satellite relay of network signals.

VI. Legal Considerations

38. The provisions of the Communications Act relating directly to common carriers are contained primarily in Title II, 47 USC § 201 *et seq.* In addition to Section 201(b) which, *inter alia*, requires just and reasonable rates, and Section 202(a) which prohibits unjust and unreasonable discrimination, the Act requires that carriers' schedules of charges (tariffs) be filed with the Commission, 47 USC § 203(a); that where questions exist as to the lawfulness of a tariff, hearings may be held and that pending such hearings, a rate may be suspended for as long as five months, 47 USC § 204; and that after a hearing rates may be prescribed, 47 USC § 205. In addition, 47 USC § 214 imposes certain certification requirements as to construction and operation of facilities and provision of services. While we have historically interpreted the Act to apply with reasonable uniformity to all carriers subject to it, nothing in the Act appears to require that our statutory responsibilities be met in the same manner with respect to all carriers and services. On the contrary, review of the legislative history of the Act (and its predecessor, the Interstate Commerce Act), relevant interpretative court decisions and the dramatic changes in

³⁹ The television networks normally provide for the transmission of their signals to affiliated broadcast stations. However, the smaller, more remotely located stations are frequently responsible for the relay of the signal from a larger station on the network distribution system.

Footnotes continued from last page
Until recently, however, the rates for such service were so high that very few CATV systems considered this to be a feasible alternative.

³⁵ The approximate cost of such a receive-only earth station with a 4 1/2 meter antenna equipped for one channel operation is roughly \$25,000. Additional channels increase the cost by approximately \$4,000 each. In the past several years this cost has decreased drastically, with further reductions likely in the future.

³⁶ See *Southern Satellite System, Inc.*, 62 F.C.C. 2d 153 (1976); *United Video Inc., et al.*, 69 F.C.C. 2d 1629 (1978). Also, temporary authority to carry station KTVU-TV San Francisco was recently granted to Satellite Communications Systems, Inc. and ASN, Inc. has been granted authority to carry the signals of WGN-TV, Chicago, KTTV-TV, Los Angeles and WOR-TV, New York. Eastern Microwave, Inc. has been authorized to carry WSBK-TV, Boston, Massachusetts and the late night programming of WCBS-TV, New York.

³⁷ To date, satellite carriers relay only closed circuit pay TV signals and the broadcast signals of independent TV stations.

the telecommunications industry since the Act's adoption in 1934 persuade us that flexibility and alteration of our regulatory efforts reflective of these changes is not only permissible but may be compelled by our overall obligation to regulate in the public interest. In previous paragraphs, we have discussed in some detail the development of the so-called specialized common carriers, domsats, miscellaneous (or video relay) carriers, and the resale carriers as well as the market characteristics within which they operate. Clearly, the current domestic telecommunications environment differs greatly from that of 1934 when there was no competition and telecommunications service was largely limited to telephone and telegraph. As well be discussed more fully in the following section (The Proposals), we propose that rates contained in tariff filings by non-dominant carriers will be considered presumptively lawful and will not have to be accompanied by detailed cost support data as now required by Section 61.38. Thus, their effectiveness will not be delayed by threatened suspension as readily as at present. Nonetheless, they will remain subject to our review and complaint processes, and should unlawful tariffs, or practices come before the Commission we will act appropriately. See 47 USC § 208. By doing so, we will be retaining jurisdiction over all of the tariff filings of the OCCs and fulfilling our statutory duties.

39. The statutory requirements of just and reasonable and non-discriminatory rates did not originate with the Communications Act, but rather with the Interstate Commerce Act of 1887. That Act, which was later made applicable to telephone and telegraph by the Mann-Elkin Act, of 1910, applied originally only to railroads. Under that Act, charges were required to be reasonable and just; unjust discriminations were prohibited and declared to be unlawful. The railroad industry in 1887 differed in many respects from the communications industry of 1934, and certainly from the communications industry of 1979. However, the influence of the railroads on the economic well-being of the country was so great that regulation was deemed essential. Review of the legislative history of that Act indicates strongly that effective regulation of the railroad industry was needed to protect against discriminatory and unreasonable rates in light of the railroads' extensive economic power. On numerous occasions subsequent to the Act's implementation, the Supreme Court has been presented with

situations which necessitated consideration of the purposes to be achieved by that Act. For example, in *Texas and Pacific Railway v. I.C.C.* 162 U.S. 197 (1896), the Court discussed the intended effect of the Act (and particularly the just and reasonable and non-discriminatory rate provisions) as follows:

* * * "Even in construing the terms of a statute, courts must take notice of the history of the legislation, and out of different possible constructions, select and apply the one that best comports with the genius of our institutions and, therefore, most likely to have been the construction intended by the law-making power. Commerce, in its largest sense, must be deemed to be one of the most important subjects, of legislation, and an intention to promote and facilitate it and not to hamper or destroy it, is naturally to be attributed to Congress. 162 U.S. at 218-219.

In our judgment, our proposals contained in this Notice, by enabling the OCCs to compete with each other by innovation in service offerings and pricing free from the regulatory constraints deemed necessary for a dominant carrier will "promote and facilitate" commerce and, for economic reasons discussed elsewhere in this Notice, enable us to continue to assure rates that are just and reasonable and not unjustly discriminatory. Although both the Interstate Commerce Act and the Communications Act require rates that are not unjustly or unreasonably discriminatory, neither Act purports to dictate how the reasonableness or justness of discriminations are to be determined. Rather, the question of whether a preference, advantage or discrimination is unreasonable or unjust has been left by Congress to the judgment and discretion of the Commission. *Board of Trade v. United States*, 314 U.S. 534 (1942). In light of the similar language of the Interstate Commerce Act and the Communications Act, our knowledge that the relevant provisions of the Communications Act were adopted from the I.C.C. Act, and the absence of any contrary legislative history, we are convinced that this agency, like the I.C.C., charged by law with assuring just and reasonable non-discriminatory rates, has the same statutory authority to exercise judgment and discretion as does the I.C.C. In *Board of Trade v. U.S.*, *supra*, The Court stated as follows:

The process of ratemaking is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors which must be valued as well as weighed. Congress has therefore delegated enforcement of transportation policy, to a permanent expert body and charged it with the duty of being responsive to the dynamic character of transportation problems, 314 U.S. at 546.

See, also *U.S. v. Southwestern Cable Co.* 392 U.S. 157, 192-93 (1968) where the Supreme Court recognized our authority under the Act to respond to a dynamic industry in a flexible manner. Similarly, we perceive our responsibilities as the expert body charged with enforcement of communications policy to be responsive to the dynamic nature of the communications industry. Included in that authority is rate regulation.

40. Our *Specialized Common Carrier* decision, *supra*, was a regulatory effort by us to "promote" commerce and to be responsive to the dynamics of the telecommunications industry. However, having had the benefit of several years' experience regulating the rates and services of the OCCs subsequent to that decision, we recognize that some of the potential public benefits which we had hoped would flow from freer entry have been frustrated, in part, by continued adherence to rules and procedures governing tariff filings and facility authorizations designed primarily for carriers with dominant market positions and monopoly services. In that decision, we quoted with approval from the staff analysis contained in the *Notice* in that proceeding, as follows:

In an industry the size and growing complexity of the communications common carrier industry, the entry of new carriers could provide a useful regulatory tool which would assist in achieving the statutory objective of adequate and efficient services at reasonable charges. Competition could afford some standard for comparing the performance of one carrier with another. 29 FCC 2d at 884.

That determination has been judicially affirmed, *Washington Utilities and Transportation Commission v. FCC*, *supra*, and is, in our judgment, a generally accepted and eminently correct proposition.

40a. Although competitive entry into the markets for provision of telecommunications services may be a relatively recent development, recognition of competition as a factor in rate regulatory responsibilities by federal agencies is not so new. In *I.C.C. v. Alabama Midland Railway*, 163 U.S. 144 (1897), it was held that

In construing statutory provisions forbidding railway companies from giving any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any description of traffic in any respect whatever, the English courts have held, after full consideration, that competition between rival lines is a fact to be considered and that a preference or advantage thence arising is not necessarily undue or unreasonable. 163 U.S. at 1643 (citations omitted).

The Supreme Court approved of those English decisions. As we have noted throughout the earlier discussions in this Notice, the competitive climate within which the OCCs operate, their relatively insignificant share of the overall market and corresponding absence of market power, their lack of monopoly services and inability and/or disincentives to cross-subsidize their rates for competitive services all militate against the necessity of cost support requirements and facilities authorization procedures necessary to effectively regulate a dominant carrier. Hence, we believe that the proposals enunciated in this Notice are fully consistent with our statutory obligations to assure just and reasonable rates and to protect against unjustly discriminatory rates, as imposed by Sections 201(b) and 202(a) of the Act.

41. In proposing the removal of certain direct regulatory constraints, we believe that such changes would in no way be inconsistent with *Federal Power Commission v. Texaco*, 417 U.S. 380 (1974). In that case, the Court overturned an order of the FPC which would have exempted small producers of natural gas from rate regulation by allowing them to utilize the prevailing market price as the sole rate determinant. In vacating the FPC order, however, the Court expressly reaffirmed the agency's authority to ensure just and reasonable rates through indirect regulation. Further, it recognized that ratemaking agencies are not bound to the use of any single ratemaking formula but are permitted to make the pragmatic adjustments which may be called for by particular circumstances, citing *FPC v. Natural Gas Pipeline Company*, 315 U.S. 575 (1942). Moreover, the Court placed heavy reliance on the clear statements of congressional intent behind the Natural Gas Act. In enacting that Act, Congress had recognized that the natural gas industry was heavily concentrated and that oligopolistic forces were distorting the market price for natural gas, and in subjecting producers to regulation because of these conditions, Congress could not have intended that "just and reasonable" rates could be conclusively determined by reference to market price. Such clear intent is, of course, absent in the 1934 Communications Act and its legislative history, since multiple entry into the communications industry is a relatively recent occurrence. Thus, we believe that our proposals under the Communications Act are not impeded by *FPC v. Texaco* and the particular regulatory design confronted by that Court.

42. In addition, we are convinced that the ratemaking flexibility afforded the OCCs but not the dominant carriers is reasonable and legally sound. In Section 4(i) of the Act, Congress granted us broad authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of (our) functions." In light of these broad powers, we seek comment on whether we may promulgate rules the applicability of which depends on the classification of the carrier. We note in this regard that our ability to classify entities subject to our jurisdiction, e.g., radio stations, is expressly set forth elsewhere in the Act. See Section 303. Separate treatment of competitors in a regulated industry has been accomplished previously and with court approval. See, e.g., *FPC v. Texaco*, *supra*. In *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968), the Court sustained a two-tiered rate system on the basis that it would stimulate the exploration and development of new sources of natural gas and thereby serve the regulatory purposes contemplated. Another example of differing regulation of competitors was approved in *American Airlines v. Civil Aeronautics Board*, 359 F. 2d 624 (D.C. Cir. 1966). There, the court approved CAB regulations which allowed "all cargo" carriers to sell blocked space at rates lower than it permitted the "combination" (i.e. passenger/cargo) carriers to offer. In so ruling, the court stated:

That competitors in a regulated industry should be treated similarly in rate rulings in order to preserve competition is not denied. But that is not to say, that reasonable distinctions between groups of competitors are impermissible, and that different services and rates may not then be authorized for different groups or classes, 359 F. 2d at 627.

Although our express statutory authority to classify carriers may not be as clear as that of the CAB, we are of the opinion that our proposed separate treatment of the OCCs constitutes the "reasonable distinction" upheld in *American Airlines*. The 1934 Act was adopted in an environment where there was no significant competition and telecommunications services were largely limited to telephone and telegraph. The contrast to the multiplicity of services offered on a competitive basis today could hardly be more striking. The Courts have generally held that the Congress intended the Commission to have considerable latitude under the Act so as to be able to regulate a dynamic industry with reasonable flexibility. See *United States*

v. Southwestern Cable Co., *supra* at 192-93 (1968). Therefore, we believe the Commission has the power to apply the Act in a way which enables us to react to changing circumstances. In particular, no court has yet declared that our powers under Title II of the Act are inflexibly mandatory. See *NARUC v. FCC*, 525 F. 2d 630, 640, n. 48 (D.C. 1976) (*NARUC I*). Nor indeed did the court which affirmed our earlier *Resale* decision, *supra*, deprive us of "broad discretion in choosing how to regulate" * * * *AT&T v. FCC*, 572 F. 2d 17, 26 (2d Cir. 1978). A purpose of this Notice is to examine the various provisions of Title II and rules promulgated thereunder to determine just where our discretion should and could be exercised in order to minimize or eliminate regulation not necessary to the public interest.

43. Further, we note that the approach proposed herein, utilization of rulemaking to achieve a single resolution of issues that would otherwise be made on an *ad hoc* basis, is one that has been recommended as a more efficient means of rate regulation and one that yields a greater degree of certainty for both the public and the carriers. This approach has been recommended by other bodies concerned about effective rate regulation in the public interest. See, e.g., Recommendation No. 78-1 of the Administrative Conference of the United States "Reduction of Delay in Ratemaking Cases" (adopted June 7-8 1978). The section of that Recommendation entitled "Use of Rulemaking for Generic Issues" states that an agency charged with responsibility for setting or approving rates should identify policy issues that may be raised repetitively and that may be appropriate for a generalized determination instead of individualized judgment. Also, see Appendix D of our *Resale* decision, *supra* for discussion of other cases supportive of rulemaking as a regulatory tool.

VII. The Proposals

A. In General

44. It is not our intention to cast these proposals and the resulting deregulation in concrete. As stated previously, they reflect our observations and experience to date and our view of future trends, are somewhat on the cautious side, and are not intended to be definitive statements of what will constitute the "best" regulatory approach in a competitive environment over the long run. Indeed, we invite comments as to the viability or reasonableness of the further deregulatory options described in Part XI. If parties believe our

proposals are either too restrictive, not restrictive enough, or are otherwise inappropriate then we request them to comment on the other options or to suggest specific alternatives. Of course, if parties propose alternative regulatory approaches to the several options discussed herein, we expect them to address the legal, policy, economic, public interest and other ramifications of their proposals.

45. Parties should address our proposals and observations made below and in the attached appendices. In the following paragraphs we will review several of our regulatory concerns and the ways in which they would be addressed under our proposals.

B. Section 201(b)

46. Section 201(b) prohibits "unjust and unreasonable" rates. It is generally accepted that economic regulation is intended to replace competition as the means of ensuring that prices are kept at cost (which includes a fair return on investment). See A. Kahn, *The Economics of Regulation*, ch. 2 (1970). We have generally held that the key criterion to a determination of just and reasonable is whether the rate is cost-related, see, e.g., *AT&T and Western Union Private Line Cases*, 34 F.C.C. 234, 297 (1963), and rates which depart from cost must be fully justified on a special showing, e.g., competitive necessity. The harms to be prohibited by § 201(b), then are rates which are above cost, i.e., supracompetitive prices, and rates below cost, i.e., predatory prices. Based on our knowledge of current market structures and their promise of continuing dynamism, as well as widely accepted economic principles, we believe that the rates of non-dominant carriers are unlikely to be either predatory or supracompetitive and thus are unlikely to contravene § 201(b) proscriptions.

47. It is widely held that predatory pricing generally involves selling a product or service below its average variable cost. Predatory pricing is likely to occur, if at all, only if the predator has "(1) greater financial staying power than his rivals, and (2) a very substantial prospect that the losses he incurs in the predatory campaign will be exceeded by the profits to be earned after his rivals have been destroyed." Areeda and Turner, *Predatory Pricing and Related Practices under Section 2 of the Sherman Act*, 88 Harvard Law Review 697, 698 (1975). See Williamson, *Predatory Pricing: A Strategic and Welfare Analysis*, 87 Yale Law Journal 284, 292 (1977). The competitive carriers, lacking any degree of market power, do not have the "substantial prospect" of

later recouping losses through monopoly profits. This is especially true where they face the dominant carrier in the same market—for example, we think it highly unlikely that a competitive carrier would attempt to drive its rivals out of the market by below-cost pricing if AT&T is among the group of actual or even potential rivals.

48. As noted earlier, we are not unaware that at least some of the competitive carriers are affiliates of non-communications entities which may possess a substantial degree of market power and financial strength. Thus, there may be some ability on the part of these affiliated entities which could be used to sustain a predatory pricing strategy. However, it is important to note that such subsidization is not a costless strategy in the absence of effective rate base regulation. Where an entity is subject to true rate base regulation, it may have strong incentives to suffer losses in some (competitive) services which can be subsidized by excessive earnings in other (monopoly) services since its overall rate of return is set by its regulator. These incentives are altogether absent where entities are not truly subject to such regulation, as is the case with the non-dominant carriers and their non-communications affiliates. Thus, in the absence of market power and effective rate base regulation, we believe that the rates of competitive carriers will generally not be predatory.

49. We also believe that these rates are unlikely to be excessive because some degree of market power must be present before supracompetitive profits can be achieved. If a non-dominant carrier sets its price above the market price, its customers will seek out the competitors' lower price. Also, the dominant carrier's rates often serve to set a ceiling above which OCC's can not price. However, we do recognize that in transitional periods, a non-dominant carrier might be able to price excessively, perhaps because it offers a new differentiated service or enters a new geographic market as the sole market entrant. Such instances would be isolated and of a transitional duration. It may well be that such temporary rates can be tolerated as a matter of law under Section 201(b) as reasonable. However, we do not reach this question since all rates of course remain subject to Section 201(b) inquiry, and we are free at any time to make statutory requests for cost support data. See Sections 218, 220.

50. We believe an improved carrier reporting system would also be effective in identifying carriers that may be earning excessive rates of return. Thus,

we believe that in the absence of Section 61.38 data (see para. 55, *infra*), we should be able to have and make public more precise information regarding carrier rates of return. With such information on a relatively current basis, we can take whatever corrective action may be warranted. Contained in Appendix D is a suggested format for submitting annual financial data to the Commission. This reporting requirement is primarily an updating and modification of existing reports now required of most of the competitive carriers. Therefore, it should entail no significant increased burden on them. This data will help us to evaluate each carrier's financial condition and the general results of the interplay of market forces. As noted, the general purpose of this rulemaking is to reduce unnecessary regulatory constraints where practical. We believe that this overall purpose can be furthered by instituting the periodic financial reporting procedure. Such a reporting procedure would not only enable us to monitor the implementation and appropriateness of the proposed rules, but on a longer term basis, also would provide useful information regarding trends in earnings and rate levels which can then be used to direct regulatory resources where they are needed. This latter function may lead to the formalization of such procedures in Part 43 of the Rules, Reports of Communication Common Carriers and Certain Affiliates.

C. Section 202(a)

51. Section 202(a) prohibits "unjust or unreasonable discrimination" in rates. As discussed previously, there is a "longstanding Commission policy which recognized the central role of costs in determining the lawfulness of rates. . . ." AT&T (*Docket No. 18128*), 61 FCC 2d 587, 650 (1976). For reasons discussed above, we believe that rate differences in competitive carrier tariffs filings will tend to be cost-related, and therefore lawful under Sections 201(b) and 202(a). For reasons set forth below, we believe that foregoing detailed explanations of the costs underlying differences in a competitive carrier's rates will not and cannot generally result in harm to consumers of communications services.

52. Price discrimination according to modern economic teaching is "the sale (or purchase) of different units of a good or service at price differentials not directly corresponding to differences in supply costs." F. M. Scherer, *Industrial Market Structure and Economic Performance*, 253 (1971). Price discrimination is often considered harmful because it results in an undesirable wealth transfer (i.e., from

the ratepayer to the carrier) and may result in a misallocation of resources. *Id.*⁴⁰ In order to sustain a profitable price discrimination scheme, three essential elements must be present: (1) the entity must possess market power; (2) the entity must be able to segregate its customers into groups with differing demand-elasticities; and (3) arbitrage must be prevented. Where a dominant carrier's rates are in issue, non-cost-related differences may strongly indicate a price discrimination scheme, which, of course, Section 202(a) requires us to interdict. Notwithstanding our regulatory efforts, dominant carriers may well be able to engage in price discrimination to the detriment of their customers. They are able to meet the three requirements for successful price discrimination by virtue of their market power and, ironically, of the opportunities inherent in the tariffing process to set down terms and conditions of service which have the effect of segmenting markets and inhibiting arbitrage.⁴¹ The requirement of Section 61.38 cost support information (as well as the policies articulated in the *Resale* decision, *supra*,) is, of course, designed to prevent dominant carriers from exploiting their market power to the detriment of customers with inelastic demand for communications service. Thus, we have no intention of alleviating the requirement that such rate differentials be justified by the dominant carrier on the basis of cost as required by Section 61.38 of our rules and applicable decisions.⁴²

53. Section 202(a) requires that non-dominant or competing carriers, who are typically price followers, also refrain from pricing their offerings in an unreasonably discriminatory manner.

⁴⁰ Although a price discrimination scheme could include an element of predatory pricing, see paragraph 47, *supra*, neither the economist's nor Section 202(a)'s concept of it requires any below cost pricing.

⁴¹ For a succinct and thorough discussion of price discrimination see F. M. Scherer, *Industrial Market Structure and Economic Performance* (Chicago, Ill., Rand McNally) pp. 253-272. Also, see our discussion of market segmentation by AT&T through the use of its tariffs in Docket 21402, *MTS/WATS Like Services*, 70 FCC 2d 593, 605-06 (1978).

⁴² *AT&T Telpak*, *supra*; *WATS Rejection*, 66 FCC 2d 9 (1977), *recon.*, 69 FCC 2d 1672 (1978); *Series 7000 Rejection*, 67 FCC 2d 1134 (1978), *recon.*, 70 FCC 2d 2031 (1979). While the continued existence of the Telpak discount is subject to pending litigation, in the *WATS* and *Series 7000* rejection orders we recently indicated our serious concern about the apparent magnitude of the discounts given to larger users *vis-a-vis* smaller or moderate users. See *Series 7000 Rejection Recon.*, at para. 40, and *WATS Rejection Recon.*, at para. 33. We are currently exploring in another proceeding the question of whether and on what basis AT&T should be permitted to offer volume discounts. See *Private Line Rate Structure and Volume Discount Policies*, *supra*.

As we have noted, the OCC's, in their effort to obtain customers, naturally have attempted to offer their services so as to make them attractive to potential customers. While carriers have utilized varying plans, all have attempted to price within their services or between like services as favorably as possible. Typically, this involves the use of long term service commitments, service quality differences, volume or bulk discounts, etc., as a means of attracting subscribers by reduced rates. Often, these actions appear to be necessary primarily to compete with the dominant carrier and effective price leader. We consider this to be a normal response to the competitive forces in the marketplace in which these carriers operate. We recognize that the result of these practices in some cases has been differences in rates as between individual customers or customer classes apparently similarly situated.⁴³ We do not believe that these differences will generally constitute unreasonable discriminations under Section 202(a) of the Act, see para. 51, *supra*. As discussed above, the extent to which a carrier can "discriminate" between and among its various customers or classes of customers (and thus the potential for unreasonable discrimination violative of the Act) is related directly to the degree of market power it possesses. Absent market power, price differentials should generally reflect only competitive forces at work.

54. Thus, we believe that the marketplace will ensure that price differentials are not unreasonable—i.e., they will be cost-related and will benefit, rather than burden, both competition and the ratepayer. Just as competition and the absence of market power prevent the OCC's from establishing supracompetitive prices for their services, these same factors preclude these carriers from unjustly discriminating in favor of some customers at the expense of their other customers. The OCC's, to the extent they are competitive, are unable to charge any of their customers non-competitive prices because those charged the higher prices will seek out, and be sought out by, alternative suppliers. In other words, the lack of market power means that any lower OCC prices to some customers cannot

⁴³ We have in the past set some of these tariff practices for investigation. See, e.g., *RCA American Communications*, 63 FCC 2d 728 (1977); *RCA American Communications*, 67 FCC 2d 836 (1978). The likelihood that our current assessment of the competitive realities in the communications sector and of the nature of price discrimination would be dispositive of these outstanding investigations caused us to defer them pending our conclusions here. See para. 94, *infra*.

harm the other OCC customers, who cannot be charged above-competitive or unjust prices. Indeed, the selective lower prices often needed to attract additional customers may allow OCC's through expansion to achieve more efficient size, thereby resulting in lower costs and prices to original customers. Accordingly, we believe marketplace forces will be sufficient to ensure that non-dominant carrier tariff filings containing rate and other differences among customers are generally in compliance with Section 202(a) and thus can be considered presumptively lawful.

D. Section 61.38 and Notice Periods

55. Section 61.38. In view of the foregoing discussion of Sections 201(b) and 202(a) of the Act, we believe sufficient basis exists to treat tariff filings by eligible carriers⁴⁴ as presumptively lawful with respect to rates. As indicated in paragraphs 7-9, *supra*, where we reviewed the historical development of § 61.38, it has been of little, if any, aid in determining the lawfulness of OCC tariffs. The intended purpose, as originally promulgated, was to assist the Commission in making initial judgments as to a tariff's lawfulness under Sections 201(b) and 202(a) of the Act. These sections of the Act themselves, however, do not require the filing of such information. Indeed, a court has noted that § 61.38 is simply an agency-devised regulatory tool designed to facilitate initial Commission judgments as to the lawfulness of a filing; it "does not require submissions to establish a *prima facie* case for the lawfulness of the tariffs they support." *International Business Machines v. FCC*, 570 F. 2d 452, 456 (2d Cir. 1978). Thus, the pertinent question is whether and to what extent competitive marketplace forces can now be substituted for Section 61.38 so as to aid the Commission in making initial judgments of lawfulness regarding tariff filings by established carriers, SCC, Domsat, resale and MCC carriers. As discussed above we continue to believe cost support data, as required by Section 61.38, is necessary where the carrier involved has substantial market power. In addition, we still believe that where a single carrier provides both monopoly services and competitive services, cost support must be supplied so that we can detect if the carrier is unfairly cross/subsidizing the rates for its competitive services from its monopoly revenues. However, our experience with the existing and

⁴⁴ The term "eligible carriers" means those nondominant carriers to which our proposals apply. See Part VIII below.

developing competition now indicates that for non-dominant carriers possessing no market power or incentive for unlawful cross-subsidization, we can reasonably rely on marketplace forces as an effective substitute for Section 61.38 insofar as making initial judgments as to lawfulness, at least for the present and foreseeable future. Thus, no purpose would generally be served by the filing of, or the review of, costing and supporting material as now required by Section 61.38 in these instances. This will also ultimately serve to reduce the burden of regulation in general and the costs of compliance with rules, as well as minimizing the adverse impact such regulation may have on competitive entry and market actions. Therefore, under our proposals eligible carriers would be relieved from submission of data required by § 61.38 of the rules provided satisfactory financial reports are filed and other requirements specified herein are met. Amendments to § 61.38, and a new § 61.39, to accomplish this purpose are contained in Appendix A.

56. *Notice Periods.* In addition to the deletion of the § 61.38 cost data requirements for eligible carriers, we also propose to revise the related notice periods contained in § 61.58 of the Rules. 47 CFR § 61.58. Basically this rule requires that tariffs containing rate increases or rate structure changes be filed on 70 or 90 days notice to the public, as appropriate. In light of Section 203(a) of the Act, 47 U.S.C. § 203(a), which provides that all common carriers "shall" file with the Commission schedules showing charges, at this stage of the proceeding we will continue to require the filing of tariffs. It may be appropriate at the next stage to examine the requirements imposed by the term "schedule of charges" as well as the issue of whether other provisions of the Act may affect the requirements of § 203. For now, however, our study of the legislative history and the judicial discussion of Section 203 clearly indicates that we have great flexibility to contract the period of notice afforded by the filing requirement of Section 203(a) should we so elect. Although Section 203(b)(1) provides, as a maximum, 90-days' notice to the Commission and the public, subsection (2) of the same provision authorizes us to modify the period of notice. Recent court decisions recognize the Commission's power to alter the notice period. See *American Telephone and Telegraph Co. v. FCC*, 487 F.2d, 871 n. 10 (2d Cir. 1973) and *American Telephone and Telegraph Co. v. FCC*, 503 F.2d 612 (2d Cir. 1974). In light of this flexibility,

we believe that we may contract the applicable notice period in Rule Section 61.58 considerably, consistent with the procedural and substantive rights of all parties but responsive to the new competitive realities. Thus, we believe a maximum notice period of 10-15 days would not be unreasonable and this period might be contracted even further, say to 1 day, after further experience is obtained with non-dominant carrier competitive filings.

57. We do not view our proposed minimization of notice as eliminating any statutory rights of complainants. While the shorter period may make it more difficult for competitors or customers to mount a persuasive rejection or suspension argument in time, such complainants do not have any statutory right to such actions. Only if a tariff is "demonstrably unlawful on its face" might we have the "duty" to reject a tariff. *Associated Press v. FCC*, 448 F.2d 1095, 1103 (D.C. Cir. 1971). Even so, it is not clear that third parties can enforce that "duty" or, if they can, that our proposed rule will prevent them from convincing us to perform that duty where we might not otherwise do so. Nor does the statute give third parties a right to suspension or judicial review of a decision not to suspend. See, *Trans Alaska Pipeline Rate Cases*, 98 S. Ct. 2053, n. 17 (1978).

58. In light of these considerations, we propose a 14-day notice period for eligible carrier filings. An amendment to Rule 61.58 to effectuate the above change is contained in Appendix A. If a petitioner raises a substantial question that warrants more extensive consideration, this notice period can be extended as provided in Section 61.58 (d) (which permits the Chief, Common Carrier Bureau to defer the effective date of any tariff filing made in less than 90 days notice) so that action can be taken prior to the effective date.

E. Presumption of Lawfulness

59. We recognize that Section 204 of the Act, 47 U.S.C. § 204, entitles members of the public to petition to suspend and investigate tariff filings and that these petitions are provided for in Section 1.773 of our Rules. 47 C.F.R. § 1.773. Clearly, it is not within our authority to eliminate a statutory entitlement and we have no intention of doing so. However, since tariff filings by eligible carriers will now be considered *prima facie* lawful, we will not exercise our discretionary authority to suspend such filings except for the most compelling reasons. See *Trans Alaska Pipeline Rate Cases*, *supra*. We note that petitions to suspend tariffs which are presumptively lawful are in many

respects similar to petitions for injunctive relief. In order to warrant suspension of such a tariff filing, a petitioner would have to rebut the presumption of lawfulness of any tariff rate provision filed by an eligible carrier. In general, to make the showing necessary to warrant suspension and investigation of such tariff provisions a petitioner would have to meet the following four part test:

(1) That there is a high probability that the tariff would be found to be unlawful after an investigation (likelihood of success on the merits);

(2) That any harm alleged to competition (which we believe accomplishes public interest benefits) would be more substantial than that to the public arising from unavailability of the service pursuant to the rates and conditions proposed in the tariff filing (e.g., that the proposed rate is predatory); and

(3) That irreparable injury would be suffered if suspension does not issue;

(4) That the suspension would not otherwise be contrary to the public interest.⁴⁵

60. In addition to these general requirements, there are other factors that might determinative if a petitioner seeks to overcome the presumption of lawfulness. One important factor is whether petitioner is an end user or consumer or a competing carrier. We have observed that users do not usually file petitions merely as a form of competitive harassment as do competing carriers (para. 9, *supra*). Thus, petitions by users may be viewed from a different perspective. For example, where a non-dominant carrier denies a consumer request for service under particular rates or conditions of service which it gives another customer and no practical service alternative exists for the complaining consumer (e.g., resort to another carrier), we might then intervene as appropriate. In such circumstances, however, we believe the consumer must show it has first requested explanations and justifications from the carrier prior to the service denial. In this regard, the

⁴⁵ This four part test is nearly identical to that used by the CAB in its newly adopted rules allowing for increased fare flexibility in the commercial passenger airline industry. *Domestic Passenger-fare level Policies*, *supra*, 43 Fed. Reg. 39530. The CAB noted that the burden is similar to the one used by courts in considering whether to grant a stay or a preliminary injunction, citing *Fortune v. Molpus*, 431 F.2d 799 (5th Cir. 1970); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921 (D.C. Cir. 1958); and *Resident Advisory Board v. Rizzo*, 429 F. Supp. 222 (E.D. Pa. 1977). We use a similar test in acting on requests for stays, see *Amendment to Subpart F of Part 76 of the Commission's Rules*, 68 FCC 2d 1308, (1978). In our independent judgment, we believe the showing necessary to rebut a presumption of lawfulness in the limited context of a determination to suspend should be similar to the standard necessary to support a stay.

size and sophistication of the consumer, the relative level of bargaining power existing between the consumer and carrier, evidence of fair and impartial dealing, and evidence of the carrier overreaching, etc., might also be relevant factors. Basically, these additional factors would address unique situations where a non-dominant carrier might possess a limited measure of market power *vis-a-vis* consumers such that our intervention is required. In the course of dealing with non-dominant carrier tariff filings and petitions relating thereto, we recognize that other factors might arise which could result in rebutting the presumption of lawfulness. As we gain further experience in this regard, we will provide more definitive guidance as appropriate.

61. If a substantial showing is made by a petitioner in rebutting the presumption, our staff is empowered to take appropriate action including an extension of the notice period for the tariff's effectiveness (as provided in Section 61.58(d)), ordering the filing of Section 61.38 data within an appropriate time period, or even rejecting tariff filings in cases where the tariff is clearly unduly discriminatory and unlawful under Section 202(a). Tariff filings could also be subject to suspension where the presumption is overcome. Where the presumption is not overcome by a petitioner, of course, we will delegate authority to the staff to routinely deny a petition to suspend and investigate.⁴⁶

62. We wish to emphasize that the above procedures would apply only in the limited context of petitions to suspend. Any tariff may still be challenged—without a presumption of lawfulness—by our complaint and investigation procedures. Moreover, it should be made clear to eligible non-dominant carriers that although the rates contained in their filings will be considered presumptively lawful so that are free of 61.38 requirements, they must nonetheless still comply with certain elemental tariff policies designed to promote reasonable consumer knowledge of their various options. Any eligible carrier filing a tariff in accordance with our policy and analysis enunciated herein would still be expected to submit with its tariff filing a concise information statement explaining its filing in terms of the actual service provided and the basic rates, terms and conditions of service.⁴⁷

⁴⁶ The grant of a suspension petition would continue to require Commission action. The staff now has authority to consider petitions to reject. There would be no change in this.

⁴⁷ Where a rate structure is not clear on its face, we may require the inclusion of sample calculations

Those filings not containing a reasonable description of the filing in this regard may be subject to deferral under 61.58(d) or requests for clarification from the Bureau staff. As indicated above, we shall require eligible carriers to continue to simplify and clarify their tariffs and the staff is directed to continue its efforts in this regard.⁴⁸

F. Section 214

63. As indicated above, we have over the past few years established in a number of proceedings policies favoring the competitive entry of new carriers. Accordingly, from policy standpoint the regulatory entry barrier has already been substantially lowered, and a large number of Section 214 applications have been, and continue to be, routinely granted without opposition. Therefore, as a matter of informal regulatory practice, the effects of Section 214 as a barrier to new entry may have been reduced already. Nonetheless, we believe it is appropriate to review our policies and rules in this regard to determine what can be done to further minimize the regulatory burden we have composed under this section and improve its effectiveness where necessary.

64. Conceptually, Section 214 may be conceived of as serving four primary functions. First, it is used as a device for certifying that entry of a company as a common carrier will serve the public interest, convenience and necessity. Secondly, it is used to determine what cities or geographic areas a carrier may serve. Third it serves as a control for the number of circuits or facilities a carrier may construct or lease to provide service to those cities or areas. Fourth, it serves as a control to prevent a carrier from unreasonably terminating or reducing service to a community or area. In the following paragraphs we will consider these functions in determining what changes we can or should make with respect to Section 214 regulation. First, we will summarize briefly the existing Part 63 rules that pertain to these functions.

65. Section 63.01 of the rules specifies the type of information now required to support all major Section 214 applications, whether for initial certification as a carrier or for the establishment of new lines (by either lease or construction) by an existing carrier. Although this rule requires that

of charges to eliminate any confusion or lack of clarity.

⁴⁸ See the concern for clarity and comparability of tariff terms which the Commission recently expressed in *Private Line Rate Structure and Volume Discount Practices*, *supra*.

extensive information be submitted, we normally focus primarily on the type of service involved, the public need for the service, the points to be served, the number and type of circuits to be provided, and the costs involved. In the case of an initial certification, we also generally review the qualifications of the entity and any particular public interest questions that may be raised with respect to the entity and the type of service to be provided. Once a carrier is authorized to serve specific communities additional circuits may be generally authorized upon the filing of simpler applications as specified in Section 63.02 and 63.03, provided that the facilities involved do not exceed certain dollar limits. Section 63.03 provides for automatic grant within 21 days after filing an application for supplemental facilities unless notified to the contrary by the Commission. That section also permits the Commission to authorize a carrier continuing authority for the construction or acquisition of small projects (limited to \$35,000 cost or \$7,000 annual rental) for which no specific prior authority is required. §§ 63.60 through 63.91 provide different requirements for authorization of discontinuance, reduction or impairment of service, depending on the type of service involved (e.g. telephone, telegraph, public cost).⁴⁹ One consistent theme, however, among all of these discontinuance rules is the requirement for customer notification and the service alternatives the customer may have.

66. We have above set forth in some detail why we believe a different approach is warranted in regulating the tariff filing of a dominant carrier as compared to a non-dominant carrier. Many of these same reasons would appear relevant to Section 214 regulation. For example, a rate base regulated dominant carrier's earnings are tied to its investment, i.e., its rate of return is based on its invested facilities and the more facilities it has, generally the greater its overall earning will be. Thus, rate base regulation carrier with its incentives to overbuild (the so-called Averch/Johnson effect). While in a rate case the Commission could disallow inclusion in the rate base of facilities representing excess capacity, such occurrences have been rare in the past and regulatory commissions have generally been reluctant to disallow unless it was shown that the excess capacity was intentional or resulted from gross mismanagement. To counter

⁴⁹ We are considering modifications to the rules pertaining to the discontinuance of telegraph service in another proceeding (see note 5 *supra*). Therefore, such changes are not considered here.

this incentive, public utility regulation has come to rely upon a prior approval mechanism which, in theory, assures that unnecessary or unnecessarily costly facilities will not be constructed by exclusive or dominant purveyors of service to the public (i.e., carriers which, because of market power vis-a-vis customers with inelastic demand, would be able to command prices calculated upon an inflated rate base). In contrast, a non-dominant carrier has no incentive to overbuild for two reasons. First, because such carriers have not been and are not now effectively rate regulated, the size of their respective rate bases is not relevant to the prices they can charge. Second, and the reason we have not imposed the full form and substance of rate regulation on the OCCs, such carriers do not possess sufficient control over price to recognize any reward from overbuilding even if they were subject to an overall rate of return constraint. See paragraphs 14, 30-31, *supra*. Their prices must reflect those of their competitors (including the dominant carrier) without regard to rate base. Therefore, we believe it appropriate to concentrate our Section 214 regulatory attention on the construction program of the dominant carrier and minimize it with respect to the non-dominant carriers.

67. Similarly, with respect to possible discontinuance of service, it would also seem that different treatment of the non-dominant carrier may be warranted. The dominant carrier in many areas, particularly the smaller communities, may be the only carrier offering a given service. Therefore, we believe continued positive control over the discontinuance of the service offered by a dominant carrier is warranted, and in fact, that is one of the primary reasons that Congress included Section 214 of the Act. On the other hand, competitive carriers, by definition, usually offer no service to any community for which there is no reasonable substitute. In such circumstances, there is not the same degree of "essentiality" to these services as there may be to certain of those provided by the dominant carriers. Accordingly, as long as the customer has advance notice so as to make arrangements for substitute service, there would not seem to be any major reason why discontinuance authority cannot be routinely granted to non-dominant carriers. In contrast to the dominant carriers, non-dominant carriers generally operate under relatively high risk conditions where failure to gain an adequate share of the market can result in a carrier's demise

or contraction of service offerings.⁵⁰ Consequently, in view of the general financial risk non-dominant carriers operate under, we do not believe it is necessary to impose any more "exit risk" than absolutely necessary to protect the interest of their subscribers.

68. In view of these considerations, we are proposing to amend the Part 63 rules in several ways. First, separate application requirements will be developed for dominant and non-dominant carriers. The rules for dominant carriers would be less concerned about circuit-by-circuit requirements, and more concerned with major additions to plant, a need disclosed by our recent five year Phase II investigation of AT&T, *Phase II Final Decision and Order* in Docket No. 19129, 64 FCC 2d 1, 50-52 (1977). To this end, we intend a fundamental reexamination of our Part 63 domestic regulatory program, a program based upon rules which have remained substantially unchanged since their adoption in 1944 to regulate the relatively simple domestic telephone and telegraph networks of that time. 9 Fed. Reg. 2092 (February 23, 1944). Networks then were more characterized by distinct lines which directly connected each city with the other cities on the network, rather than by the interconnection of indirect lines to build up a through connection. For example, during the 1930's, the bulk of long distance calls (e.g., 80% in 1936) were carried over dedicated long distance lines which directly connected cities in order to avoid the transmission losses and delays then associated with the manual toll board switching of lesser quality "short distance" toll lines. Because telephone lines were capable then of providing satisfactory transmission quality only individually, or in combinations of two, the General Toll Switching Plan's original goal was to limit the number of switches required for a toll connection, not to provide for alternate routing of calls. H. S. Osborne, *A General Switching Manual for Telephone Toll Service*, 9 BELL SYSTEM TECHNICAL J. 429 (July, 1930). This was changed in the early 1950's with the introduction of Direct Distance Dialing. The upgrading of transmission plant eliminated toll line distinctions. The maximum number of allowable switches in an end to end toll connection was increased from two to seven. Automatic electromechanical toll switches replaced the manual toll boards so as to make possible the automatic interconnection of indirect lines to create a through connection.

⁵⁰ See, e.g., *Data Transmission Corp.*, 60 F.C.C. 2d 958 (1976).

Automatic alternate routing, once the exception, is now the rule, and long distance calls between any two points link a switching ladder in search of an idle circuit to permit their completion. For example, because of automatic alternate routing, it is quite possible, and indeed common, for a toll call intended between cities within a single state to be automatically routed to its destination through out of state lines at a higher level in the switching hierarchy.

69. All of this has resulted in a highly interdependent, complex switched telephone system which is not adequately reflected in our present rules. While relevant to the simple networks of the 1930's and 1940's, our present approach—to require individual applications for specific "lines"—does not appear to be either adequate, or material, to an evaluation of the needs of the modern switched telephone network. These problems appear to need addressing in a context much broader than that of an application for a specific piece of equipment.⁵¹ Consequently, we do not intend to simply continue the present approach, reviewing numerous equipment and "circuit" applications without regard to the impact on the overall network. Rather, we intend to approach our regulatory concerns with essentially a "clear slate" upon which we intend to develop new approaches designed to meet our goals. As indicated in paragraph 66 our primary goal in this regard is to insure against excessive addition to plant which will unduly expand the rate base, thus causing higher earnings requirements. This goal is, of course, easier to state than achieve. We recognize the complexity of the nationwide switched network and that much addition to plant has to be planned years in advance of the basis of forecasts which may or may not be accurate as to actual needs. Because of this long lead time, we have also felt the frustration, from time to time, under our current 214 procedures, of reviewing construction plans too late in the planning cycle to reasonably require significant changes.

70. Due to the complexities of modifying Section 214 procedures for

⁵¹ We recognize Section 214 speaks in terms of construction of "lines." In the past the rules have been written rather restrictively as to the meaning of what constituted a line. In view of the increasing complexity of communications networks and their necessary integration with switches and other support equipment, a question arises as to whether a more expansive definition of the term may be appropriate and necessary. We seek comment on whether Congress intended to include within the concept of "lines" of communications all facilities necessary to make those lines into effective communications offerings. Switches of all kinds are necessary to create the communications networks wherein alternate routing is a prime design goal.

dominant carriers, we are not now proposing any specific rule. Rather, we request interested persons to submit their ideas for possible approaches for Section 214 regulation for these carriers, keeping in mind our objectives and concerns as stated above. In particular we request comment on the following:

- (1) At what point in the planning cycle should commission authority be sought?
- (2) For major programs or plant additions should authorization be in two steps, say preliminary at the planning stage, and final before construction actually begins?
- (3) In what way can the Commission best focus on major construction while minimizing administrative effort on minor or routine supplemental facilities?
- (4) Should different types of facilities have different types of approval procedures? If so, what?
- (5) To what extent can or should the Commission review alternative facility options on major construction projects?
- (6) To what extent, if any, should the Commission review and/or approve management, engineering and financial procedures and guidelines under which major projects are planned?
- (7) How can the Commission best monitor the efficiency of use (e.g., the fill factor) of the overall switched network, and major segments thereof, and how the facility construction program affects this from year to year?
- (8) How can the accuracy of facility forecasts be best monitored and evaluated from year to year?
- (9) To what extent can or should the Commission make efficient use of existing facilities a condition precedent to the construction of new facilities?
- (10) Given the various certification system possibilities, what standard should the Commission employ in considering disallowances?

71. For non-dominant carriers, we propose to focus only on those aspects of Section 214 considered essential. Although under current policy we believe that it is appropriate to continue the initial certification of these carriers, we intend to lessen substantially their application requirements in accordance with our open entry policies and in recognition of the constraining influences of market forces noted above. Essentially we propose to reduce Section 214 facility authorization requirements for such carriers to include only initial certification to provide common carrier service and the points or geographic areas of service. In that authorization, we would grant blanket authority to the carrier for unlimited expansion of circuits, except video relay circuits,⁵² to the authorized service

areas. Thus, where supplemental circuits are to be installed or leased, no additional authorization would be required. Instead we would require the reporting of such additions within 30 days after their service date.⁵³ As currently, carriers would be required to acquire prior facility authorizations for the underlying transmission facilities, i.e., for radio and for cable (or other non-radio transmission medium) over 10 miles in length. We believe such a regulatory program will substantially reduce the facility authorization burden on both the non-dominant carriers and on the Commission staff while fulfilling our obligations under Section 214 of the Act. Finally with respect to discontinuance of service, we propose to minimize the requirements for these non-dominant carriers to discontinue service to any point. Provided that 30 days prior notice is given to their customers and no showing is made that a reasonable substitute service is not available, such applications would be "automatically" granted 30 days after the filing date. If a petition to deny were filed, we would, of course, act on the petition prior to any discontinuance.

72. We note that Section 214 is written in imperative terms, and thus may not permit complete abandonment of the certification process. However, we believe the Act provides us sufficient flexibility so as to allow the blanket applications we here propose. Nothing in Section 214 sets a minimum time span in which the proposed construction, extension, augmentation, operation, transmission or discontinuance covered by the Section 214 application must take place, and thus appears to be an area left to our administrative discretion. We also note that we have in past rulemakings contracted the burdens that might otherwise be imposed under Section 214. See *Resale Decision*, *supra*.

73. The details of these proposed Part 63 rule changes are contained in Appendix A. We solicit comment not only on these particular changes, but on any other alternatives that interested parties believe to be more appropriate. However, such alternatives should be addressed in terms of meeting the requirements of the Act, the general public interest involved, and in terms of minimizing the regulatory burden on both the Commission staff and the regulated carriers.

G. Video Relay Carriers

74. While the aforementioned proposals pertaining to Section 61.38, presumptions of lawfulness, Section 214, etc., would also be generally applicable to non-dominant common carriers providing video relay services whether those carriers are terrestrial microwave, satellite, or resale, we believe some different treatment in this area is warranted. In particular, we wish to address rate making methodology applicable to these carriers because of the different nature of competition we have observed in this market.

75. With a growing number of resale satellite carriers now providing video relay service to cable television systems and widespread installation of receive-only earth stations by cable television systems, we believe that we may permit, under appropriate conditions, video relay carriers to use diverse rate structuring principles. In Appendix B, we set forth our analysis of various ratemaking principles in the context of the current level of competition for these services. We basically conclude therein that the technical and cost characteristics of satellite video relay carriers, taken in conjunction with the unique nature of the markets they serve, may justify the use of cost allocation methodologies which give greater consideration to the ultimate user of the common carrier service than has previously been the case. Thus, in view of the above, we propose to allow competitive satellite video relay carriers broad latitude in their selection of a ratemaking methodology, including the use of population-sensitive rates. We have tentatively found that such ratemaking flexibility is likely to promote widespread availability of video relay service at reasonable rates while allowing for the continued development and expansion of competition in this specialized marketplace. We view this approach as serving the policies of Section 1 of the Act, 47 U.S.C. § 151.

76. Having determined that population-sensitive rate structures seem to be appropriate for satellite video relay carriers serving cable television systems, we also believe that since a terrestrial carrier competes with a satellite carrier in the provision of such services, then our general regulatory policy of full and fair competition should likewise permit the terrestrial video relay carriers to utilize population-sensitive rate structures similar to those of the satellite carriers. Accordingly, we propose to remove the requirement that terrestrial microwave carriers providing video relay service to

⁵² We are excepting video relay circuits via satellite here because of the small number of applications involved and the substantial number of policy issues that have been raised in the past with respect to such service.

⁵³ Such reporting will, among other things, enable us to monitor the extent of competitive services available and analyze, to a degree, the efficiency of use of the radio spectrum.

cable television systems justify population-sensitive rates under the complete burden specified in *American Television Relay*, 63 F.C.C. 2d 911, 929-30 (1977), provided that such rates are uniformly applied with respect to all customers on any given microwave system. However, we will entertain and address any issues pertaining to clearly unreasonable rate discrimination.

77. We noted above that due to the unique cost, demand and technical characteristics of video relay services provided, the forces of the competitive marketplace may not function as effectively as they might for other types of competitive carriers and services. Therefore, at least initially, our staff will monitor very closely systemwide rate increases and shall be directed to request relevant data from the carrier as is appropriate. Since, as noted in para. 35, *supra*, there may be no effective alternative for the cable systems being served with network television signals, because such signals are not currently being carried on satellites, we propose to continue requiring Section 61.38 support data where a terrestrial microwave carrier proposes to increase rates for the carriage of such signals. So long as this is the case, we would not, of course, apply a presumption of lawfulness to this service.

VIII. Applicability

78. The proposed guidelines and rules shall apply to the extent indicated herein to all carriers except those the Commission finds to have market power. As noted above, a carrier which is dominant usually is the effective price leader or has a substantial opportunity and incentive (i.e., effective rate base regulation) to subsidize the rates for its more competitive services with revenues obtained from its monopoly services. Such subsidization is unlawful to the extent it adversely impacts the less competitive or monopoly services and permits the dominant carrier to gain an anticompetitive advantage over other carriers.

79. The dominant carrier concept, however, necessarily raises the question of when and under what circumstances a carrier achieves "market power" or "dominance" such that it is excluded from the streamlined filing provisions under our proposed rules. Thus, an ultimate goal of this rulemaking proceeding is to establish a set of standards and procedures by which this Commission will be able to identify dominant firms (i.e. those with market power) on a continuing and consistent basis. Obviously, as the markets expand, varieties of service offerings increase, and new entry occurs,

reassessment of prior determinations will be required.⁸⁴ Therefore, we believe commenting parties should devote considerable attention to describing and discussing criteria useful to defining market power and defining the point at which a carrier becomes a dominant firm such that direct regulatory constraints more reliably insure just, reasonable, and not unduly discriminatory rates and practices than reliance on marketplace forces. In this respect, recent regulatory changes of the Interstate Commerce Commission (ICC) may provide a useful starting point for further study. For example, the ICC has found that invoking certain presumptions at the initial tariff filing stage can provide pragmatic guides in deciding whether to exercise rate jurisdiction over dominant carriers or to permit competition to operate more freely.⁸⁵ Thus, according to the ICC, a carrier with a 70 percent share of the market in a particular tariffed service is presumed to be the dominant carrier for that service.⁸⁶ Other tests utilized by the ICC in presuming market dominance are reported in *Special Procedures for Making Findings of Market Dominance as required by the Railroad Revitalization and Regulatory Reform Act of 1976*, 353 I.C.C. 784 (1976), *recon.*, 355 I.C.C. 12 (1976), *aff'd*, in *relevant part*, *Atchison, Topeka and Santa Fe Railway Company v. ICC*, 580 F. 2d 623 (D.C. Cir. 1978). (The case was remanded for the limited purpose of clarifying one of the presumptions selected by the ICC.)

80. Additional factors relating to the definition of market power and dominant firms might be considered: whether the carrier is effectively rate regulated; a required showing by the filing carrier that the market for the tariffed service is workably competitive; the ability of a carrier to be a price leader; the number of carriers involved in providing a particular service; the extent to which other carriers provide services that are practical marketplace

substitutes; and the relative size of the carriers as measured by customer base, plant investment, R&D capability, overall company revenues, corporate structures such as affiliation with other carriers, or with non-regulated corporate affiliates, and standing in financial markets.⁸⁷ With regard to affiliation, we may want to consider affiliation with a local exchange carrier as an indicium or rule of dominance. The degree to which affiliated entities are truly separate and deal at arms' length with each other should also be considered. Also, any acquisitions or mergers between carriers may be relevant in determining carrier market power and dominance,⁸⁸ as well as how all the above factors may change over time.

81. Our initial determinations of market power primarily reflect the industry as it stands today and for the reasonably foreseeable future. As indicated, the present industry structure is one which has long been dominated by relatively few large firms, providing a variety of private line and switched message services in generally well-defined markets based on historical industry practices. However, numerous firms have either recently entered the industry or propose entry, many with substantial financial resources and other significant backing. Moreover, the underlying technology is more diversely supplied, and capable of performing more new and innovative services than was the case in the past. In other words, we find ourselves very much at a crossroad where historic industry development and related policies and practices face the prospect of dynamic industry change brought on by new or proposed entrants offering many services through new types of facilities under varied pricing systems. While in the long run we recognize the necessity for clearly defined standards and procedures for dominant carrier determinations, we also believe that to settle on a limited number of criteria at

⁸⁴ Also, the resolution or initiation of other significant proceedings, particularly resolution of the pending MTS/WATS Market Structure Inquiry, *supra*, could have a bearing on the precision and finality of any standards or procedures considered or adopted herein.

⁸⁵ We are fully aware that in the absence of a finding of market dominance by the ICC, reliance on the marketplace was directed by an act of Congress. We mention the ICC's tests for findings of market dominance only as an aid for analysis in the context of the more limited approach directed to specific competitive carrier tariff filings which are the subject of these proposed rules.

⁸⁶ While a percentage market share criterion alone may not be sufficient for dominant carrier determinations, it appears to us to offer significant advantages in terms of relevance, certainty and ease of applications.

⁸⁷ Obviously, the financial wherewithal and market power of a parent or sister corporation may make entry and growth of an affiliated new carrier somewhat easier. However, it does not automatically follow that such a new carrier should be classified as a dominant carrier, either under our initial or more final determinations, merely because of its relationship with its financially stronger affiliate. See paragraph 48, *supra*.

⁸⁸ Where a dominant carrier acquires, either directly or indirectly, a non-dominant carrier, we will treat the acquired carrier as a dominant carrier unless it can show that it operates as a completely separate entity. Indicia of separate identity may include separate books of accounts, facilities, officers, directors, personnel, or such other conditions as the Commission may find warranted. Also, it must be demonstrated that the two entities deal with one another on an arms length basis in all respects. See e.g., *GTE Applications*, note 18, *supra*.

this stage would require us to speculate unduly on the public interest impact of the new and proposed entrants, many of which have not yet filed a tariff providing services to the public or have achieved only limited success to date in competing with the established carriers. As noted above, the possible impact of such entrants is also being considered, in a broader context, in the *MTS/WATS Market Structure Inquiry*. Under these circumstances, we believe the most reasonable course of action in initially making tentative dominant carrier determinations is to focus primarily on the realities of the present industry structure and the proven experience with that structure. Recognizing the inevitability (and desirability) of change, we will retain the discretion to make appropriate changes in the future upon our own motion or upon the motion of a party demonstrating changed circumstances. We will develop the final criteria for dominant carrier determinations based upon our actual experience with the proposed regulatory reforms, the comments filed by the parties herein, and, of course, our observations of the development of the industry through the regulatory mechanisms presently or to become available. Furthermore, it is our current intention to make this an ongoing proceeding so that we may continually reevaluate the guidelines and any final rules and thus make any necessary modifications in the light of actual experience, or changes in operation, affiliation or structures of the firm in question.⁶⁰

82. Our initial market power and dominant carrier determinations for the purpose of implementing the proposals were made by reviewing relevant Commission files, reports, and orders and weighing many of the factors described above, rather than prematurely limiting ourselves to a few rigid rules. We recognize that the factors considered, as outlined below, could perhaps be applied during the course of this proceeding to other carriers which, by reason of new technology or early entry into new service or geographic markets, among other things, might acquire market power. We considered such possibilities, but do not see any present indications of this happening during this period. However, should other carriers emerge within this time frame that appear to be dominant, we certainly will make a determination as appropriate. Furthermore, if any carrier

which we now find to possess a position of dominance should lose that position we would likewise reevaluate our present determinations.

83. In ascertaining market power and dominance for purposes of implementing this deregulatory program, it is obvious that we must first consider the Bell System.⁶¹ We have noted previously Bell's total current assets of \$103.3 billion, total operating revenues of \$41.0 billion, and its net plant value at \$90.4 billion. (See para. 16 above.) Further, it has earned in excess of one billion dollars in profits for several consecutive quarters. In our Docket 20003 Inquiry, *Customer Interconnection*, *supra*, we further noted AT&T's dominant market position in virtually all service markets, including local service, MTS and WATS public switched services, and the various private line service markets. See also, Docket 19129, 64 F.C.C. 2d 1 (1977). Because AT&T remains by far the dominant supplier of basic interstate telephone service (in 1977 alone, AT&T obtained \$14.6 billion in MTS revenues compared to total SCC revenues in all services of approximately \$120 million) it has, unlike recent or proposed OCC entrants, a substantial opportunity and incentive (because of rate base regulation) to subsidize between and among services to the detriment of users not having realistic service alternatives, and particularly to subsidize those services which might be more susceptible to OCC competition with its monopoly service revenues.⁶² We have also noted AT&T's role as the effective price leader.

84. From the beginning of our expanded competitive entry policies, e.g., the *Specialized Common Carrier* and *Domsat* proceedings, we have been concerned that AT&T's historical market power, immense financial and technological base, its control over monopoly interconnection facilities, and its substantial cross-subsidization potential could afford it the opportunity to impact consumers adversely and effectively thwart or limit our competitive policies and any resulting reforms we might find consistent with those policies. Under these

circumstances, our Docket 18128 cost allocation guidelines and requirements, and the requirements we have recently imposed through other Commission orders, were developed so that we may prevent that from happening.⁶³ Thus full and effective implementation of the Docket 18128 Decision and AT&T's compliance with other applicable orders are necessary for the furtherance of our policy of full and fair competition. Any current relaxation of our present tariff support requirements with respect to AT&T appears unwarranted.⁶⁴

85. In summary, we have noted the rather obvious circumstances which we believe foreclose any application of the proposals herein to AT&T and its associated companies.⁶⁵ We shall not readdress this determination until such time as we achieve full and effective Docket 18128 implementation, made any related changes necessary in the Uniform System of Accounts (USOA), see *Notice of Proposed Rulemaking, Accounts and Financial Reporting for Telephone Companies*, CC Docket No. 78-196, 43 Fed. Reg. 33560, July 31, 1978, and *Further Notice*, FCC 79-479 (released August 9, 1979), and are otherwise assured that a relaxation of our tariff support rules, policies and decisions applicable to Bell would be consistent with our statutory responsibilities and the public interest. We do not eliminate the possibility that USOA and the use of separate subsidiaries may at some time afford an AT&T affiliate the opportunity to offer some competitive services as a non-dominant carrier in the future.

86. Like AT&T, Western Union's long-established role in the telecommunications industry raises

⁶⁰ Revised Fully Distributed Cost Method 7 (FDC-7) was the cost methodology required by the Commission to ensure, among other things, AT&T's accountability for rates for all of its service categories and to determine unlawful cross-subsidization between and among service categories. *AT&T (Docket 18128)*, 61 F.C.C. 2d 587 (1976), *recon.*, 64 F.C.C. 2d 871 (1977), *further recon.*, FCC 78-104, released February 24, 1978. See also, *WATS Rejection, Series 7000 Rejection*, *supra*, and *AT&T DDS Rejection*, 67 F.C.C. 2d 1195 (1978), *recon. denied*, FCC 78-879, (released January 5, 1979). See also *Bell Telephone Company of Pennsylvania*, *supra*, and related interconnection cases.

⁶¹ As applied to the tariff filings of the OCCs, the scope of the proposals is not likely to impact adversely members of the public or our competitive policies in general. Such an impact is unlikely given their limited time in the market and limited customer bases, as well as the fact that AT&T functions as the effective price leader. On the other hand, AT&T's vast customer base and historical market position in all services could make even its minor tariff changes irreversibly detrimental to consumers at large and our competitive and other policies. See, e.g., *Series 7000 Rejection Recon.*, *supra*, at para. 16.

⁶² See our discussion at paragraph 42.

⁶³ Since the independent telephone industry offers interstate services on essentially a non-competitive, cooperative basis with Bell, generally concurring in Bell tariffs, we shall also consider them as dominant carriers for purposes of these rules.

⁶⁴ The entry of OCCs into MTS/WATS-like services as a result of the *Execunet* litigation and into the private line markets due to the *Specialized Common Carrier Decision* seems to have had only a minimal effect. Indeed, AT&T's yearly revenue growth alone in such markets exceeds any small inroads made by the OCCs. In the case of either MTS/WATS or private line, the OCC market share is far less than 1%.

⁶⁵ As noted in para. 31, *supra*, we may separately consider modified reporting procedures or other appropriate regulatory actions to examine those broad industry structure issues which are beyond the scope of this proceeding.

problems different from those associated with the recent or potential OCC entrants to the industry. Of course, Western Union is vastly different from AT&T. Because of AT&T's immense size and substantial resources (e.g., AT&T revenues were \$41.0 billion in 1978 compared to Western Union's \$687.8 million), its dominance extends to virtually every service market and thus impacts U.S. consumers in general. Still, Western Union is much larger than most of the new OCC entrants and thus could use its market position to compete unfairly (e.g., Western Union's \$687.8 million revenues for 1978 can be compared to the longest established SCC, MCI, which had \$78.1 million for the same period). We do not intend to impose unnecessary regulatory constraints on Western Union and possibly frustrate its competitive efforts merely because it has existed longer than the OCCs, or because it has been around at least as long as AT&T. Indeed, we believe our recent and proposed actions in CC Docket 78-96, note 5, *supra*, permitting entry of other carriers into the public message telegraph service (PMS) domestic market may greatly facilitate Western Union's ability to compete more fully in all aspects of the domestic marketplace.

87. Notwithstanding our desire to facilitate maximum competitive freedom for Western Union, we see an apparent conflict with our intention regarding the application of our proposals to Western Union's tariff filings. Although Western Union no longer has a *de jure* monopoly in domestic PMS, it remains the sole provider (and thus dominant carrier) of domestic Telex and/or TWX services.⁶⁵

⁶⁵ Telex and TWX are the only significant domestic switched networks dedicated to teletypewriter, or written record service on an exchange basis. Thus, WU's market share for this type of service approaches 100%. These networks operate principally in the circuit switched mode (a form of real-time switching), but also offer the optional use of message switching so that additional features are available including multiple-addressed message service, store and forward service between Telex and/or TWX stations, and access to other services such as PMS. All Telex and TWX subscribers are issued combined Telex/TWX directories so that access to essentially all other subscriber stations is readily available on a direct-dial or store and forward basis. Although a substantial market comprised of point-to-point and switched teletypewriter requirements exists outside the realms of Telex and TWX (e.g., Autodin and Advanced Record Service (ARS), switched private line networks provided by Western Union to the government, Series 1000 and Low Speed Channel private line service provided by AT&T and Western Union respectively, and the very substantial amount of use of the nationwide telephone network for record type services), such alternative services may not be viewed as ready substitutes to Telex and TWX. Western Union's Telex and TWX domestic services also include a substantial amount of use associated with the domestic handling of international traffic, thus indicating an even more

These circumstances could afford Western Union, unlike the current OCCs, the opportunity to cross-subsidize its other offerings to the possible detriment of its Telex/TWX ratepayers.⁶⁶ This could also result in Western Union achieving an unfair competitive advantage over competing OCCs. On the other hand, we recognize that WU may be somewhat constrained in its pricing flexibility by AT&T's effective price leadership in most services. For example, Western Union must generally price many of its private line services under those of AT&T's. See Docket 20847, *infra*.

88. We also note several pending proceedings which could affect substantially Western Union's role in the marketplace, particularly its dominant posture in Telex/TWX services. For example, in our *Telex/TWX Investigation*, CC Docket 78-97, 67 F.C.C. 2d 1420 (1978), we are already examining the cross-subsidization problem in some depth. As noted in *Telex/TWX, supra*, at 1424, Western Union's projected 1981 earnings of 25.7% and 18.8% on Telex and TWX services, respectively, (as well as projections for 1979 and 1980) seem excessive when compared to either significantly low earnings or negative earnings on its other services. This factor, coupled with several Telex/TWX rate increases in recent years, *Telex/TWX, supra*, at 1422, causes us concern about the cross-subsidization problem. To get at the heart of the problem, we are thus considering the establishment of guidelines and principles similar to those promulgated in Docket No. 18128 for AT&T, to govern Western Union's cost allocations among its services. Hopefully, the *Telex/TWX Investigation* will provide sufficient basis for the development of cost allocation principles and guidelines, as well as addressing the rate of return for Telex and/or TWX services.⁶⁷

89. We are also mindful of the fact that changed circumstances in the domestic and international marketplaces (e.g., changes in the domestic Telex/TWX market) emanating from policy determinations

privileged position in the domestic market. Moreover, it is often essential for a domestic Telex/TWX user, particularly in the hinterland, to subscribe to Western Union's service in order to have ready access to the international Telex services of the IRCs.

⁶⁶ Also, until such time as the domestic PMS market becomes more competitive in reaction to our freer entry policy, existing PMS subscribers could possibly be disadvantaged by cross-subsidization.

⁶⁷ If we are unable to achieve our purposes in those proceedings, we may be forced to institute a separate inquiry as we indicated earlier. See *AT&T*, 67 F.C.C. 2d 1441, 1444 (1978).

by the Commission which emphasize maximum reliance on competitive marketplace forces to accomplish the statutory purposes of the Act could have a profound impact upon both Western Union's dominant posture in the provision of domestic Telex/TWX services, its concomitant ability to cross-subsidize, and thus the possible applicability to Western Union of the proposals herein. Thus, the eventual applicability of the proposals to Western Union is obviously a factor to be considered in any pending or new proceedings bearing on Western Union's competitive posture in domestic Telex/TWX. In this regard, relevant pending proceedings are Docket 19660, *International Gateway and Formula Inquiry*, 38 F.C.C. 2d 541 (1972), 54 F.C.C. 2d 804 (1975); Docket 21005, *Interface of International Telex and Domestic Telex/TWX Services*, 62 F.C.C. 2d 414 (1976); and the *Graphnet applications, supra*.⁶⁸

90. In summary, we have noted above the current circumstances which, in our judgment, at least initially require Western Union to be classified as a dominant carrier, thus foreclosing any immediate application of the proposals to Western Union. We, of course, invite Western Union's comments on its classification and thus will review our determination at the end of the comment process.

IX. Summary and Implementation

91. In conclusion, we believe that these proposals, as applied to the competitive services of the non-dominant carriers, will facilitate even more competition, diversity and associated consumer benefits, and are likely to reduce the regulatory burden for the industry as well as for the Commission. Moreover, the proposals should encourage carrier planning by decreasing the uncertainties that often surround tariff filings and the Section 214 process. Finally, we believe such rules, policies and proposals are consistent with our statutory obligations under the Act to ensure that the rates and terms of service of non-dominant competing carriers are just and reasonable and not unduly discriminatory.

92. The proposed rules are set forth in Appendix A.⁶⁹ Also, we have included

⁶⁸ We also recognize the possible emergence of more direct competition with Telex/TWX from advanced message switched network services such as AT&T's proposed ACS service and ITT's U.S. Domestic Transmission Systems, Inc. (USDTS) proposed system.

⁶⁹ Appendix A also includes several minor proposed changes to Section 61.38, including the

in Appendix D a proposed financial report to be initially filed by all carriers intending to take advantage of the proposals. It is anticipated, however, that these reporting requirements may be consolidated with existing reports (e.g., Form P) now required under Part 43 of the Commission's Rules. Therefore, all parties are placed on notice that these reporting requirements may be made applicable to all carriers. We, of course, expect thorough comment on the proposals and the various analyses and assumptions contained in the discussion above. It is our current intention to implement the proposals in Part VII promptly after we have had the benefit of public comment. In this regard, we are including in Appendix C several questions, in addition to those already raised in the text, to facilitate more direct and complete comment. We will consider the further deregulatory options in Part XI as possible longer term forms of deregulation.

93. Until such time as comments are filed and we issue our further order regarding the implementation of the proposals in Part VII, we believe it would be useful to inform parties as to what requirements will govern tariff filings in the interim. As noted earlier, most rejection and suspension petitions against non-dominant competing carrier tariff filings are made by competing carriers and such petitions appear to be almost always of a dilatory nature. As noted, upon final implementation of the proposals the Common Carrier Bureau will be delegated authority to deny suspension petitions. Until that action is effectuated by a formal rule change, we believe the Commission's and parties' resources could be saved if we immediately grant the Bureau authority to act on denials of suspension petitions. Accordingly, our delegation of authority in rule 0.291 is hereby temporarily amended by this Order to permit that action.

X. Disposition of Pending Dockets and Related Complaints

94. We have held in abeyance several dockets, established to investigate particular OCC or competing tariff filings, until such time as we developed general policies to resolve recurring controversies as to permissible rate structures, rate levels, service features, etc. These are: Docket 20098, *Western Union and RCA Satellite Services*, 47 F.C.C. 2d 639 (1974); Docket 20198, *United Video*, 49 F.C.C. 2d 878 (1974);

Docket 20493, *Western Telecommunications, Inc.*, 55 F.C.C. 2d 203 (1976); Docket 21047, *American Television and Communications Corporation*, 62 F.C.C. 2d 171 (1976); Docket 21145, *United Wehco, Inc.*, 63 F.C.C. 2d 741 (1977); CC Docket 78-24, *American Television Relay (ATR II)*, 67 F.C.C. 2d 527 (1978); CC Docket 78-68, *RCA Americom*, 67 F.C.C. 2d 836 (1978); CC Docket 78-70, *American Satellite Corp.*, F.C.C. 78-128, (released March 10, 1978); and CC Docket 78-99, *Western Union*, 68 F.C.C. 2d 889 (1978). Another Docket (20801), *Midwestern Relay, supra*, remains in limited hearing. It is our intent to terminate or otherwise settle these dockets on the basis of the policies and rules adopted in this proceeding to the extent reasonably possible.

95. While some of these dockets (and any related formal complaints)⁷⁰ may involve questions of past unlawfulness and the possible remedies therefor, the parties may wish to reconsider the issues in light of the proceeding. We see considerable benefit to be derived from promptly resolving and implementing, to the extent appropriate, the matters set for inquiry herein so that the Commission, carriers, and their customers may channel their resources to more mutually productive ends.⁷¹

96. Accordingly, we request that all active parties to these pending dockets and any related complaints reexamine their positions and inform us on or before the date specified in para. 124 below as to their intentions in this regard. Thereafter, we will provide further guidance to the presiding Administrative Law Judges as to how they should proceed.

XI. Further Deregulatory Options

97. As noted above, not only may regulation of non-dominant competitive carriers be unnecessary due to their lack of market power, but such regulation can also be costly in several ways. There are direct costs of formulating, enforcing and complying with rules and regulation. These costs are ultimately borne by the taxpayers or the ratepayers. Moreover, the very presence of regulation can make competition less effective than it might otherwise be. Facilities authorization requests force

⁷⁰ See, e.g., *Las Cruces TV Cable v. ATR*; *El Paso Cablevision, Inc. v. ATR*; *North Platte and McCook Multi-View TV v. Mountain Microwave Corp.*; and *Micro-Cable Communications Corp. v. ATR* (two complaints).

⁷¹ We particularly note the efforts of the carrier, Trial Staff, and presiding Administrative Law Judge in Docket 20801, *Midwestern Relay, supra*, where recently a settlement of most issues was concluded. We encourage similar settlement efforts by parties to these other pending Dockets.

competitors to give their rivals advance notice of business strategies. This can, by itself, discourage the introduction of new, competitive services. Requiring adherence to tariffs where competitive pricing would flourish otherwise may make collusive pricing possible by both facilitating agreement and preventing the secret discounts that often lead to the breakdown of agreements that are attempted. Rate of return regulation, of the threat of its imposition, may discourage firms from entering risky ventures that, if successful, would result in temporary commensurate profits. Legitimate discounts to various classes of customers and introductory prices to attract new business may be viewed as unjust and unreasonable discrimination and therefore may be prohibited. The very presence of regulation may discourage some firms from entering. Also, competitors may use the regulatory forum to challenge and delay one another's service introductions. As a result of both our belief that marketplace forces may prevent competitive carriers from deviating from cost-based pricing, and our desire to reduce unnecessary regulatory costs and burdens, we are seeking to determine how far we can legally reduce or eliminate the unnecessary and costly regulation of these competitive firms. In the following paragraphs we discuss and invite comments on various possible ways of achieving this goal beyond the initial proposal described above, which we are confident is already within our statutory authority.

98. These further deregulatory options are based to some extent, on more modern interpretations of the Communications Act of 1934. Obviously that Act was passed at a time when there was little or no competition in telecommunications, services were generally limited to MTS and telegraph, and methods of transmission were generally accomplished through wire and cable. The industry we face today bears scant resemblance to that of 45 years ago. In recognition of the dynamic nature of communications, the courts have generally recognized the need of the Commission to interpret the language of the Act in context with the times and the needs of the public so that the goal of the Act, as stated in section 1, 47 USC § 151, "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service" can be reasonably accomplished. See, *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968); *United States v. Midwest Video Corp.*, 406 U.S. 649 (1972)

Footnotes continued from last page
raising of the gross revenue requirements of 61.38(f) to reflect the effects of inflation.

Separate orders and pleading cycles will apply to the further deregulatory proposals in Part XI.

(Midwest Video I). Therefore, in addition to comments specifically solicited, we request interested parties to comment generally on the following two regulatory scenarios in terms of: (a) the probable impact on the provision of service to the public as to rates, diversity, innovation, and availability; (b) any likely structural changes in the nature of the competitive marketplace; and (c) the legal sufficiency of these possible approaches under the 1934 Act.

A. Forbearance From Regulation

99. Under this option we explore the possibility that the Commission may have discretion to forbear from the exercise of its full regulatory authority under the Act. For purposes here, we assume that the competitive carriers are common carriers within the meaning of the Act. This option is not, of course, as far reaching as the one that follows (which would, in effect, examine anew under current conditions the term "common carriers") since it would allow the Commission some flexibility to exercise whatever regulatory authority is deemed necessary to insure that the general goal of the Act are achieved.

100. The most frequently cited case supporting the existence of discretion in the Commission is the D.C. Circuit's decision in *Philadelphia Television Broadcasting Co. v. FCC*, 359 F.2d 282 (D.C. Cir. 1966). In upholding the Commission's refusal to assert Title II jurisdiction over a cable system, the court pointed out that new technological developments require new regulatory responses and that the Commission therefore should have discretion in formulating its regulatory program. In a statement equally applicable to the issues we currently face, the court said:

Congress in passing the Communications Act of 1934 could not, of course, anticipate the variety and nature of methods of communications by wire or radio that would come into existence in the decades to come. In such a situation, the expert agency entrusted with administration of a dynamic industry is entitled to latitude in coping with developments in that industry. . . . In a statutory scheme in which Congress has given an agency various tools with which to protect the public interest, the agency is entitled to some leeway in choosing which jurisdictional base and which regulatory tools will be the most effective in advancing the Congressional objective.

101. We are, of course, aware of the division of authority on this issue. For example, in our *Resale Decision*, we made passing reference to *FPC v. Texaco, Inc.*, *supra*, in such a context as to suggest that we had concluded it removed the discretionary element we theretofore believed existed under the Act. However, it does not appear that

the case would preclude a Commission decision to exempt the OCCs from Title II regulation. In striking down an FPC plan to leave small producer prices to be determined by the marketplace, the Court explained that:

It is abundantly clear from the history of the Act and from the events that prompted its adoption that Congress considered that the natural gas industry was heavily concentrated and that monopolistic forces were distorting the market price for natural gas.

359 F.2d at 297-298. Thus, the essential basis of the Supreme Court's decision in *FPC v. Texaco* was that Congress had specifically addressed the market structure of the natural gas industry and the effect of monopoly market power on the prices at which producers sold their product.⁷³ The drafters of the Communications Act, on the other hand, quite clearly did not address the completely different telecommunications market and carriers we have today, nor did they incorporate assumptions about the effect on market structure of competitive providers of service. Similarly, the "events" prompting the passage of the Communications Act obviously bear no resemblance to the events facing us today.

102. To the extent that the Supreme Court based its decision not on the elimination of direct regulation of the rates of small producers, but on its interpretation of the legislative history of the applicable statute, we seek comment on the applicability of that holding to the question of the regulation of competitive carriers generally. We also are considering its application on the question of the deregulation of resale and enhanced service providers as a subclass thereof. In that case, it may be said, we are continuing to regulate directly those carriers providing underlying facilities and thus satisfying the purposes of the framers of the Act.

103. In the appeal of our *Resale Decision*, the Second Circuit rejected an argument that the Commission had the discretion to refrain from regulation of resale firms. *AT&T v. FCC*, *supra*. The court seemed to place primary reliance on *FPC v. Texaco* and the "statutorily mandated" requirement that we have a duty to "execute and enforce the provisions" of the Act. 47 U.S.C. § 151. The question of discretion under the Act however, if answered affirmatively, may preempt any "duty" to enforce the terms of Title II. That is, if the Act provides the agency with the power to forbear from

regulation, an exercise of that power would certainly excuse failure to ensure compliance by individual firms with the procedures constituting the mechanism by which Title II regulation is to be effected. If our previous discussion of the *Texaco* opinion has any validity, it may undermine the apparently broad holding of the *AT&T* opinion as well.⁷⁴

104. Moreover, in the *NARUC* cases cited *infra*, the question of the existence of an ability to forbear from regulating common carriers seems to have been left open. In *NARUC I*, the court said "we reject those parts of the orders which imply an unfettered discretion in the Commission to confer or not confer common carrier status on a given entity, depending on the regulatory goals it seeks to achieve." This statement, although sometimes cited in the context of the Commission's power to forbear from regulation, in fact, is only relevant to the process whereby the Commission evaluates the nature and offering of a particular firm to determine whether or not it is a common carrier. If common carriage is found to exist, then the question of discretion as to the extent of regulation, if any, arises. The court made clear that it recognized the distinction when it expressly said: "We do not here hold that the Commission is required to exercise its affirmative Title II powers wherever a common carrier within its jurisdiction is found to exist. We . . . leave to a case presenting that issue the problem of whether Title II powers are mandatory or discretionary."⁷⁴

105. Furthermore, in *NARUC II*, the court recognized, in discussing *ACLU v. FCC*, 532 F.2d 1344, 1351 (9th Cir. 1975), that "there may be arguments for allowing the Commission to decline to exercise its statutory powers . . . for example, it may be contended and has elsewhere been held (citing *Philadelphia Television Broadcasting Co.*) that a part of the broad discretion allowed the Commission under the Act involves the power not to exercise particular authority which it has been granted."⁷⁵ We note that both *NARUC* opinions were rendered after the decision in *FPC v. Texaco*.

106. There is also particular language in Title II of the Act which arguably supports the proposition that the Commission has authority to forbear entirely from traditional tariffing

⁷³ "In concluding that the Commission lacked the authority to place exclusive reliance on market prices, we bow to our perception of legislative intent." *Id.*, at 400.

⁷⁴ The Second Circuit also appeared to believe that there was no authority supporting the argument that the Commission could forbear from regulation. As previously noted, we consider *Philadelphia Television Broadcasting Co.*, and the other cases cited *supra*, to be such authority.

⁷⁵ *NARUC I* at 48. See note 82 *infra*.

⁷⁶ *NARUC II* at 620, n. 113. See note 85 *infra*.

regulation. Section 203(c) says in pertinent part:

No carrier, unless otherwise provided by or under authority of this chapter [i.e., the Act], shall engage or participate in such communication unless [tariff] schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder. . . . [emphasis added].

The emphasized language seems to contemplate carrier offerings other than by tariff if such offerings can be said to be "provided by" or "under authority" of the Act. Other sections of the Act clearly provide for the provision of common carrier communications services or facilities by one carrier to another carrier pursuant to contract. See Section 201(b) (between regulated and unregulated carriers), and 211(a) (between two or more regulated and unregulated carriers), 47 U.S.C. §§ 201(b) and 211(a). *Bell Telephone Co. of Pa. v. FCC*, 503 F.2d 1250, 1277 (3d Cir. 1974), cert. denied, 422 U.S. 1026 (1975). These intercarrier exceptions to Section 203(c)'s tariffing requirement appear to be contemplated by the "unless otherwise provided by . . . this chapter" language in Section 203(c). That is, such relationships are explicitly "provided by" Sections 201(b) and 211(a). If these relationships are "provided by" the Act, there is a question whether the Commission, though lacking an explicit statutory direction, might "under authority of" the Act have discretion to permit other relationships, e.g., carrier-customer, to be governed by contract rather than tariff. Section 203(c)'s "unless" clause arguably speaks of two categories of exceptions—unless "otherwise provided by or under authority of this chapter." In *Midwestern Relay Corp.*, 69 FCC 2d 409, 415-16 (1978), we implied that the "under authority" language does not have any independent significance when we said that any exception to Section 203(c) "must be clearly expressed" elsewhere in the Act. While we do not at this time depart from that construction,⁷⁶ we invite comments as to whether the "under authority" language might in proper circumstances support the adoption of a Commission rule exempting certain carrier-customer relationships in competitive markets from any tariffing requirements. Specifically we seek comments as to whether that discretionary "authority" might arise "under" our general

rulemaking authority, Section 4(i), 47 U.S.C. § 154(i), or our conditioning authority in Section 214, 47 U.S.C. § 214.

B. Definitional Option

107. Under this option we consider the possibility of defining certain providers of communications services as not being actual common carriers under the Act and thus being subject to full and complete deregulation. As such, these entities, once defined as non-common carriers, would be subject to no Commission control, except where changes in the marketplace or the nature of their services could possibly result in their being re-classified as common carriers. They would, of course, be subject to some federal control, as are all businesses engaged in interstate commerce, under the antitrust laws. But in essence, they would be completely free to enter and exit the market and would be subject to no rate, tariff or facility regulation. A legal rationale for this approach is set forth in the following paragraphs in order to elicit public comment.

108. We note initially our authority and responsibility for resolving complex definitional issues. We have in the past been confronted with problematic constructions of statutory terms as new markets and services have developed. See, e.g., *Resale Decision* (resellers and shared use); *Computer Inquiry II* (data processing); *Naruc I* (SMRS). We have thus recognized that regulation appropriate in one context may be inappropriate in another.

109. We now consider the term "common carriers" as used in the Act. The plain meaning of the definition in the Act itself is not helpful: "'common carrier' or 'carrier' means any person engaged as a common carrier for hire. . . ." 47 U.S.C. § 154(h). Our rules shed little additional light on the issue: "any person engaged in rendering communication service for hire to the public." 47 CFR § 21.1. Neither does a return to the legislative history: the term was not intended to include "any person if not a common carrier in the ordinary sense of the term."⁷⁷ The Supreme Court has recently agreed with at least one lower court's finding that these provisions are so indefinite as to warrant a return to common law and court and agency pronouncements in an attempt to define a common carrier.⁷⁸

110. Several factors emerge from a resort to common law and earlier cases.

The critical element in the meaning of the term is itself somewhat ambiguous. It is often said that the activity in question must be of a "quasi-public" character.⁷⁹ Whether the activity is undertaken for profit, while perhaps being a "significant indicium" of common carriage,⁸⁰ is not determinative of this question.⁸¹

111. The early English basis for regulation was concerned with activities which were conducted in the public arena and with the exercise of monopoly power. For example, shippers, innkeepers, controllers of the sole wharf serving an area were held to show certain common traits. The fact that these enterprises are ones which prosper from providing service to the general public⁸² and that the customer has no control over his or her interest in the product when it is entrusted to the business, led to the development of liability for faulty performance of the promised service resting with the business. In essence, they became insurers.⁸³

112. Their business performance seems not to have been "regulated" in the modern sense of that term. Lord Ellenborough, in one of the earliest statements on the subject, illustrated that the untoward effects attendant to monopoly control of an essential facility required a change in the way the business was viewed by society:

If for a particular purpose, the public have to resort to his premises and make use of them and have a monopoly in them for that purpose, if he will take the benefit of his monopoly he must, as an equivalent, perform the duty attached to it on reasonable terms.⁸⁴

113. In these earliest treatments of common carriers there appears to be a distinct understanding that restriction on the way these entities conducted their business was the *quid pro quo* for the advantageous commercial position they had assumed. That is to say, having developed a business which affects the community at large, because of the exclusive control of a facility necessary to the continuance of commerce, the state exercised its power to protect the public's legitimate interest in the

⁷⁶ *NARUC I* at 641.

⁷⁷ *AT&T v. FCC*, 572 F.2d 17 at 26 (2nd Cir. 1978).

⁷⁸ *NARUC I* at 641; *NARUC v. FCC*, 533 F.2d 801 (D.C. Cir. 1976) (*NARUC II*).

⁷⁹ In the case of the innkeeper, travel conditions seem to have led to the imposition of such a condition of service to the general public.

⁸⁰ *NARUC I* at 640.

⁸¹ F. Henrick, *The Power to Regulate Corporations and Commerce*, p. 328 (1906). See also note, "Affection with Public Interest," 39 Yale L.J. 1089, 1093, (1930); McAllister, "Lord Hale and Business Affected with a Public Interest," 43 Harvard L. Rev. 759 (1930).

⁷⁶ We would note, however, the usual rule of statutory construction that no part of a statute should be presumed to be redundant or superfluous or otherwise be read out of the statute. See *United States v. Menasche*, 348 U.S. 528, 538-39 (1955); *Markham v. Cabell*, 326 U.S. 404, 411 (1945).

⁷⁷ H. R. Conf. Rep. No. 1918, 73rd Cong., 2d Sess. 46 (1934).

⁷⁸ *FCC v. Midwest Video Corp.*, 99 S. Ct. 1435 (1979) (*Midwest II*); *NARUC v. FCC*, 525 F.2d 630, 640 (D.C. Cir. 1976), cert. den., 425 U.S. 992 (1976) (*NARUC I*).

operation of the roadways granted to certain persons by the Lords of England. Thus the grants carried with them not only the power to charge tolls, but also a responsibility to honor a right of passage and equal treatment of the travellers. Smaller roads and streams not essential to commercial and social intercourse were not viewed as common passages for the King's people and were considered private, having none of the characteristics of service on equal terms.

114. Thus, the "quasi-public" characteristic found to be the *sine qua non*⁸⁵ of common carriage may have been based on a social decision that those who exercise unfettered control of an access point essential to the commercial well being of the nation must be kept under control. If so, there may be an additional element to common carrier which is economic in nature. It seems to us that to the extent monopoly control of an essential facility may be a critical element of the meaning of the term common carrier that the other common carriers (OCCs) in general (and particularly resellers of enhanced services), who are participating in a multi-firm competitive market, may not satisfy either aspect of the test. Moreover, unlike the firms to which regulation was originally applied, these carriers receive no exclusive franchise or guarantee. They do not receive the power of eminent domain, tax benefits, the power to levy tolls or state funds, as the railroads did. It does not seem that any individual firm offering such service is "essential" in the way the "Kings Highways," railroads, or canals were essential to the development of commerce. There seem to be significant differences between what we expect to develop in these markets and such infrastructure services as basic power and transportation. It may be that any particular firm could enter, or leave, this market without causing an unacceptable amount of dislocation.

115. The question then is whether the common carrier concept may legitimately be understood to contain some element of essentiality or monopoly. If the fundamental characteristics of common carriage do involve some element of monopoly or essentiality with respect to the services provided, and if certain competitive carriers do not manifest those characteristics, then it may be that the only basis for considering them common carriers is an assumed practice on their part of providing access to the public on

non-discriminatory terms.⁸⁶ It appears, however, that this factor is a characteristic of a wide variety of institutions which have been treated in differing ways. For example, with civil rights legislation and relevant case law, the duty to hold oneself open for service indiscriminately to those willing to pay the price applies far beyond the range of traditional common carriers. Grocery stores, restaurants, motels and other non-utility operations all function under a similar duty. Moreover, the nation's antitrust laws have long imposed a duty of access on reasonable conditions on the monopoly controller of an essential facility. See *United States v. Terminal R.R. Association*, 224 U.S. 383 (1912); *Associated Press v. U.S.*, 326 U.S. 1 (1945). If a non-discriminatory access responsibility, akin to that applied to common carriers, is characteristic of non-common carriers as well, then a finding of such "access," without more, may not be sufficient to require classification of the firm as a common carrier.⁸⁷ We wonder whether a requirement that a business serve all those willing to pay the price may be the result of a broad social decision different than the drafters of the Communications Act made in defining common carriers in 3(h).

116. Another point of consideration is whether some types of competitive carriers as a group are common carriers as contemplated by the Act. That is, are some segments of that group sufficiently different from other segments to be definitionally outside the scope of Title II of the Act? For example, it has been argued that resale, or enhanced service providers, are not common carriers since they do not own transmission facilities. It is argued they are, therefore, analogous to freight forwarders, which are regulated by the Interstate Commerce Commission only by virtue of an express amendment to the Interstate Commerce Act. We concluded in our *Resale Decision*, at 304-307, that freight forwarders were common carriers and the ICC's refusal to regulate them was a result of its particular statutory language. We did not address the issue of whether the Communications Act also presented a situation where entities thought to be common carriers were not

included within the definition of communications common carriers. Our conclusion necessarily means, however, that we at least assumed it did not.

117. We are concerned, however, that this *sub silentio* assumption should be revisited given the oft-quoted statement by Senator Dill that:

In this bill many provision are copied verbatim from the Interstate Commerce Act because they apply directly to communications companies doing a common carrier business, but in some paragraphs the language is simplified and clarified. These variances or departures from the text of the Interstate Commerce Act are made for the purpose of clarification in their application to communications, rather than as a manifestation of Congressional intent to obtain a different objective.⁸⁸ (emphasis supplied)

The legislative history of the Act may be read to indicate, therefore, an intention by the Congress to extend the jurisdiction of the FCC only over the extent of communications comparable to the jurisdiction of the ICC over transportation. Insofar as freight forwarders were admittedly not covered by the Interstate Commerce Act at the time the Communications Act was adopted by the Congress, it could be a further indication that our above referenced assumption in the *Resale Decision* may have been in error. In any event, it now seems to us that the assumption as to the scope of the Communications Act is such a significant one, and so inextricably intertwined with this proceeding, that a more exhaustive analysis is warranted.⁸⁹ In particular, we seek comment on whether the language in Sections 3 (a) and (b) of the Act should be defined as encompassing those who lease rather than own and operate transmission facilities. We also request comment on whether *MacKay Radio and Telegraph Co.*, 6 FCC 562 (1938), cited in our *Resale Decision*, *supra*, which exercised jurisdiction over lessors of common carrier facilities, is applicable in the case of the competitive resale market.

⁸⁵ Senate Rep. No. 2356, 73 Cong. 2d Sess. at 2 (1934).

⁸⁶ Although the Second Circuit Court of Appeals found firms engaged in forwarding messages to be common carriers (*AT&T v. FCC*, *supra*), it placed primary reliance on Sections 3 (a) and (b) of the Act which include among "communications" by wire, the "forwarding" of communications. The "forwarding" language traces back to the Hepburn Act of 1906 and was designed to make "direct or indirect agents" of the railroads subject to ICC rate jurisdiction (see remarks of Cong. Hinshaw, in B. Schwartz, *The Economic Regulation of Business and Industry*, Vol. I at 643). In the case of resale and enhanced communications carriers, we believe they are competitors of the underlying carrier rather than mere agents.

⁸⁷ A number of recent cases, including *NARUC I*, *NARUC II*, and *Midwest Video II*, *supra*, have emphasized that the concept of "holding oneself out indiscriminately" for service to the public, even where the service may be of use to only a fraction of the public, is a characteristic in common carriage.

⁸⁸ As previously discussed, competition is a recent development. It may be that the primary motivation for the construction of a communications common carrier regulatory system in 1934 was a fear of monopoly and its effects, rather than a recognition of any quasi-public nature.

⁸⁹ *NARUC II* at 608.

118. One final argument offered to support the possible proposition that enhanced or resale carriers are not common carriers involves their alleged failure to meet the definitional prerequisite "formulated by the FCC and with peculiar applicability to the communications filed, that the system be such that customers transmit intelligence of their own design and choosing."⁹⁰

119. In the recently decided *Midwest Video II* case the Supreme Court implicitly affirmed the legitimacy of this definition of common carrier. In fact, this particular aspect of the definition of common carriage seems to have been dispositive. In distinguishing that case from *Midwest Video I*, the court relied on its determination that the Commission's access regulations "abrogate the cable operators' control over the composition of their programming." Although we have treated this matter in great detail in our Tentative Decision in *Computer Inquiry II*, FCC 79-307, *supra*, we seek comment in this proceeding as well on whether the fact that firms providing resale of "enhanced services" will be changing the information submitted by their customers eliminates such firms from the scope of the definitions of common carrier as used in the Communications Act. We recognize that not all firms which may be resellers or enhanced service providers will necessarily alter the information transmitted. We hope that those addressing this issue will provide information on any differences among firms which would be important in light of this discussion.

120. Exploration of the issue of whether the OCCs are properly considered common carriers does not indicate disagreement with the courts' view that we are "not at liberty to manipulate the definition of 'common carrier' in such a way as to achieve predetermined regulatory goals." *AT&T v. FCC*, *supra*, at 26. But we also agree with those courts which have found both the statutory language and the legislative history on this subject less than illuminating. See, for example, *Midwest Video II*, note 82, *supra*, at n. 10, and cases cited therein. We have no desire to impose Title II regulation on markets or firms where such regulation is unnecessary to protect the public. Firms such as those affected by the Tentative Decision in *Computer Inquiry II* are clearly different from firms providing communications service

between 1912 (when the Secretary of Commerce was first empowered to license radio stations) and 1934 (when the Communications Act was adopted). We admit, however, that the extent of our jurisdiction with respect to these newly developed companies is less than clear. Therefore, public comment on the legal and public interest issues raised above will be particularly useful.

XII. Ordering Clauses

121. Accordingly, IT IS ORDERED, That pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 203, 204, 205, 214 and 403 of the Communications Act, of 1934, as amended, and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, there is hereby instituted an inquiry and Notice of proposed rulemaking into the foregoing matters. Members of the public are put on notice that any such policies which may be established in this proceeding may be embodied in the Rules and Regulations of the Commission.

122. It is further ordered, That all interested persons may file comments on the specific proposals included in Part VII of this Notice, the supporting analysis, and Appendices A-D on or before February 1, 1980. Reply comments shall be filed on or before March 14, 1980. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 CFR § 1.419, an original and five (5) copies of all comments, shall be furnished to the Commission.

123. It is further ordered, That all interested persons may file comments on the matters included in Part XI on or before February 29, 1980. Reply comments shall be filed on or before March 21, 1980.

124. It is further ordered, That all active parties to the pending Dockets and related complaints named in paras. 94-96 inform us on or before February 15, 1980, as to their positions on the appropriate disposition of such dockets and complaints.

125. It is further ordered, That the Chief, Common Carrier Bureau, is delegated authority to act on denials of suspension petitions directed against tariff filings of non-dominant carriers consistent with the discussion in

paragraph 93, *supra*, pending further order.⁹¹

126. It is further ordered, That the Secretary shall cause this Notice of Proposed Rulemaking to be published in the Federal Register.

Federal Communications Commission.
William J. Tricarico,
Secretary.

*See attached Statements of Commissioners Ferris, Chairman; and Fogarty.

Appendix A Proposed Rules

It is proposed to modify Part 61 of the Commission's Rules, 47 CFR 61, as follows:

1. Modify paras. (a) and (f) of § 61.38 to read:

§ 61.38 Material to be submitted with letters of transmittal by filing carriers.

(a) *Explanation and data supporting changes and/or new tariff filings.* Every tariff filing shall be submitted with a statement (preferably in the letter of transmittal) which shall briefly summarize the filing, its purpose, and whether any prior Commission facility authorization necessary to its implementation has been obtained. Each tariff filing, except those filed pursuant to § 61.39, shall also be accompanied by a full explanation and justification. Such support material, whether for a tariff change or for a service not previously offered, shall include: (1) * * *

(f) *Exception.* The requirements of this section shall not apply to any carrier with annual gross revenues of less than \$200,000. Annual gross revenues shall be calculated on the basis of gross revenues for the most recent 12-month period or on the basis of the average of three years estimated annual gross revenues, whichever is greater.

2. Add a new Section 61.39 to read:

§ 61.39 Tariff filings for service offerings by nondominant carriers.

(a) Except as provided in (e) below, tariff filings involving domestic service may be filed without the support material required by Section 61.38 (except as to explanatory material) provided that the filing carrier makes a showing that the following criteria under this section are satisfied:

(1) The filing carrier has not been found, for purposes of this section, by

⁹⁰ Since this delegation of authority relates to rules of agency procedures, compliance with the notice and effective date provisions of the Administrative Procedure Act, 5 U.S.C. § 553, is not required.

⁹¹ NARUC II at 609, quoting *Industrial Radiolocation Service*, 5 F.C.C. 2d 197, 202 (1966) and *Frontier Broadcasting Co. v. FCC*, 24 F.C.C. 251, 254 (1958).

the Commission to be a dominant carrier in the provision of any service;

(2) The filing carrier has filed and will file the financial reports as specified in (Appendix D of this Order).*

(3) Tariffs which offer video relay services shall also contain rates that are based on consistent ratemaking methodology for all customers of the transmission system involved (e.g., if any customer is charged on a distance sensitive basis, all customers shall be charged on a similar basis; or if any CATV system customer is charged on a population sensitive basis, all customers are charged on a similar basis).

(b) Any tariff filing complying in all respects with the requirements of this Section shall be considered to be *prima facie* lawful and will not be suspended unless a party requesting suspension is able to show each of the following:

(1) That there is a high probability that the tariff would be found to be unlawful after an investigation;

(2) That any harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing;

(3) That irreparable injury will result if suspension does not issue; and

(4) That the suspension would not otherwise be contrary to the public interest.

(c) A tariff filing not meeting all of the requirements of this Section shall be required to submit full support data as required by Section 61.38.

(d) The Commission may, at any time, request of any carrier filing tariffs pursuant to this section to submit any information or data necessary to determine the lawfulness of any tariff filing. In such an event, the carrier shall be prepared to submit such information within seven (7) calendar days (or longer period established by the staff) of the date it is requested.

(e) This section does not apply to tariffs involving the provision of mobile radio service or Multipoint Distribution Service, or to any tariff filing where the effect of the filing is to initially establish or to increase rates to any customer for the relay of network television signals.

3. Add a new paragraph (f) to Section 61.58 to read:

§ 61.58 Notice requirements.

(f) Tariff filings complying with Section 61.39 may be filed on 14-day's notice to the public, notwithstanding the requirements of (b) and (c) above.

*This requirement will be deleted in the final version if such reporting requirements are made mandatory for all carriers in the finalized rules.

It is proposed to modify Part O of the Commission's Rules, 47 C.F.R. § O, as follows:

1. Add a new paragraph (j) to Section 0.291 to read:

§ 0.291 Authority delegated.

(j) The Chief, Common Carrier Bureau of delegated authority to deny requests for suspension and investigation of tariffs where the filing qualifies under Section 61.39 of the Commission's Rules, notwithstanding the requirements of (d) above.

It is proposed to modify Part 63 of the Commission's Rules, 47 CFR § 63, as follows:

1. A new section 63.07 is added to read as follows:

§ 63.07 Special procedures for nondominant domestic common carriers.

Where a domestic carrier has not been found by the Commission to be dominant in the provision of any service, the following procedures shall be applicable in lieu of those specified in § 63.01-63.06.

(a) Except as indicated in paragraph (b) below, applications for initial certification of an entity to become an interstate communications common carrier shall include the following:

(1) The name and address of the applicant;

(2) A completed copy of FCC Form 430 ("Common Carrier Radio License Qualification Report");

(3) A description of the type of service to be offered;

(4) The cities or geographic area where service is to be offered, including the initial number of circuits to be installed or leased;

(5) Construction and/or lease cost of facilities;

(6) Identity of lessor, if leased facilities are to be used.

(b) Except where service is provided via satellite, a separate certificate is not required for a carrier relaying only television signals (video and associated audio) over radio facilities authorized to such carrier. The radio authorization will constitute any necessary certification under Section 214 of the Communications Act.

(c) The installation or lease of additional circuits (exclusive of video circuits) over authorized radio or non-radio transmission medium (e.g., cable) to previously authorized service points or area does not require separate authorization provided that the following information is reported to the Commission within 30 days of the initiation of service over such additional facilities:

(1) Caption information—"Report under § 63.07(c)";

(2) Name and address of carrier;

(3) Type and number of circuits added, including terminal points;

(4) Construction or lease cost;

(5) If lease, the identity of lessor; and

(6) Commencement date of service to the public over added facilities.

(d) Applications of a previously certified carrier to add new points or areas of services or to construct an interstate non-radio transmission medium (e.g., cable) in excess of 10 miles in length shall contain the following information:

(1) Name and address of applicant;

(2) Points or geographic areas of service to be added, or points between which cable or other non-radio transmission medium is to be constructed (see Subpart I of Part 1 of this chapter for possible environmental impact statement that may be required);

(3) Type and number of initial circuits between terminal points;

(4) Construction and/or lease cost; and

(5) If lease, identify lessor.

2. Add a new Section 63.71 to read as follows:

§ 63.71 Special procedures for discontinuance, reduction or impairment of service by nondominant domestic carriers.

Where a domestic carrier has not been found by the Commission to be dominant in the provision of any service, an application to discontinue, reduce or impair service shall be filed and considered pursuant to the following procedures:

(a) The application shall contain the following information:

(1) Name and address of carrier;

(2) Description and date of planned discontinuance, reduction or impairment;

(3) Points or geographic areas of service affected;

(4) Dates and method of notice to affected customers;

(b) Notice to existing customers shall include the information required in paragraph (a) above and the following statement:

"The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service of a reasonable substitute from another carrier. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, D.C. 20554, referencing the Section 63.71 Application of (carrier's name). Comments should include

specifics of impact upon you or your company, including any inability to acquire reasonable substitute service."

(c) Such application shall be considered granted on the 31st day following its filing without further Commission notification provided that:

(1) Notification to all affected customers consistent with this section, is given on or before the date the application is filed; and

(2) The Commission staff has not notified the carrier that the grant will not be automatically effective.

Appendix B—Discussion of Video Relay Ratemaking Methodology

1. In considering proposed ratemaking principles for the video relay carriers, we have reviewed: whether the foundations of our current ratemaking policies for these competitive carriers continue to exist in this new environment; the different relevant cost characteristics between satellite and terrestrial microwave technologies; the general market forces which govern the demand for importation of distant signals (whether by satellite or terrestrial means); how that demand may be influenced by transmission technique, i.e., via satellite or terrestrial microwave; and what the current trends indicate the future will bring. Our initial observations which provide the basis for our proposals are set forth below. We solicit any additional comments or observations pertaining to how these or any other significant factors should be considered in constructing a final set of ratemaking principles for video relay carriers. Because of the unique nature of the market served and the fact that program material transmitted over single channels is shared by all subscribers, our analysis is limited to the video relay carriers.

2. Of course, the overriding purpose of any ratemaking calculus involves the ultimate recovery of the carrier's total costs in initiating and providing its services and determining how those costs are to be recovered and distributed through the rates charged to its customers. In these respects, satellite and terrestrial carriers possess very different cost characteristics which cannot be ignored if we are to devise a single set of ratemaking guidelines for all video relay carriers, whether terrestrial or satellite. It must also be remembered that the customers of these carriers are most often cable television systems, and thus whatever rates are charged to these customers are ultimately borne by the cable system's subscribers, whether in small or large communities.

3. The primary cost characteristic which differentiates a satellite carrier from a terrestrial carrier is a satellite's distance insensitive transmission cost characteristics. For example, the transmission costs to a satellite carrier of relaying a television signal from New York City to Los Angeles will be the same as its cost to relay that same signal from New York to Philadelphia. In contrast, a terrestrial carrier's costs are significantly influenced by the distance the signal must travel. Therefore, when a terrestrial microwave carrier develops its rate structure,

i.e., the rates it will charge any individual customer, a major component of that structure normally includes the distance of the customer from the signal source. In fact, failure to consider this element properly can result in a finding that a terrestrial video relay carrier's rate structure is unduly discriminatory. See *American Television Relay*, 63 F.C.C. 2d 911 (1977), *recon.*, 65 F.C.C. 2d 792 (1977) *appeal pending*, Case No. 77-1910 (D.C. Cir.).

4. A satellite carrier, however, would not normally be expected to utilize distance as a ratemaking factor since the costs of physically providing the service to any customer are essentially the same irrespective of distance. Therefore, if a satellite carrier were to consider distance in its rate design, the rates could be questioned as to whether they were reasonable and non-discriminatory. See *Communications Satellite Corp.*, 56 F.C.C. 2d 1101, 1180-81 (1975), *remanded on other grounds*, *Communications Satellite Corp. v. FCC*, No. 75-2193 (D.C. Cir. 1977). Obviously, if we are to adhere to our traditional ratemaking policies which generally stress costs in pricing particular services, it would seem that competing terrestrial and satellite video relay carriers offering almost the identical services would be required to allocate costs in very different manners. That alone does not cause us undue concern since those carriers' cost characteristics for the provision of video relay service are so different. However, we are concerned that requiring two competing types of video relay carriers with major differences in cost characteristics to abide by our current ratemaking policies for video relay service which were primarily developed for terrestrial carriers, may result in the possible loss of the inherent benefits of the transmission technologies used, or adversely impact some smaller CATV systems. Therefore, while we continue to believe that the costs of providing a service are the most reliable criterion in determining whether a carrier's rates are just and reasonable, the allocation of those costs by carriers offering only competitive services in this unique market deserves further examination.

5. The fixed costs of providing a video relay common carrier service via satellite are substantial and are incurred largely once at the outset of service. Aside from receive-only earth stations which are normally customer owned,¹ the system cannot be built incrementally, nor are costs normally incurred through frequent additions to plant, as is the usual case with a terrestrial microwave carrier.

6. The costs generally incurred by a resale satellite carrier in providing a video relay service involve two primary components. First, the reseller must lease from the underlying carrier a satellite uplink. This usually consists of an annual rental fee for the use of a transmit/receive earth station used in transmitting the signal to the satellite. Tariffs currently on file indicate that the underlying carrier's charges average approximately \$200,000 per year for the

uplink. Second, a reseller must lease a satellite transponder which amplifies and relays the signal to receiving earth stations. Annual lease fees for use of a satellite transponder on a full-time basis generally run about \$1,000,000. Thus fixed annual revenue requirements and the rates charged must at least cover annual leasing expenses of some \$1,200,000 per channel if full service is to be provided.²

7. Under traditional cost of service ratemaking principles, which would view the cable systems as the carrier's primary customers, the most reasonable means of allocating these costs and setting customer rates would be to divide the amount of fixed costs by the number of cable systems subscribing to the service. If only a few cable systems were to subscribe initially to the carrier's service, those cable systems would theoretically be charged the full amount of at least the uplink and transponder leasing costs. Such a fee could be prohibitively expensive for even large cable systems, especially when weighed against the need to add an additional distant signal to their program offering. Moreover, unless a sufficient number of cable systems initially agreed to take the service so that the fixed costs could be apportioned at affordable rate levels, then no cable customer, particularly the small CATV system, would be likely to be in a financial position to subscribe to video relay service via satellite. Therefore, to make the importation of signals via satellite affordable to all cable television systems they serve and to stimulate use of what would otherwise be idle capacity, these resale carriers typically have developed rate structures which base rates on the number of cable system subscribers.³

8. Such rate structures, which are growing in number, recognize that a satellite carrier's total revenue requirement must be allocated in some fashion and that the end user of its services ultimately bears these requirements. Such rate structures enable cable systems serving all size communities better to afford the signal since their rates are directly proportional to their subscriber base.⁴ Furthermore, such a rate structure may enable more cable systems to take service via satellite⁵ than might otherwise occur if rates were based on another allocation method. It may also enable satellite resellers more easily to enter a market. Moreover,

²See *United Video*, 69 F.C.C. 2d 1629, 1632 (1976). Naturally, these carriers also have employee salaries, general and administrative expenses, and other operating costs to recover by way of rates.

³See *Southern Satellite Systems Tariff*, F.C.C. No. 1, Para. 4.1.1(A), which apparently applies a rate of 10 cents per cable system subscriber but with a maximum \$1,875 per month and a minimum of \$5. Southern Satellite indicates an intention to further reduce the maximum charge as its customer base increases.

⁴Although we have, in previous cases, sometimes characterized such rate structures as value of service ratemaking, they are perhaps more accurately described as variants of that concept and are merely another way of allocating costs.

⁵This assumes, of course, that the cable system already has an earth station positioned to receive a satellite signal, or that the signal offered is attractive enough to the cable operator for him to purchase an earth station.

¹For purposes of our analysis here, we assume the receive station earth station is provided by the customer, as is the current practice.

additional television signals can be provided to communities of all sizes, thus expanding service to more of the population and furthering the efficient use of satellite capacity.⁶ While it can be argued that such rate structures are discriminatory in the sense that CATV systems are being asked to pay rates based on their subscriber base rather than the *pro rata* costs to bring them the service, it must be recognized that even the allocation of costs based upon the number of CATV systems served is essentially arbitrary.⁷ However, due to the unusual cost and revenue requirement characteristics of satellite systems as described above, and the unique nature of the CATV markets served, we do not now believe that discrimination, if any, is unreasonable in violation of Section 202(a) of the Act. Moreover, the cable system itself merely serves to further carry the signal to its subscribers, the ultimate "consumers" of the service. Viewed in this sense, there is no discrimination because the monthly fee assessed to a CATV's system's subscribers, part of which is designed to recover the system's signal importation costs, is the same for each and every subscriber. Therefore, we generally believe such rate structures, as presently applied by the video satellite relay carriers, can serve the public interest because they further the mandate of Section 1 of the Act, 47 U.S.C. § 151, "to make available, as far as possible, to all the people of the United States . . ." wire and radio communications at reasonable charges, and because such rates allow the recognized benefits of satellite service to be more widely realized. Such factors, particularly the impact on smaller communities, must not be ignored in performing our public interest obligations under the Act. *Cf., Carter Mountain Transmission Corp. v. FCC*, 321 F.2d 359, 362-63 (D.C. Cir. 1962), *cert. denied*, 375 U.S. 951 (1963).

9. Having arrived at our tentative conclusion that these population based rate designs may be acceptable for satellite video relay carriers in recovering their total cost of service, the question arises as to whether our general policy in competitive markets of full and fair competition dictates that terrestrial video relay carriers also be permitted to allocate costs in a manner similar to that of the satellite carriers. In *ATR*, *supra*, we held that *ATR*, a terrestrial microwave video relay carrier, had not met its burden of proof in justifying the reasonableness of its particular population-sensitive rate structure, which it asserted would make service more affordable for small CATV systems. We did not conclude that all such rate structures were unlawful *per se*. However, we did find that such rate structures tended to be inherently discriminatory and that rates which depart

from costs generally require additional justification to ensure that any resulting discrimination is not unreasonable and that the rates would serve some other public interest objectives. Specifically, we stated:

This is not to say, however, that a population based value of service rate structure could never be found just and reasonable and not unreasonably discriminatory. We recognize our statutory obligation under Section 1 of the Act "to make available, as far as possible, to all the people of the United States . . ." wire and radio communications at reasonable charges. We also realize, as our past departures from strict cost of service rates indicate, "that ratemaking agencies are not bound to the service of any single regulatory formula; they are permitted, unless their statutory authority otherwise plainly indicates, to make the pragmatic adjustments which may be called for by particular circumstances." *FPC v. Texaco, Inc.*, 417 U.S. 380, 389 (1974), quoting from *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, at 586 (1942).

63 F.C.C. 2d at 929. We now believe that the circumstances surrounding video relay common carriage have changed sufficiently to warrant pragmatic adjustment of our ratemaking policy statements for terrestrial video relay carriers made in *ATR* to account for these changed circumstances.

10. Before we proceed to discuss these changes, we have several additional observations regarding the *ATR* case. First, *ATR*'s particular population based rate structure was introduced and contested in 1972 when the threat of satellite competition to terrestrial microwave carriers for video relay service was virtually non-existent. Consequently, the parties to the hearings conducted in early 1973 did not focus sufficiently on this possibility or the particular cost characteristics of satellite service as a major justification for terrestrial carrier usage of population-sensitive rate structures. Because the Commission must generally rely on the record before it in arriving at a final decision in a tariff ratemaking case, we now believe that the result reached in the *ATR* case, which was based on a relatively limited record, should not continue to be overly stressed for broad policy precedential value in other cases. Second, as the statement quoted above indicates, we made a concerted effort in *ATR* to acknowledge that population-sensitive rate structures for terrestrial video relay carriers were reasonable under the Act with proper justification. We now believe the presence of satellite competition can provide that justification in many cases. Therefore, some modification to the population-sensitive justification burden established in *ATR* seems to be required.

11. Because we have tentatively found that the use of population-sensitive rate design is reasonable for satellite video relay carriers, we believe competing terrestrial video relay carriers also should be able to utilize similar ratemaking principles under our policy of full and fair competition. Accordingly, in recovering its total cost of service, we believe a terrestrial carrier should be allowed to use either population-sensitive or more traditional cost of service rate structures.

However, it is important to emphasize that whatever ratemaking design a video relay carrier chooses to employ, it must apply that rate structure consistently to all customers of a given microwave system. For example, we do not believe a carrier should normally be permitted to have a cost of service rate structure with individual customer exception rates founded on competitive necessity. That type of ratemaking practice would raise serious discrimination questions. However, if a population-sensitive rate structure is used to cover a carrier's total costs, we believe the terrestrial carrier should be required to demonstrate that the rates charged will provide revenues sufficient to meet its total costs within a reasonable time frame. Moreover, it should show that rates charged to each of its CATV system customers cover the direct costs of that customer's connection to the microwave carrier's main truckline plus appropriate coverage of the joint or common truckline and other network costs. This will ensure equitable treatment among all CATV system customers, e.g., that any added CATV system customer will not impose an undue cost burden on other customers.

12. We believe this proposal will permit terrestrial video relay carriers enough flexibility to apportion their costs so as to compete effectively with satellite carriers without being unreasonably discriminatory. See *ATR*, 63 F.C.C. 2d at 926.

13. Finally, our prohibition against charges for customer retransmission of a carrier's signal was founded upon our emphasis on more traditional cost of service ratemaking methods. We stated in *ATR* that a carrier able to justify a population-sensitive rate structure might be able to assess a retransmission fee.⁸ See, 63 F.C.C. 2d at 961. We hereby solicit comments on whether or not our retransmission policy should be revised in view of our suggested changes in ratemaking principles for competing carriers providing video relay service. During the pendency of this proceeding, however, we shall continue to adhere to the retransmission policy stated in *ATR*.

14. Although the foregoing discussion addresses video relay ratemaking policies only in terms of service of CATV systems, we believe the underlying rationale may also be appropriate to video relay to other users, e.g., broadcasters. There, some competition may also be developing between satellite and terrestrial transmissions systems. A primary distinction would seem to be, in the case of a conventional broadcaster, that there are no fee-paying subscribers of the user. However, broadcasters do ultimately serve communities of varying populations, as do cable systems. Perhaps of more practical significance in the case of broadcasting is the fact that the customer, more often than not, is the television network. Due to this, tariffs generally offer such service on an overall basis. Therefore, questions concerning ratemaking methods applicable to video relay for broadcast use generally have not been

⁶ Once an earth station is positioned to receive signals from a particular satellite, the earth station becomes increasingly cost effective because it can receive any additional signals put on the satellite at an extra cost of approximately \$4,000.

⁷ As pointed out, once a satellite distribution network has been established and where customers supply the earth stations, each additional customer imposes little or no direct additional cost other than administrative expenses, e.g., for billing and customer relations.

⁸ The retransmission fee then contemplated involved only adjustment of the population of a CATV system customer to reflect the number of subscribers of any other cable systems served through the drop to that customer.

directly raised. However, we solicit comments on whether such ratemaking methodology needs to be addressed at this time.⁹

Appendix C—Questions to be Addressed by Commenting Parties

1. In order to develop concise comments regarding what carriers are dominant or nondominant and to examine the extent of entry barriers into the industry, we set forth in this appendix in outline form the subject matter we would like addressed. Although this outline is prepared primarily to elicit responses from the relevant domestic carriers and consumers choosing to participate in this proceeding, we solicit comments from any knowledgeable party. We request comments to be as thorough but as concise as possible.

2. In general, the questions are designed to test our initial observations and analysis concerning the extent to which various common carrier possess flexibility in their pricing decisions (i.e., the degree to which they possess market or monopoly power).¹ Carriers possessing no market power not only are unable to charge more than the price leader but will generally only be able to charge prices which will collectively earn the "going" industry rate of return. Further, such nondominant firms lack the cross-subsidization potential possessed by a firm providing both monopoly and competitive services. In light of those circumstances, the Commission proposes to free nondominant carriers from rules which were originally designed to prevent dominant firms from taking advantage of their substantial market power. Also we request comments addressing the degree of effective competition in telecommunications, the extent of entry barriers, and the nature of the market forces now existing examined in the terms of serving the public interest and indicating areas where, as well as how, improvements can be made to make entry freer and make competitive marketplace forces more effective in serving the public interest. An outline of these points and the type of information requested is set forth below.

3. In order for the Commission to gain further information regarding dominant and nondominant carriers and the markets in which these carriers operate or propose to operate, we request to the extent practical that commenting parties first place each tariffed service offered or proposed under one of the following market categories:²

Market Categories

- (1) Basic Voice
 - (2) Basic non-voice
 - (3) Enhanced non-voice
 - (4) Video (plus associated Audio)
 - Services—Broadcast and CATV
 - (5) Others (specify)
4. For each class of service or market set forth above, participants are to address the subjects covered by the following headings, subheadings and questions. It would be useful if all parties organized their comments in the same manner as this outline so that the Commission and interested parties may conveniently catalogue and analyze the responses. Where appropriate, responses should be quantified and the basis and source of information indicated. In dependent studies providing similar information are welcome. Accordingly, for each service or market we request that the following information be provided to the greatest extent practicable:

I. Basic Market Conditions

A. Relevant Service(s) Provided

1. Given the possible incomplete overlap between the above market classification scheme and a specific tariffed service(s), the carrier should indicate the tariff and specific provisions applicable for each relevant service(s) or market(s), as well as the accepted industry name for such tariff offering. Description and quantification of the overlap with other service(s) or market(s) should be provided.

2. Geographical coverage of service(s) should be described.

B. User Characteristics

1. Indicate distribution of business, government and residential users as to a particular market(s) and indicate size and distribution (i.e., specify Fortune 500 ranking or other) by market(s).

2. To aid in determining market size provide revenues (1978 and three-year projections), market quantities (i.e., miles of IXC, number of terminals served and/or other appropriate units), and historical and expected growth rates.

3. Identify specific locational needs of customers (i.e., Nationwide, Regional, Local) and provide distributional requirements of users (i.e., point-to-point, multipoint, zones, selective or broadcast distribution, and/or other (specify)).

4. Detail possible substitute services (estimated values for elasticity and cross-elasticities of demand should be provided as appropriate).

to the various services or markets as they currently exist and the carriers perceived to possess market power and to be dominant and nondominant. Our questions are based on this assumption unless otherwise indicated. However, respondents are expected to comment on anticipated and proposed developments over the next 3-4 years. Where they do so, they should clearly indicate that is their intent. Because of the importance of the issues raised herein we particularly invite the comments of the newer and proposed OCC entrants and the using public to aid us in building a full record, particularly on such matters as the final criteria for making both nondominant and dominant carrier determinations, as contemplated in the proposed rules.

C. Technology

1. Describe in general the type(s) of technology employed and how employed, and provide expected consumer, industry or market technological requirements.

II. Market Structure

A. Service Suppliers

1. Number and identity of known suppliers of services in each relevant market(s).

2. Corporate structure of responding service supplier (i.e., parent corporation, affiliates, holding companies, board of directors, corporate officers, interlocking directorates, etc.)

B. Service Differentiation

1. Respondent should identify what it believes are the major options or service features offered within each relevant market(s).

2. Respondent should qualitatively assess the prevalence and significance of service differentiation within each relevant market(s) and identify the form of these service differences (i.e., technical, service features, pricing, bulk discounts, etc.)

C. Cost Structures

1. Respondent should indicate what it considers are the important cost characteristics of serving a particular market(s) (i.e., high initial costs, large overheads, significant lease or interconnect costs, marketing expenditures, etc.).

D. Entry Barriers

1. Respondent should discuss what it believes are the major barriers, if any, to entry into each relevant market(s). The discussion should include the following points, and relative importance of the perceived barriers should be indicated:

- a. Capital requirements
- b. Limit entry pricing
- c. Brand Loyalty (goodwill)
- d. Service differentiation
- e. Advertising
- f. Regulatory constraints and expense
- g. Pecuniary economies (financing)
- h. "Real" economies (marketing or marginal)
- i. Litigation expense
- j. Others (specify)

E. Interindustry Competition

1. Comments are invited concerning the influence of corporate familial relationships and arrangements on the actual structure of each relevant market(s) (consider *inter alia*, the potential for interindustry cross-subsidization and predatory pricing as a result of parent-subsidiary relationships where market power may reside in at least one "outside" industry).

III. Market Conduct

Pricing Behavior

1. An addition to AT&T and possible WU does any other carrier exhibit price leadership in each relevant market(s).

2. Respondents should discuss the existence and extent of price discriminations within each relevant market(s) and whether and to what extent they consider such practices violative of Section 202(a).

⁹This should not be construed as relieving AT&T of its obligation to file a fully-justified Series 7000 (video transmission) tariff in compliance with the requirements of our applicable orders. See *Series 7000 Rejection Order*, *supra*. AT&T, of course, remains the dominant carrier in providing video transmission service to broadcasters.

¹If any information is considered to be a trade secret, or commercial or financial information necessitating confidentiality, respondents may request non-disclosure consistent with the applicable provisions of our Rules.

²Our main goal is, of course, to determine the extent to which firms exhibit market power. This service or market classification scheme based on the *Computer Inquiry II*, Tentative Decision, *supra*, is for convenience and analytical purposes only. Parties should feel free to present their comments in other formats. Responses should primarily pertain

3. Respondents should identify their own general pricing strategies and set forth their views on what types of pricing behavior in each relevant market(s) (i.e., negotiated rates, target rates, rates of return, administered pricing, etc.) should be acceptable to this Commission.

B. Service Strategies Within Each Relevant Market(s)

1. Respondents should discuss what they view as the present service strategies of their competitor(s) and identify what service strategies are "dictated" by each relevant market(s). By "dictated" we mean the actions that are required to effectively serve the demands of a particular market(s).

C. Research and Development (R + D) Activities

1. Respondents should review in general the major R + D activities in which they are presently engaged and the general sources of funds for these R + D activities (including parent company and/or affiliate contributions, if any).

D. Innovations

1. Respondents should discuss what major innovations they have introduced from a technical, service and marketing point of view, when (dates) they were introduced, and discuss how these innovations have affected and will affect the cost characteristics and pricing behavior in each relevant market(s).

E. Advertising and Marketing Activities

1. Respondents should indicate what level of advertising expenditures they believe is needed to enter a particular market(s) and how much is needed to sustain a positive earnings position.

2. Respondents should discuss the role of advertising as presently employed by existing carriers in producing service differentiation and creating possible entry barriers, as well as discussing how present marketing and advertising behavior affects the cost characteristics and pricing behavior in serving each relevant market(s).

F. Litigation and Regulatory Activities

1. Respondents should provide estimates of expenditures for litigation (tariffs and rates) and regulatory matters (tariffs and rates) separately, including a discussion of the extent to which such expenditures inhibit their own or other carriers' competitive offerings or filings for each relevant market(s). They should also describe how these expenses might vary under alternative regulatory schemes.

IV. Proposed Procedures and Rules for Dominant Carrier Determinations

A. Under the assumption that the proposal will be finally adopted, respondents should list and explain fully the procedures, rules, criteria, etc., which should be employed by the Commission to make dominant and nondominant carrier determinations to the extent necessary for each relevant service(s) or market(s), including appropriate definitions of terminology employed, cross-references to other portions of their comments, or other supporting information.

B. Using their proposals, respondents should identify those carriers they believe

should be classified as dominant, explaining and providing justification for such determinations.

V. Recommended Changes to the Proposals and Deregulatory Approach

A. Respondents should provide, if necessary, suggested additions or deletions to the proposals and approaches discussed for relevant carriers, service(s) or market(s), including suggested revisions to the text of the proposed rules in Appendix A.

VI. Conclusions and Summary

A. Respondents should provide a concise summary of their observations and experience with our free entry policies (particularly commenting on any barriers to entry) and the resulting competition. They should also state their positions with respect to the several proposed regulatory reforms herein, including references to any recommended changes or alternatives thereto as presented elsewhere in their comments. This discussion should include comments on the extent to which current marketplace forces can be relied upon to serve the public interest or be made more effective, to aid the Commission in carrying out its statutory responsibilities under Sections 1 and 201-205 of the Act, 47 U.S.C. § 151, 201-205, as well as comments on the proposals in Part XI. In doing so, we expect participants to address the legal, policy, economic, public interest and other ramifications of their proposed alternatives.

Appendix D.—Reporting Requirements for Eligible Carriers

1. As stated in the text, the Commission would require the domestic carriers subject to the proposals, as adopted in final form, to submit specific periodic financial information. This appendix outlines the nature and form of this data. The OCCs should present this material as clearly and concisely as possible, providing definitions of terms where needed.

2. For the most part, the information requested is self-explanatory. The terms used are generally those commonly used in accounting and are consistent with general usage in the forms and reports required under Part 43 of the Rules. Nevertheless, a few additional comments are in order. In addition to providing the information on total company operating revenues, investments and expenses, such information should also be provided by each carrier for each tariffed service offering. Accounting policies followed by the carrier should be summarized (e.g., method of depreciation, etc.). The outline which should be followed is set forth below. We realize that one form may not be equally appropriate for all carriers, however, we solicit comment as to which format may be of more general applicability, particularly if these reporting requirements are incorporated into Part 43. Until such format is finally specified, any deviation should be explained. It should also be remembered that one of the purposes of this financial information is to draw a clearer picture of each company's operations so that we may better evaluate overall industry performance in conjunction

with the proposals and observe the interplay of market forces.¹

3. The data specified below would be required on an annual basis:

I. Income Data

Total Operating Revenues:
Total Operating Expenses:
Also disaggregate the following expenses:
—maintenance
—traffic
—general and administrative
Sales and marketing:
—advertising
—other
Interconnection:
—local
—interexchange
—other
Research and development:
Other expense
Income taxes
Other taxes
Depreciation and Amortization
Income from Communications Operations:
Other Income (Identify by source and amount)
Fixed Charges:
—interest on funded debt
—other
Net Income:

II. Rate Base Data

Communications Plant in Service:^{*}
—gross plant
—depreciation and amortization
—net plant in service
Communications Plant Under Construction
—to be in service in one year or less
—to be in service in over one year

III. Assets and Liabilities

Assets:
Current assets:
—cash
—short-term investment (commercial paper, etc.)
—accounts receivable from affiliated companies
—accounts receivable from subscribers
—materials and supplies
—other
Total current assets
Investments
—investment in affiliated companies
—other investments
Total
Property and equipment:
—communications plant in service
—communications plant under construction
—earth stations
—other property
Subtotal:
Less: Depreciation and Amortization
Reserves
Total Property, net
Other assets and deferred charges
Total Assets:
Liabilities:
Current liabilities:

¹ We believe we have sufficient data before us, even without the financial data requested herein, that we can implement the proposals following the comment process outlined in para. 117 in the text.

^{*} Include any plant leased from any affiliated companies.

- accounts and wages payable to affiliated companies
- other accounts payable
- accrued liabilities
- current portion of long-term debt
- other current liabilities

Total:

Long-term debt (after one year)

Deferred Federal Income tax and credits

Other liabilities

Stockholders' equity

- capital Stock outstanding or owner equity

- stock premium (or discount) and other capital surplus

- retained earnings

—Total:

September 27, 1979

Separate Statement of Charles D. Ferris, Chairman

On Competitive Common Carrier Rates and Facilities Authorizations

The Commission's action today is based on the continuing need to reexamine the regulatory regimes that have grown up over 45 years of accretion since the Communications Act of 1934 was enacted. Recently, such a reexamination has led to FCC to propose changes in our rules governing cable systems and radio stations. Such reviews should extend over the entire range of FCC regulations to insure that only efficient, effective and necessary regulations remain.

Unnecessary regulations are those that have been outdated by technological changes or whose purposes can be more efficiently achieved through the operation of a competitive marketplace. Unnecessary regulations often raise prices for consumers, skew the decisions of managers, and distort the functioning of the marketplace. In addition, they waste government resources that could otherwise be better employed.

If, for example, the FCC does eliminate the requirement that certain competitive carriers file the same tariff information required of a carrier which dominates the market, the FCC's entire tariff review procedure might be strengthened. Tariffs could be implemented more quickly and the opportunity for dilatory challenges reduced.

Perhaps most importantly, the FCC's staff might be able to engage in more effective regulation by focusing our limited resources on filings from carriers able to subsidize their competitive offerings from the proceeds of monopoly services or to engage in anticompetitive activities based on a position of market power. Of course, all rates, including those of competitive carriers, would still be subject to Section 201(b) inquiry, and the FCC could continue to obtain cost support data from any carrier under Section 220.

Establishing a presumption of lawfulness for rates filed by competitive carriers would serve similar functions. At present the FCC's rules allow carriers to delay new offerings by their competitors. Commission acceptance of the proposal put forward today might well accelerate the availability to the public of innovative common carrier services. Such a presumption of lawfulness could, of course, be overcome by the presentation of appropriate evidence.

The proposed changes would also remove the current requirement that competitive carriers obtain FCC certification for line extensions and service discontinuation. This should permit freer entry and exit from markets, facilitating competition and further reducing the need for regulation.

I look forward to reviewing the comments that come to the Commission in this proceeding. They should help us define necessary regulation and the most efficient ways to regulate when necessary. They should also assist us in determining whether further deregulatory steps are possible and desirable given our current legislative mandate.

We may never be able to say we know everything about our telecommunications markets. But we can say that we will try to gather all the information we can, that we will submit that information to rigorous analysis, and that we will use the expertise developed over 45 years to make our judgments. We can also demonstrate that time has not stood still in telecommunications nor should it be asked to do so in telecommunications regulation.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor.

This *Notice of Inquiry and Proposed Rulemaking* proposes to relieve eligible competitive carriers from the filing of tariff cost support data now required by 61.38 of the Rules and also proposes to reduce the facilities authorization and service termination requirements imposed on them by our current rules implementing Section 214 of the Communications Act.

The *Notice* supports the first proposal with general economic theory which indicates that firms facing competition and having no market power are unlikely to have the ability to engage in effective predatory pricing and price discrimination or to earn supracompetitive profits. The *Notice* therefore proposes that tariff filings of nondominant competing carriers be given a presumption of lawfulness under Sections 210(b) and 202 (a) of the Act, a presumption rebuttable only upon meeting a stay-type standard.

Similarly, the *Notice* supports the proposal to treat Section 214 applications by OCCs for initial certification as also blanket applications for future extensions based on the observation that competitive carriers which are not rate-base regulated have no economic incentive toward wasteful or duplicative facilities. Interpreting Section 214 as embodying the concern that customers not be left without service, the *Notice* proposes to treat OCC discontinuances as not adversely affecting public convenience and necessity because there are other carriers to turn to.

I believe the Commission has a sound initial basis to pursue these deregulatory proposals.¹ However, I also believe that

¹ While I think it is also appropriate for the Commission to seek comment on more total deregulatory "forbearance" and "definitional"

answers to the questions posed in Appendix C are extremely important from the standpoint of providing a full factual, as well as theoretical record for the proposals. Such a record will help this expert agency to look and act like one at the conclusion of this proceeding.

In this connection, Congress in 1934 determined that telecommunications were essential to the welfare of our nation and created the Communications Act and this Commission to ensure nationwide service at reasonable, nondiscriminatory rates. While the nature and structure of the telecommunications industry has certainly changed in the ensuing 45 years, the importance of rapid, efficient communications remains critical to our society in 1979. Economic theory teaches that in a marketplace of numerous firms competitive forces will drive prices to costs and will prompt the efficacious meeting of supply and demand without the visible hand of government regulation. While I believe we should test this theory in the common carrier field with appropriate deregulation, I also believe that our existing statutory mandate requires us to make certain that deregulatory theory is matched by deregulatory reality. In a deregulated OCC environment, will there still be barriers to firm entry that may frustrate the desired competition that theory predicts? Will all OCC customers have fair and equal access to OCC services and pricing packages? Will OCC rates really be driven down to costs? These are some of the more critical questions that I hope the comments will focus on in building the record in this proceeding.

This *Notice* also raises a critical consideration with respect to the place and role of the established, dominant carriers, particularly AT&T, in the deregulated OCC environment that is here proposed. The availability of AT&T private line service offerings is a primary basis for allowing the OCCs complete freedom in structuring their rates and terms of service; AT&T rates, for example, will theoretically set the ceiling on what the OCCs can charge for their like or comparable services. While the *Notice's* proposals would effectively preclude obstructionist rejection petitions by OCCs *inter se*, AT&T competitive response tariffs will still be fair game for possible dilatory petitions by the OCCs. I recognize the dominant carrier/cross-subsidization/predatory pricing rationale for this disparate treatment; however, since we would be relying so heavily on AT&T responsive rates to keep the deregulated competition honest, it is all the more critical for this Commission and AT&T to reach a speedy and satisfactory conclusion in the pending proceedings on a Docket No. 18128 cost allocation manual, AT&T rate structures and volume discount

options. I have the initial feeling that these alternatives may go well beyond what our current experience would justify. Moreover, there is a fine line between creative, discretionary construction of our existing statute and a rewrite of the Act which only Congress can accomplish; these alternatives may cross it.

practices, and a revised Uniform System of Accounts.

[FR Doc. 79-36081 Filed 11-23-79; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1047

[No. MC-C-3437 (Sub-No. 7)]

Petition To Amend Interpretation of Operating Rights Authorizing Service at Designated Airports

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Interstate Commerce Commission is considering amending the regulation at 49 CFR 1041.22(a) so that carriers with authority to serve a named airport would have that authorization expanded to include all points within the air terminal zone of that airport. As that regulation now reads, an air freight motor carrier holding authority to perform line-haul operations between specific airports may perform that service only to and from the airports themselves or the particular air freight terminals utilized by the air carriers in connection with the movement of air freight to or from the specified airports.

DATES: Comments (an original and 11 copies) must be received on or before January 25, 1980.

ADDRESSES: Send comments to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Donald Shaw, 202-275-7292 or Joseph O'Malley, 202-275-7928.

SUPPLEMENTARY INFORMATION: By petition filed October 3, 1978, Pinto Trucking Service, Inc., a motor common carrier specializing in the transportation of air freight between airports, sought the institution of a rulemaking to amend the Commission's regulations in the manner described above. Notice of the filing of the petition was published in the Federal Register on October 24, 1978 at 43 FR 49601, and the Commission invited comments from all interested parties.

Although we are somewhat surprised at the low number of responses to our Federal Register notice, a number of comments were received, both in favor of, and in opposition to the proposed amendment. Generally speaking, the motor carriers now providing the airport-to-airport service involved favor the proposal; the airlines, the airport pickup and delivery carriers, and non-

air freight line-haul motor carriers oppose it.

Based on the comments we have received so far, it is possible that amendment of the regulation to allow line-haul air-freight carriers broader service opportunities could potentially stimulate intermodal freight movement, help ensure efficient allocation of traffic among carrier modes, and result in potential energy conservation. On the other hand, it is also possible that these potential benefits could be outweighed by harmful effects on services of those opposing the amendment. Before we make a final determination as to adopting the proposal and amending the regulation, we would like to have more input from the shipping public and the particular portion of the transportation industry involved.

Although parties should feel free to comment on any aspect of the proposed change which would affect them, from the comments already received we have identified several areas about which we would find additional information particularly useful. We would like to hear from present or potential air-freight shippers concerning how they believe amendment of the regulation would affect their own operations. Also helpful would be information from line-haul air-freight carriers and the pickup and delivery carriers concerning the type equipment they operate, the extent to which, if any, their traffic is containerized, and some data regarding the sizes of those containers. We would find useful information about the effect that recent expansion of air terminal zones has had on regulated and non-regulated pickup and delivery carriers. Specific data rather than general allegations is needed. Finally, an assessment of the impact this amendment would have on competition among small and medium air-freight motor carriers would be of assistance.

Because of its long-standing expertise on matters related to the transportation of air-freight, we specifically request that the Civil Aeronautics Board participate in this proceeding by filing comments on the proposal. Its views on the issues described above or any other matters related to this proceeding would be appreciated. Accordingly, a copy of this notice will be served on the Board.

§ 1041.22 [Amended]

The Interstate Commerce Commission is considering amending the regulation at 49 CFR 1041.22(a) to read as follows:

(a) A certificate or permit issued to a motor carrier of property pursuant to 49 U.S.C. 10521 et seq. (formerly Part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.)) authorizing service at a

named airport shall be construed as authorizing service in the transportation of freight having a prior or subsequent movement by air at all points or places located within the air terminal zone (as described in § 1047.40 of this chapter) of the airport authorized to be served by the motor carrier.

As that regulation now reads, an air freight motor carrier holding authority to perform line-haul operations between specific airports may perform that service only to and from the airports themselves or the particular air freight terminals utilized by the air carriers in connection with the movement of air freight to or from the specified airports. Airport-to-airport authority does not now permit the line-haul motor carrier to serve the shipper or the consignee in the air terminal zone. Instead, it may, in effect, serve only the air carriers. If the regulation were amended, carriers with authority to serve a named airport would have that authorization expanded to include all points within the air terminal zone of that airport.

Decided: October 26, 1979.

By the authority of 49 U.S.C. § 10321 and 5 U.S.C. § 553.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis. Vice Chairman Stafford dissenting.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-36312 Filed 11-23-79; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173

[Docket No. HM-163D; Notice No. 79-15]

Withdrawal of Certain Bureau of Explosives Delegations of Authority

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) proposes to issue an amendment to the Department's Hazardous Materials Regulations withdrawing or cancelling the remaining delegations of authority to the Bureau of Explosives (B of E) in Part 173 of 49 CFR. However, the B of E would continue to play a role in the testing of explosives and other hazardous materials for MTB. This action is being taken to conform existing programs with the purposes of

the Hazardous Materials Transportation Act.

DATE: Comments must be received on or before January 15, 1980.

ADDRESS: Comments must be addressed to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Five copies of comments are requested.

FOR FURTHER INFORMATION CONTACT:

Darrell L. Raines, Office of Hazardous Materials Regulation, 400 7th St. S.W., Washington, D.C. 20590, 202-472-2726.

SUPPLEMENTARY INFORMATION: On August 17, 1978, the Materials Transportation Bureau published Docket No. HM-163; Amdt. Nos. 171-41, 173-119, 178-49 (43 FR 36445). These referenced amendments constituted the first action in an overall program to withdraw all of the delegations of authority to the B of E in 49 CFR Parts 100-199.

On March 28, 1979, the MTB published Docket No. HM-163A; Amdt. No. 171-45 (44 FR 18027) to recognize certain approvals and authorizations issued by the B of E.

On May 7, 1979, the MTB published Docket No. HM-163B; Notice 79-7 (44 FR 26772) proposing to withdraw or cancel certain delegations of authority to the B of E in Part 178 of 49 CFR. The final rule is expected to be published in the very near future.

Docket No. HM-163C; Amdt. Nos. 171-50, 173-132, 178-57 (44 FR 55577) was published on September 27, 1979, to transfer from the Transportation

Systems Center, Cambridge, Massachusetts, to the Bureau's Associate Director for Operations and Enforcement the responsibility for: (1) Approving cigarette lighters or other ignition devices; (2) registering container manufacturers' marks or symbols; and (3) receiving and maintaining reports required to be filed in connection with hazardous materials shipping containers and packagings.

The MTB plans to continue use of the service and expertise of the B of E laboratory for the testing of explosives and other hazardous materials. However, consideration will be given to the use of additional laboratories, such as the Bureau of Mines, when acceptable arrangements can be made. Results of tests performed by the B of E will be forwarded to the Associate Director for Operations and Enforcement, Materials Transportation Bureau, Washington, D.C. 20590 by the applicant for review and final disposition. The preamble to the August 17, 1978, amendment clearly stated the reasons for the action taken as well as those to be considered in future rulemaking. In view of the above referenced preamble, repeating it again in this notice is not deemed necessary.

These proposed changes should have little or no economic impact on the private sector, consumers, State or local governments since these proposals would merely require the final approval to be granted by the Associate Director for Operations and Enforcement instead of the B of E. In some instances the requirement for B of E examination and

approval by MTB would be deleted.

Primary drafters of this document are Darrell L. Raines, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, and George W. Tenley, Office of the Chief Counsel, Research and Special Programs Administration.

In consideration of the foregoing, 49 CFR Parts 171 and 173 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. Section 171.20 would be added to read:

§ 171.20 Submission of Examination Reports.

(a) When it is required in this subchapter that the issuance of an approval by the Associate Director for OE be based on an examination by the Bureau of Explosives (or any other test facility recognized by MTB), it is the responsibility of the applicant to submit the results of the examination to the Associate Director for OE.

(b) Applications for approval submitted under paragraph (a) of this section, must be submitted to the Associate Director for Operations and Enforcement, Materials Transportation Bureau, Washington, D.C. 20590.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. Each section referenced in the first column would be amended to read as indicated in the third column:

Regulation affected	Present wording	Proposed amendment
§ 173.28(h)(1).....	(1) Single-trip containers inspected and tested prior to January 1, 1971, that have been approved for reuse by the Bureau of Explosives may be used until July 1, 1971, under the terms and conditions specified.	(1) [Deleted].
§ 173.31(d)(4) Retest Table 1 Footnote ¹ .	1. Tanks and safety relief devices in hydrocyanic acid service must be retested and inspected by a written procedure filed with and approved by the Bureau of Explosives.	1. Tanks and safety relief devices in hydrocyanic acid service must be retested and inspected by a written procedure filed with and approved by the Associate Director for OE.
§ 173.32(b)(3).....	(3) Tanks having capacities of between 750 pounds and 1,000 pounds of water shall be considered as portable tank containers for the purposes of this part. In lieu of using safety relief valves on such containers they may be equipped with fusible plugs only when the container is filled by weight. Size, number, and location, as well as character and physical properties of fusible plugs shall be approved by the Bureau of Explosives. These containers shall be marked "ICC Specification 51S".	(3) Tanks having capacities of between 750 pounds and 1,000 pounds of water shall be considered as portable tank containers for the purposes of this part. In lieu of using safety relief valves on such containers they may be equipped with fusible plugs only when the container is filled by weight. Size, number, and location, as well as character and physical properties of fusible plugs shall be examined by the Bureau of Explosives and approved by the Associate Director for OE. These containers shall be marked "DOT Specification 51S."
§ 173.34(c)(1).....	(1) Additional markings not affecting any of the prescribed markings may be made in accordance with marking requirements of the specification.	Note: This paragraph will be handled by a separate Docket in the very near future.
§ 173.34(c)(3)(i) First sentence.	(i) Marked service pressure may be changed only upon application to the Bureau of Explosives and receipt of written instructions as to the procedure to be followed.	(i) Marked service pressure may be changed only upon application to the Associate Director for OE and receipt of written instructions as to the procedure to be followed.
§ 173.34(c)(3)(ii).....	(ii) Changes may be made in serial numbers and in the identification symbols by the owners. Identification symbols must be registered and approved by the Bureau of Explosives. Serial numbers and identification symbols may be changed only by the owner upon his receipt of written approval from the Bureau of Explosives. The request for approval must identify the existing markings (including serial numbers) that correspond with the proposed new markings.	Note: This paragraph will be handled by a separate Docket in the very near future.
§ 173.34(d) First sentence.	(d) Safety relief devices. Each cylinder charged with compressed gas, unless excepted in this paragraph, must be equipped with one or more safety relief devices approved, as to type, location, and quantity, by the Bureau of Explosives and must be capable of preventing explosion of the normally charged cylinder when it is placed in a fire.	(d) Safety relief devices. Each cylinder charged with compressed gas, unless excepted in this paragraph, must be equipped with one or more safety relief devices, examined as to type, location, and quantity, by the Bureau of Explosives and approved by the Associate Director for OE. The safety relief devices must be capable of preventing explosion of the normally charged cylinder when it is placed in a fire.
§ 173.34(g)(4)(ii).....	(ii) The permanent expansion shall not be less than 3 percent nor more than 10 percent of the total expansion in the hydrostatic retest, in which case the flattening and physical tests are not required. For this alternative method the hydrostatic retest pressure shall not exceed 115 percent of the minimum prescribed test pressure except with specific approval of the Bureau of Explosives.	(ii) The permanent expansion shall not be less than 3 percent nor more than 10 percent of the total expansion in the hydrostatic retest, in which case the flattening and physical tests are not required. For this alternative method the hydrostatic retest pressure may not exceed 115 percent of the minimum prescribed test pressure except with specific approval of the Associate Director for OE.

Regulation affected	Present wording	Proposed amendment
§ 173.34(f) Introductory text.	(f) <i>Repair by welding or brazing of DOT-4 series, and DOT-8, welded or brazed cylinders.</i> Repairs on DOT-4 series and DOT-8 series welded or brazed cylinders are authorized to be made by welding or brazing. Such repairs must be made by a manufacturer of these types of DOT cylinders or by a repair facility authorized by the Bureau of Explosives and by a process similar to that used in its manufacture and under the following specific requirements.	(f) <i>Repair by welding or brazing of DOT-4 series and DOT-8, welded or brazed cylinders.</i> Repairs on DOT-4 series and DOT-8 series welded or brazed cylinders are authorized to be made by welding or brazing. Such repairs must be made by a manufacturer of these types of DOT cylinders or by a repair facility approved by the Associate Director for OE and by a process similar to that used in its manufacture and under the following specific requirements:
§ 173.34(g)(4)(i) Introductory text.	(i) Must be done by a manufacturer of these types of DOT cylinders or by a repair facility authorized by the Bureau of Explosives.	(i) Must be done by a manufacturer of these types of DOT cylinders or by a repair facility approved by the Associate Director for OE.
§ 173.34(h) Introductory text.	(h) <i>Rebuilding of DOT-4 series and DOT-8, welded or brazed cylinders.</i> Rebuilding of DOT-4 series and DOT-8 series, welded or brazed cylinders is authorized. Such rebuilding must be done by a manufacturer of these types of DOT cylinders or by a repair facility authorized by the Bureau of Explosives and by a process similar to that used in its original manufacture and under the following specific requirements:	(h) <i>Rebuilding of DOT-4 series and DOT-8, welded or brazed cylinders.</i> Rebuilding of DOT-4 series and DOT-8 series, welded or brazed cylinders is authorized. Such rebuilding must be done by a manufacturer of these types of DOT cylinders or by a repair facility approved by the Associate Director for OE and by a process similar to that used in its original manufacture and under the following specific requirements:
§ 173.53(h) Introductory text.	(h) <i>Type 8.</i> Any solid or liquid compound, mixture or device which is not specifically included in any of the above types, and which under special conditions may be so designated and approved by the Bureau of Explosives. Example: Shaped charges, commercial.	(h) <i>Type 8.</i> Any solid or liquid compound, mixture or device which is not specifically included in any of the above types, and which under special conditions may be so designated and examined by the Bureau of Explosives and approved by the Associate Director for OE. Example: Shaped charges, commercial.
§ 173.53(i) Introductory text.	(i) A shaped charge, commercial, consists of a plastic, paper, or other suitable container comprising a charge of not to exceed 8 ounces of a high explosive containing no liquid explosive ingredient and with a hollowed-out portion (cavity) lined with a rigid material. Detonators or other initiating elements shall not be assembled in the device unless approved by the Bureau of Explosives.	(i) A shaped charge, commercial, consists of a plastic, paper, or other suitable container comprising a charge of not to exceed 8 ounces of a high explosive containing no liquid explosive ingredient and with a hollowed-out portion (cavity) lined with a rigid material. Detonators or other initiating elements may not be assembled in the device unless examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.53(j) Introductory text.	(j) <i>Ammunition for cannon with projectiles.</i> Ammunition for cannon with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, or shell is fixed ammunition assembled in a unit consisting of the cartridge case containing the propelling charge and primer, and the projectiles, or shell, fused or unfused. Detonating fuzes, tracer fuzes, explosives or ignition devices, or fuze parts with explosives contained therein must not be assembled in ammunition or included in the same outside package unless shipped by, for, or to the Departments of the Army, Navy, and Air Force of the United States Government or unless of a type approved by the Bureau of Explosives.	(j) <i>Ammunition for cannon with projectiles.</i> Ammunition for cannon with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, or shell is fixed ammunition assembled in a unit consisting of the cartridge case containing the propelling charge and primer, and the projectiles, or shell, fused or unfused. Detonating fuzes, tracer fuzes, explosive or ignition devices, or fuze parts with explosives contained therein may not be assembled in ammunition or included in the same outside package unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.56(a) Introductory text.	(a) Detonating fuzes, tracer fuzes, explosive or ignition devices, bouchons, or fuze parts with explosives contained therein, must not be assembled in explosive projectiles, grenades, explosive bombs, explosive mines, or explosive torpedoes, or included in the same outside package with them unless shipped by, for, or to the Departments of the Army, Navy, and Air Force of the United States Government, or unless of a type approved by the Bureau of Explosives.	(a) Detonating fuzes, tracer fuzes, explosive or ignition devices, bouchons, or fuze parts with explosives contained therein, must not be assembled in explosive projectiles, grenades, explosive bombs, explosive mines or explosive torpedoes, or included in the same outside package with them unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.56(c) Introductory text.	(c) Explosive projectiles, explosive torpedoes, explosive mines, or explosive bombs, exceeding 90 pounds in weight, and explosive projectiles of not less than 4 1/4 inches in diameter, may be shipped without being boxed only by, for, or to the Departments of the Army, Navy, and Air Force of the United States Government when securely blocked and braced in accordance with methods approved by the Bureau of Explosives.	(c) Explosive projectiles, explosive torpedoes, explosive mines, or explosive bombs, exceeding 90 pounds in weight, and explosive projectiles of not less than 4 1/4 inches in diameter, may be shipped without being boxed only when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.56(c)(1) Introductory text.	(1) Explosive projectiles less than 4 1/4 inches in diameter may be shipped without being boxed, when palletized, only by, for, or to the Departments of the Army, Navy, and Air Force of the United States Government when securely blocked and braced in accordance with methods approved by the Bureau of Explosives.	(1) Explosive projectiles less than 4 1/4 inches in diameter may be shipped without being boxed, when palletized, and only when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.56(d) Introductory text.	(d) Gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, gas bombs, smoke bombs, incendiary bombs, gas grenades, smoke grenades, incendiary grenades, and gas mines, explosive, containing a bursting charge must be packed and properly secured in strong wooden boxes. Detonating fuzes, boosters or bursters, bouchons or ignition elements must not be assembled in these articles or included in the same package with them unless shipped by, for, or to the Departments of the Army, Navy, or Air Force of the United States Government, or unless of a type approved by the Bureau of Explosives. (See §§ 173.190, 173.330, 173.350, and 173.383 for non-explosive chemical or poisonous ammunition.)	(d) Gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, gas bombs, smoke bombs, incendiary bombs, gas grenades, smoke grenades, incendiary grenades, and gas mines, explosive, containing a bursting charge must be packed and properly secured in strong wooden boxes. Detonating fuzes, boosters or bursters, bouchons or ignition elements may not be assembled in these articles or included in the same package with them unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.57(a) Introductory text.	(a) Rocket ammunition with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, or illuminating projectiles, must be well packed and properly secured in strong wooden or metal containers or in preformed fiber glass resin impregnated containers approved by the Bureau of Explosives.	(a) Rocket ammunition with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, or illuminating projectiles, must be well packed and properly secured in strong wooden, metal, preformed fiber glass resin impregnated container, or other packagings of approved military specifications which comply with § 173.7(a).
§ 173.65(h) Third sentence.	Other methods of packaging for devices of which shaped charges are a component part may be employed when approved by the Bureau of Explosives.	Other methods of packaging for devices of which shaped charges are a component part may be employed when examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.79(a)(2) Introductory text.	(2) Wooden boxes, wooden crates, or other packagings or approved military specifications which comply with § 173.7(a), or other packagings approved by the Bureau of Explosives.	(2) Wooden boxes, wooden crates, or other packagings of approved military specifications which comply with § 173.7(a).
§ 173.79(c) Introductory text.	(c) Jet thrust units Class A explosives or rocket motors, Class A explosives, may be packaged in the same outside packaging with their separately packaged igniters (or igniter components), Class A, B, or C explosives only in packagings approved by the Bureau of Explosives or of approved military specifications complying with § 173.7(a).	(c) Jet thrust units Class A explosives or rocket motors, Class A explosives, may be packaged in the same outside packaging with their separately packaged igniters (or igniter components), Class A, B, or C explosives only when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.86(b), (b)(1), (b)(2), and (b)(3) Introductory text.	(b) No person may offer a new explosive for transportation unless it has been examined, classed, and approved by one of the following agencies: (1) Bureau of Explosives; (2) The U.S. Energy Research and Development Administration (ERDA) for new explosives made by, or under the direction or supervision of ERDA when tested in accordance with the Explosives Hazard Classification Procedures contained in DOD TB 700-2 (May 19, 1967), or (3) U.S. Army Materiel Development and Readiness Command (DRCFS), Naval Sea Systems Command (NAVSEA 04H), or HQUSAF (IGD)/SEV for new explosives made by, or under the direction or supervision of the Department of Defense when tested in accordance with the Explosives Hazard Classification procedures contained in DOD TB 700-2 (May 19, 1967), (NAVORDINST 8020.3 to 11A-47, DSAR 8220.1).	(b) No person may offer a new explosive for transportation unless it has been examined by one of the following agencies, and classed and approved by the Associate Director for OE. (1) Bureau of Explosives; (2) U.S. Department of Energy (DOE) for new explosives made by, or under the direction or supervision of DOE when tested in accordance with the Explosives Hazard Classification procedures contained in DOD TB 700-2 (May 19, 1967), or (3) U.S. Army Materiel Development and Readiness Command (DRCFS), Naval Sea Systems Command (NAVSEA 04H), or HQUSAF (IGD)/SEV for new explosives made by, or under the direction or supervision of the Department of Defense when tested in accordance with the Explosives Hazard Classification procedures contained in DOD TB 700-2 (May 19, 1967), (NAVSEAINST 8020.8 AFCTO 11A-47, DSAR 8220.1).
§ 173.86(g) Last sentence.	The devices must not rupture on functioning and must be of a type approved by the Bureau of Explosives, except as otherwise provided in §§ 173.51(q) and 173.86(a).	The devices must not rupture on functioning and must be of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, except as otherwise provided in § 173.51(a)(16) and § 173.86(a).
§ 173.92(a)(4) Introductory text.	(4) Wooden boxes, wooden crates, or other packagings of approved military specification which comply with § 173.7(a), or other packagings approved by the Bureau of Explosives.	(4) Wooden boxes, wooden crates, or other packagings of approved military specification which comply with § 173.7(a).

Regulation affected	Present wording	Proposed amendment
§ 173.92(c).....	(c) Jet thrust units, Class B explosives, or rocket motors, Class B explosives, may be packaged in the same outside packaging with their separately packaged igniters (or igniter components), Class A, B, or C explosives, only in packagings approved by the Bureau of Explosives or of approved military specifications complying with § 173.7(a).	(c) Jet thrust units, Class B explosives, or rocket motors, Class B explosives, may be packaged in the same outside packaging with their separately packaged igniters (or igniter components), Class A, B, or C explosives, only when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.94(A) Introductory text.	(a) Explosive power devices, Class B, must not be shipped with igniters, assembled therein unless shipped by, for, or to the Departments of the Army, Navy, and Air Force of the United States Government or unless of a type approved by the Bureau of Explosives. Explosive power devices, Class B, must be packed in outside containers complying with the following specifications:	(a) Explosive power devices, Class B may not be shipped with igniters assembled therein unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD. Explosive power devices, Class B, must be packed in outside containers complying with the following specifications:
§ 173.94(b).....	(b) Explosive power devices, Class B, packed in any other manner must be in containers of a type approved by the Bureau of Explosives.	(b) Explosive power devices, Class B, packed in any other manner must be in containers of a type examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.95(a)(2).....	(2) Wooden boxes or metal packagings of approved military specification which comply with § 173.7(a), or other packagings approved by the Bureau of Explosives.	(2) Wooden boxes or metal packagings of approved military specification which comply with § 173.7(a).
§ 173.95(b).....	(b) Rocket engines (liquid), Class B explosives, must not be shipped with igniters or initiators assembled therein unless shipped by, for, or to the Department of the Army, the Department of the Navy, or the Department of the Air Force, and only when authorized by the Department of Defense or by the Bureau of Explosives.	(b) Rocket engines (liquid), Class B explosives, may not be shipped with igniters or initiators assembled therein unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.95(c).....	(c) Rocket engines (liquid), Class B explosives, may be packed in the same outside packaging with separately packaged igniters, jet thrust, Class B explosives when authorized by the Department of Defense or when packagings are approved by the Bureau of Explosives.	(c) Rocket engines (liquid), Class B explosives, may be packed in the same outside packaging with separately packaged igniters, jet thrust, Class B explosives when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.
§ 173.100(p) Second sentence.	Unless greater weight of composition is approved by the Bureau of Explosives, the number of caps in these inside packages shall be limited so that not more than 10 grains of explosive composition shall be packed into one cubic inch of space and not exceeding 17.5 grains of the explosive composition of toy caps shall be packed in any inside container.	(p) The number of caps in these inside packages shall be limited so that not more than 10 grains of explosive composition shall be packed into one cubic inch of space and not exceeding 17.5 grains of the explosive composition of toy caps shall be packed in any inside container.
§ 173.100(r) Sixth sentence.	Any new device, not enumerated in this paragraph, must be approved by the Bureau of Explosives before being offered for transportation as Common Fireworks.	(r) Any new device, not enumerated in this paragraph, must be examined by the Bureau of Explosives and approved by the Associate Director for OE, before being offered for transportation as Common Fireworks.
§ 173.100(r)(11).....	(11) Novelties consisting of two or more devices enumerated in this paragraph when approved by the Bureau of Explosives.	(11) Novelties consisting of two or more devices enumerated in this paragraph when examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.100(u).....	(u) Toy propellant devices and toy smoke devices consist of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder. These devices must be so designed that they will neither burst nor produce external flame on functioning and ignition elements, if attached, must be of a design approved by the Bureau of Explosives.	(u) Toy propellant devices and toy smoke devices consist of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder. These devices must be so designed that they will neither burst nor produce external flame on functioning and ignition elements, if attached, must be of a design examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.100(x) Introductory text.	(x) Cigarette loads, trick matches, and trick noise makers, explosive, must be of a type approved by the Bureau of Explosives and are described as follows:	(x) Cigarette loads, trick matches, and trick noise makers, explosive, must be of a type examined by the Bureau of Explosives and approved by the Associate Director for OE and are described as follows:
§ 173.100(y).....	(y) Smoke candles, smokepots, smoke grenades, smoke signals, signal flares, hand signal devices, and Very signal cartridges are devices designed to produce visible effects for signal purposes. These devices must contain no bursting charges and no more than 200 grams of pyrotechnic composition each (see Note 1), exclusive of smoke composition (see Note 2), unless greater weight of composition is approved by the Bureau of Explosives.	(y) Smoke candles, smokepots, smoke grenades, smoke signals, signal flares, hand signal devices, and Very signal cartridges are devices designed to produce visible effects for signal purposes. These devices must contain no bursting charges and no more than 200 grams of pyrotechnic composition each (see Note 1), exclusive of smoke composition (see Note 2), unless greater weight of composition is examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.100(aa).....	(aa) Explosive power devices, Class C, are devices designed to drive generators or mechanical apparatus by means of propellant explosives, Class B. The devices consist of a housing with a contained propellant charge and an electric igniter or squib. The devices must be of a type examined by the Bureau of Explosives for this classification.	(aa) Explosive power devices, Class C, are devices designed to drive generators or mechanical apparatus by means of propellant explosives, Class B. The devices consist of a housing with a contained propellant charge and an electric igniter or squib. The devices must be of a type approved by the Bureau of Explosives and approved by the Associate Director for OE for this classification.
§ 173.100(ee) Second sentence.	(ee) The starter cartridge is used to activate a mechanical starter for jet engines and must be of a type approved by the Bureau of Explosives except as provided in § 173.51(q) and § 173.86(a).	(ee) The starter cartridge is used to activate a mechanical starter for jet engines and must be of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, except as provided in § 173.51(a)(16) and § 173.86(a).
§ 173.102(a)(2).....	(2) In addition to specification containers prescribed in this section, explosive cable cutters, explosive power devices, Class C, explosive release devices, or starter cartridges, jet engines, Class C may be shipped when packed in strong wooden or metal boxes, or other containers approved by the Bureau of Explosives. Starter cartridges, jet engine, must have igniter wires short-circuited when packed for shipment.	(2) In addition to specification containers prescribed in this section, explosive cable cutters, explosive power devices, Class C, explosive release devices, or starter cartridges, jet engines, Class C may be shipped in strong wooden or metal boxes. Starter cartridges, jet engine, must have igniter wires short-circuited when packed for shipment.
§ 173.120(c).....	(c) <i>Truck bodies or trailers on flat cars.</i> Truck bodies or trailers with automatic heating or refrigerating equipment of the flammable liquid type may be shipped with fuel tanks filled and equipment operating or inoperating, when used for the transportation of other freight and loaded on flat cars as part of a joint rail highway movement, provided the equipment and fuel supply are of a type approved by the Bureau of Explosives. The heating or refrigerating units are not subject to any other requirements of this subchapter and are considered as carriers' equipment, not as shipments.	(c) <i>Truck bodies or trailers on flat cars.</i> Truck bodies or trailers with automatic heating or refrigerating equipment of the flammable liquid type may be shipped with fuel tanks filled and equipment operating or inoperating, when used for the transportation of other freight and loaded on flat cars as part of a joint rail highway movement, provided the equipment and fuel supply are of a type examined by the Bureau of Explosives and approved by the Associate Director for OE. The heating or refrigerating units are not subject to any other requirements of this subchapter and are considered as carriers' equipment, not as shipments.
§ 173.124(a)(1) Fifth sentence.	(1) Each inside container must be completely insulated, except for top closure, with two coats of heat-retardant paint, of type approved by the Bureau of Explosives, applied over suitable primer and finished with suitable waterproof paint; or with other equally efficient insulation approved by the Bureau of Explosives. Not more than 12 inside containers nor more than one layer of containers may be packed in one outside container.	(1) Each inside container must be completely insulated, except for top closure, with two coats of heat-retardant paint, of type examined by the Bureau of Explosives and approved by the Associate Director for OE, applied over suitable primer and finished with suitable waterproof paint; or with other equally efficient insulation examined by the Bureau of Explosives and approved by the Associate Director for OE. Not more than 12 inside containers nor more than one layer of containers may be packed in one outside container.
§ 173.124(a)(2) Eighth sentence.	Cylinders having a water capacity in excess of 1 gallon must be insulated with at least three coats of heat-retardant paint, of a type approved by the Bureau of Explosives, applied over suitable primer and finished with suitable waterproof paint; or with other equally efficient insulation approved by the Bureau of Explosives.	(2) Cylinders having a water capacity in excess of 1 gallon must be insulated with at least three coats of heat-retardant paint, of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, applied over suitable primer and finished with suitable waterproof paint; or with other equally efficient insulation examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.162(h) Last sentence.	(h) On recommendation of the Bureau of Explosives, other methods of loading shown to be at least equally efficient in securing the necessary ventilation will be authorized.	(h) [Delete last sentence].
§ 173.197a.....	Smokeless powder for small arms in quantities not exceeding 100 pounds net weight transported in one car or motor vehicle may be classed as a flammable solid when approved for this classification by the Bureau of Explosives. Maximum quantity in any inside packaging must not exceed 8 pounds and inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type approved by the Bureau of Explosives. Each outside package must bear a flammable solid label.	Smokeless powder for small arms in quantities not exceeding 100 pounds net weight transported in one car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives and approved by the Associate Director for OE. Maximum quantity in any inside packaging must not exceed 8 pounds and inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives and approved by the Associate Director for OE. Each outside package must bear a flammable solid label.

Regulation affected	Present wording	Proposed amendment
§ 173.202(a)(1).....	(1) Spec. 15A or 15B (§ 178.168 or § 178.169 of this subchapter). Wooden boxes with inside metal containers of a type approved by the Bureau of Explosives cushioned with incombustible cushioning material. Each container must have been tested hydrostatically to a pressure of not less than 60 pounds per square inch. Closing devices must be protected from injury. Not more than 300 pounds of sodium or potassium liquid alloy may be shipped in one outside container.	(1) Spec. 15A or 15B (§ 178.168 or § 178.169 of this subchapter). Wooden boxes with inside metal containers of a type examined by the Bureau of Explosives and approved by the Associate Director for OE. Inside containers must be cushioned with incombustible cushioning material. Each container must have been tested hydrostatically to a pressure of not less than 60 pounds per square inch. Closing devices must be protected from injury. Not more than 300 pounds of sodium or potassium liquid alloy may be shipped in one outside container.
§ 173.218(a)(1).....	(1) Spec. 15A, 15B, 15C, 16A or 19A (§ 178.168, § 178.169, § 178.170, § 178.185 or § 178.190 of this subchapter). Wooden boxes, or other equally efficient container when approved by the Bureau of Explosives, with glass, metal, or earthenware inside containers of not over 2 gallons capacity each which must be maintained at a temperature below 0°F. Shipments are authorized for transportation by private or contract carrier by motor vehicle only.	(1) Spec. 15A, 15B, 15C, 16A or 19A (§ 178.168, § 178.169, § 178.170, § 178.185 or § 178.190 of this subchapter). Wooden boxes, with glass, metal, or earthenware inside containers of not over 2 gallons capacity each which must be maintained at a temperature below 0°F. Shipments are authorized for transportation by private or contract carrier by motor vehicle only.
§ 173.225(a)(1).....	(1) Spec. 15A or 15B (§ 178.168 or 178.169 of this subchapter). Wooden boxes with metal inside containers hermetically sealed (soldered) or watertight metal cans with screwtop closures. Other closures if approved by the Bureau of Explosives will be permitted.	(1) Spec. 15A or 15B (§ 178.168 or 178.169 of this subchapter). Wooden boxes with metal inside containers hermetically sealed (soldered) or watertight metal cans with screwtop closures.
§ 173.237(a)(2).....	(2) Containers and means of refrigeration providing equal efficiency, when approved by the Bureau of Explosives, are authorized for shipments by private carrier by motor vehicle.	(2) [Delete.]
§ 173.238(a).....	(a) Aircraft rocket engines (commercial) and their igniters may be offered for transportation when of a type approved by the Bureau of Explosives to be so described and classed, and when packaged as follows:	(a) Aircraft rocket engines (commercial) and their igniters may be offered for transportation when of a type examined by the Bureau of Explosives and approved by the Associate Director for OE to be so described and classed, and when packaged as follows:
§ 173.238(a)(1).....	(1) Spec. 15A, 15B, 15E or 16A (§ 178.168, 178.169, 178.172 or 178.185 of this subchapter). Wooden boxes. Igniters must be packaged in sealed metal containers approved by the Bureau of Explosives and packed in wooden boxes as specified above when shipped separately from the Aircraft rocket engines.	(1) Spec. 15A, 15B, 15E or 16A (§ 178.168, 178.169, 178.172 or 178.185 of this subchapter). Wooden boxes. Igniters must be packaged in sealed metal containers examined by the Bureau of Explosives and approved by the Associate Director for OE and packed in wooden boxes as specified above when shipped separately from the Aircraft rocket engines.
§ 173.238(a)(2).....	(2) Aircraft rocket engines (commercial), when approved by the Bureau of Explosives, may be packed in the same outside shipping container with their separately packaged igniters. Igniters must be packed in separate sealed metal containers in strong inside containers.	(2) Aircraft rocket engines (commercial), when examined by the Bureau of Explosives and approved by the Associate Director for OE may be packed in the same outside shipping container with their separately packaged igniters. Igniters must be packed in separate sealed metal containers in strong inside containers.
§ 173.238(a)(3).....	(3) Aircraft rocket engines (commercial) and/or their igniters, packed in any other manner than specified in paragraphs (a) (1) and (2) of this section, must be in containers of a type approved by the Bureau of Explosives.	(3) Aircraft rocket engines (commercial) and/or their igniters, packed in any other manner than specified in paragraphs (a) (1) and (2) of this section, must be in containers of a type examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.245(a)(25).....	(25) Spec. 12A or 12B (§ 178.210 or 178.205 of this subchapter). Fiber board boxes with inside aluminum containers not over 5 pounds capacity each. Aluminum containers must be approved by the Bureau of Explosives.	(25) Spec. 12A or 12B (§ 178.210 or 178.205 of this subchapter). Fiber board boxes with inside aluminum containers. Aluminum containers must be examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.252(g)(1) Last sentence.	Each drum must be completely emptied and dried before reuse and must be equipped with gaskets of a material approved by the Bureau of Explosives.	Each drum must be completely emptied and dried before reuse and must be equipped with gaskets of a material examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.256(a)(3).....	(3) Spec. 22B (§ 178.197 of this subchapter). Plywood drums equipped with molded liner of type and material approved by the Bureau of Explosives.	(3) Spec. 22B (§ 178.197 of this subchapter). Plywood drums equipped with molded liner of type and material examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.260(g).....	(g) Electric storage batteries, containing electrolyte or corrosive battery fluid in a coil from which it is injected into the battery cells by a gas generator and initiator assembled with the battery, and which are nonspillable and leakproof, are exempt from Parts 170-189 of this title when approved by the Bureau of Explosives.	(g) Electric storage batteries, containing electrolyte or corrosive battery fluid in a coil from which it is injected into the battery cells by a gas generator and initiator assembled with the battery, and which are nonspillable and leakproof, are exempted from Parts 110-189 of this title when examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.266(f)(2) Last sentence.	Designs for venting and pressure relief devices must be approved by the Bureau of Explosives.	Designs for venting and pressure relief devices must be examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.268(f)(4).....	(4) Cushioning for carboys must be incombustible mineral material, elastic wooden strips, natural cork blocks or rubber blocks. Other materials may be used if approved by the Bureau of Explosives. The use of hay, excelsior, loose ground cork, or similar materials, whether treated or untreated, is prohibited.	(4) Cushioning for carboys must be incombustible mineral material, elastic wooden strips, natural cork blocks or rubber blocks. The use of hay, excelsior, loose ground cork, or similar materials, whether treated or untreated, is prohibited.
§ 173.269(b).....	(b) Cushioning for carboys must be incombustible mineral material, elastic wooden strips, natural cork blocks or rubber blocks. Other materials may be used if approved by the Bureau of Explosives. The use of hay, excelsior, loose ground cork, or similar materials, whether treated or untreated, is prohibited.	(b) Cushioning for carboys must be incombustible mineral material, elastic wooden strips, natural cork blocks or rubber blocks. The use of hay, excelsior, loose ground cork, or similar materials, whether treated or untreated, is prohibited.
§ 173.272(i)(18).....	(18) Specification 17F (§ 178.117 of this subchapter). Metal barrels or drums (single-trip only). Drums equipped with vented closures of an experimental type approved by the Bureau of Explosives are also authorized for export shipments. Authorized for sulfuric acid of 77.5 percent to 98 percent concentrations with or without an inhibitor, provided such acid has a corrosive effect on steel no greater than 93.2 percent sulfuric acid, measured at 100°F.	(18) Specification 17F (§ 178.117 of this subchapter). Metal barrels or drums (single-trip only). Drums equipped with vented closures of an experimental type examined by the Bureau of Explosives and approved by the Associate Director for OE are also authorized for export shipments. Authorized for sulfuric acid of 77.5 percent to 98 percent concentrations with or without an inhibitor, provided such acid has a corrosive effect on steel no greater than 93.2 percent sulfuric acid, measured at 100°F.
§ 173.300(b)(1).....	(1) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives.	(1) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.303(a).....	(a) Cylinder, filler and solvent requirements. (Refer to applicable parts of Specs. DOT 8 and DOT 8AL.) Acetylene gas must be shipped in cylinders, Spec. 8 or 8AL (§ 178.59 or § 178.60 of this subchapter). The cylinders shall consist of metal shells filled with a porous material that has been tested with satisfactory results by the Bureau of Explosives, and this material must be charged with a suitable solvent.	(a) Cylinder, filler and solvent requirements. (Refer to applicable parts of Specs. DOT 8 and DOT 8AL.) Acetylene gas must be shipped in Spec. 8 or 8AL cylinders (§ 178.59 or § 178.60 of this subchapter). The cylinders shall consist of metal shells filled with a porous material that has been examined by the Bureau of Explosives and approved by the Associate Director for OE, and this material must be charged with a suitable solvent.
§ 173.305(c)(1).....	(1) Spec. 2P (§ 178.33 of this subchapter). Inside metal containers equipped with safety relief devices of a type approved by the Bureau of Explosives and packed in strong wooden or fiber boxes of such design as to protect valves from injury or accidental functioning under conditions incident to transportation. Pressure in the container must not exceed 85 psi absolute at 70°F. Each completed metal container filled for shipment must be heated until content reaches a minimum temperature of 130°F., without evidence of leakage, distortion or other defect. Each outside shipping container must be plainly marked "INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS."	(1) Spec. 2P (§ 178.33 of this subchapter). Inside metal containers equipped with safety relief devices of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, and packed in strong wooden or fiber boxes of such design as to protect valves from injury or accidental functioning under conditions incident to transportation. Pressure in the container must not exceed 85 psi absolute at 70°F. Each completed metal container filled for shipment must be heated until content reaches a minimum temperature of 130°F., without evidence of leakage, distortion or other defect. Each outside shipping container must be plainly marked "INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS."
§ 173.306(d)(1).....	(d) Truck bodies or trailers on flat cars; automobiles, motorcycles, tractors, or other self-propelled vehicles. (1) Truck bodies or trailers with automatic heating or refrigerating equipment of the gas burning type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail-highway movement, provided the equipment and fuel supply are of a type approved by the Bureau of Explosives. The heating or refrigerating units are not subject to any other requirements of this subchapter and are to be considered as carriers equipment not as shipments.	(d) Truck bodies or trailers on flat cars; automobiles, motorcycles, tractors, or other self-propelled vehicles. (1) Truck bodies or trailers with automatic heating or refrigerating equipment of the gas burning type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail-highway movement, provided the equipment and fuel supply are of a type examined by the Bureau of Explosives and approved by the Associate Director for OE. The heating or refrigerating units are not subject to any other requirements of this subchapter and are to be considered as carriers equipment not as shipments.

Regulation affected	Present wording	Proposed amendment
§ 173.315(f)(12).....	(12) Subject to conditions of paragraph (a)(1) of this section for the methyl chloride and sulfur dioxide optional portable tanks, one or more fusible plugs approved by the Bureau of Explosives may be used on these tanks in place of safety relief valves of the spring-loaded type. The fusible plug or plugs must be in accordance with CGA Pamphlet S-1.2, to prevent a pressure rise in the tank of more than 120 percent of the design pressure. If the tank is over 30 inches long, each end must have the total specified safety discharge area.	(12) Subject to conditions of paragraph (a)(1) of this section for the methyl chloride and sulfur dioxide optional portable tanks, one or more fusible plugs examined by the Bureau of Explosives and approved by the Associate Director for OE may be used on these tanks in place of safety relief valves of the spring-loaded type. The fusible plug or plugs must be in accordance with CGA Pamphlet S-1.2, to prevent a pressure rise in the tank of more than 120 percent of the design pressure. If the tank is over 30 inches long, each end must have the total specified safety discharge area.
§ 173.332(d).....	(d) Spec. 105A500-W or 105A600-W (§§ 179.100 and 179.101 of this subchapter). Tank cars. Tank must be restenciled 105A300-W and be equipped with safety valves of the type and size used on spec. 105A300-W (§§ 179.100 and 179.101 of this subchapter) tank car. Tank car tank must be equipped with approved dome fittings and safety devices, and with cork insulation at least 4 inches in thickness. Each tank car must be marked "HYDROCYANIC ACID" in accordance with the requirements of § 172.330 of this subchapter. Written procedure covering details of tank car appurtenances, dome fittings and safety devices, and marking, loading, handling, inspection, and testing practices shall be filed with and approved by the Bureau of Explosives before any tank car is offered for transportation of hydrocyanic acid. The maximum permitted filling density is 63 percent of the water capacity of the tank.	(d) Spec. 105A500-W or 105A600-W (§§ 179.100 and 179.101 of this subchapter). Tank cars. Tank must be restenciled 105A300-W and be equipped with safety valves of the type and size used on spec. 105A300-W (§§ 179.100 and 179.101 of this subchapter) tank car. Tank car tank must be equipped with approved dome fittings and safety devices, and with cork insulation at least 4 inches in thickness. Each tank car must be marked "HYDROCYANIC ACID" in accordance with the requirements of § 172.330 of this subchapter. Written procedure covering details of tank car appurtenances, dome fittings and safety devices, and marking, loading, handling, inspection, and testing practices shall be examined by the Bureau of Explosives and approved by the Associate Director for OE before any tank car is offered for transportation of hydrocyanic acid. The maximum permitted filling density is 63 percent of the water capacity of the tank.
§ 173.333(a)(2).....	(2) Specification 106A500X (§§ 179.300, 179.301 of this subchapter) tanks. Authorized only for phosgene. Each tank must be approved by the Bureau of Explosives. Tanks must not be equipped with safety devices of any type. Outage must be sufficient to prevent tanks from becoming liquid full at 130°F. (55°C.) (See §§ 174.200 and 177.834(m) of this subchapter for special requirements for rail and highway shipments.)	(2) Specification 106A500X (§§ 179.300, 179.301 of this subchapter) tanks. Authorized only for phosgene. Tanks may not be equipped with safety devices of any type. Outage must be sufficient to prevent tanks from becoming liquid full at 130°F. (55°C.) (See §§ 174.200 and 177.834(m) of this subchapter for special requirements for rail and highway shipments.)
§ 173.336(a)(3).....	(3) Specification 106A500X or 110A500W (§§ 179.300, 179.301 of this subchapter) tanks. Each tank must be equipped with gas tight valve protection caps which must be approved by the Bureau of Explosives. Tanks must not be equipped with safety devices of any type. Outage must be sufficient to prevent tanks from becoming liquid full at 130°F. (55°C.) (See §§ 174.600 and 177.834(m) of this subchapter for special requirements for rail and highway shipments.) Specification 110A500W tanks must be stainless steel.	(3) Specification 106A500X or 110A500W (§§ 179.300, 179.301 of this subchapter) tanks. Each tank must be equipped with gas tight valve protection caps. Tanks must not be equipped with safety devices of any type. Outage must be sufficient to prevent tanks from becoming liquid full at 130°F. (55°C.) (See §§ 174.600 and 177.834(m) of this subchapter for special requirements for rail and highway shipments.) Specification 110A500W tanks must be stainless steel.
§ 173.336(a)(4) Last sentence.	(4) Written procedure covering details of tank car appurtenances, dome fittings and safety devices, and marking, loading, handling, inspection, and testing practices shall be filed with and approved by the Bureau of Explosives before any tank is offered for transportation of nitrogen tetroxide.	(4) Written procedure covering details of tank car appurtenances, dome fittings, safety devices, marking, loading, handling, inspection, and testing practices must be examined by the Bureau of Explosives and approved by the Associate Director for OE before any tank car is offered for transportation of nitrogen tetroxide.
§ 173.366(a)(3).....	(3) In addition to specification containers prescribed in this section, arsenic (arsenic trioxide) or arsenic acid (solid) may be shipped when packed in portable, collapsible, rubber containers, not over 70 cubic feet capacity, of a type approved by the Bureau of Explosives. Authorized for carload or truckload shipments only.	(3) In addition to specification containers prescribed in this section, arsenic (arsenic trioxide) or arsenic acid (solid) may be shipped when packed in portable, collapsible, rubber containers, not over 70 cubic feet capacity, of a type examined by the Bureau of Explosives and approved by the Associate Director for OE. Authorized for carload or truckload shipments only.
§ 173.370(a)(13).....	(13) Bulk in strong, water-tight, metal portable containers of not over 70 cubic feet capacity each approved by the Bureau of Explosives.	(13) Bulk in strong, water-tight, metal portable containers of not over 70 cubic feet capacity each and approved by the Associate Director for OE.
§ 173.385(b).....	(b) These articles must not be assembled with or packed in the same compartment with mechanically or manually operated firing, igniting, bursting, or other functioning elements, unless of a type or design approved by the Bureau of Explosives.	(b) These articles must not be assembled with or packed in the same compartment with mechanically or manually operated firing, igniting, bursting, or other functioning elements, unless of a type or design examined by the Bureau of Explosives and approved by the Associate Director for OE.
§ 173.385(c).....	(c) Pending approval by the Department of regulations classifying the numerous devices within the general descriptions of this section, and providing appropriate restrictions to be observed in the transportation thereof, no shipment of packages containing articles under this section shall be made until samples thereof have been examined by the Bureau of Explosives or by other competent testing laboratory in the presence of representative of the Bureau of Explosives, and the shipment is shown to possess such resistance to shocks of transportation and protection against leakage of contents as are afforded by standard types of packages described in Part 178 of this chapter, and the packages are labeled or marked to show compliance with this Part.	(c) No shipment of packages containing articles under this section may be made until samples thereof have been examined by the Bureau of Explosives, or examined under their supervision, and approved by the Associate Director for OE.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Note.—The Materials Transportation Bureau has determined that this document will not have a major impact under Executive Order 12044 and DOT implementing procedures (44 FR 11034), nor an environmental impact under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the docket.

Issued at Washington, D.C., on November 13, 1979.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 79-36377 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register

Vol. 44, No. 228

Monday, November 26, 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 Informal Action; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Informal Action of the Administrative Conference of the United States, to be held in Hearing Room B of the Interstate Commerce Commission, between 12th and 13th Streets on Constitution Avenue, N.W., Washington, D.C. This meeting will be held at 10:30 a.m. on December 13, 1979.

The purpose of this meeting is to discuss proposed new projects on agency permit issuance procedures, and other new business.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance of the meeting. 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, contact Jeffrey Lubbers (202-254-7065). Minutes of the meeting will be available on request.

Richard K. Berg,
Executive Secretary.

November 19, 1979.

[FR Doc. 79-36208 Filed 11-23-79; 8:45 am]

BILLING CODE 6110-01-M

Committee on Judicial Review; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United

States, to be held at 10:30 a.m., Thursday, December 13, 1979, in the fourth floor Conference Room of Covington and Burling, 888 16th Street, N.W., Washington, D.C.

The Committee will meet to discuss future projects.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance of the meeting. 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, contact Linda Sedivec (202-254-7065). Minutes of the meeting will be available on request.

Richard K. Berg,
Executive Secretary.

November 19, 1979.

[FR Doc. 79-36209 Filed 11-23-79; 8:45 am]

BILLING CODE 6110-01-M

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thursday, December 13, 1979 at 1:45 p.m. and on Friday, December 14, 1979 at 9:45 a.m. in Hearing Room B of the Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, D.C.

The Conference will consider proposed recommendations on the following matters:

1. Appropriate restrictions on participation by a former agency official in matters before the agency.
2. Elimination of the presumption of validity of agency rules and regulations in judicial review, as exemplified by the Bumpers Amendment.
3. Hybrid rulemaking of the Federal Trade Commission—administration of

the program to reimburse participants' expenses.

In addition the Conference will consider a proposed resolution advocating an enhanced role for the Administrative Conference in procedural reform, proposed bylaw amendment on member attendance, and any new business.

Plenary Sessions of the Conference are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037, telephone (202) 254-7020.

Dated: November 20, 1979.

Richard K. Berg,
Executive Secretary.

[FR Doc. 79-36210 Filed 11-23-79; 8:45 a.m.]

BILLING CODE 6110-01-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice is hereby given that, during the week ended November 16, 1979 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
Nov. 13, 1979	37064	United Air Lines, Inc., P.O. Box 66100, Chicago, Illinois 60666. Application of United Air Line, Inc. pursuant to Section 401(e)(7)(B) of the Act and Part 302 of the Board's Rules of Practice request amendment of its Certificate of Public Convenience and Necessity for Routes 1 and 57 so as to remove the city pairs below from the list of restricted markets in Appendix A attached to United's Certificate. This would allow United to operate round trip nonstop service in the following markets: Dayton—Denver Dayton—Los Angeles Denver—Columbus Los Angeles—Columbus Richmond—Chicago Conforming answers and applications are due November 27, 1979.
Nov. 14, 1979	37084	USAir, Inc., Washington National Airport, Washington, D.C. 20001. Application of USAir, Inc. pursuant to Section 401 of the Act and Part 201 and Subpart Q of Part 302 of the Economic Regulations requests an amendment of its certificate of public convenience and necessity for Route 97-F so as to authorize USAir to engage in scheduled nonstop air transportation of persons, property and mail between Bermuda, on the one hand, and Baltimore, Maryland, Boston, Massachusetts, New York, New York, and Newark, New Jersey, by amending USAir's certificate for Route 97-F to include a new segment as follows: "Between the terminal point Bermuda, and the alternate terminal points Baltimore, Maryland, Boston, Massachusetts, New York, New York, and Newark, New Jersey." * Conforming answers and applications are due December 11, 1979.
Nov. 15, 1979	37093	United Air Lines, Inc., P.O. Box 66100, Chicago, Illinois 60666. Application of United Air Lines, Inc. pursuant to Section 401 of the Act, Part 201 of the Board's Economic Regulations, and Part 302 of the Board's Rules of Practice requests under Subpart Q an amendment of its Certificate of Public Convenience and Necessity for Route 1 so as to authorize it to perform round trip nonstop air transportation between Chicago, Illinois and Phoenix, Arizona. Conforming answers and applications are due December 13, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-36333 Filed 11-23-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-11-125; Docket 37109]

Limitation of Excess Baggage Allowance in Certain Caribbean Markets Proposed by Eastern Air Lines, Inc.; Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 16th day of November, 1979

By tariff revisions ¹ filed September 18 and marked to become effective November 17, 1979, Eastern Air Lines, Inc. (Eastern) proposes to revise its excess baggage allowance rule to provide that no more than one piece of excess baggage over the three permitted "free" will be accepted between the U.S. and Caribbean points, except Bermuda and the Bahamas. Currently, Eastern will accept any number of excess bags upon payment of \$24 per piece. According to Eastern, the purpose of the proposed revision is to discourage the tender of inordinate amounts of baggage in these markets.

A complaint requesting rejection or

suspension pending investigation of this proposal has been filed by DHL Corporation (DHL), an air courier service. DHL states that: Eastern gives no indication of the markets in which the problems are acute, the number of flights on which there are problems, and the frequency or seasonality of problems and, consequently, the proposed solution may be too severe and generalized; while Eastern alleges that it recently had to charter flights to transport abnormal amounts of excess baggage, it does not indicate when "recently" was the number of such flights, or the number of days delay in delivering excess baggage, nor does the proponent state whether freight or mail was transported on the combination flights which could not accommodate all baggage; as recently as August 13, Eastern was permitted to increase excess baggage charges to \$24 per bag for each item in excess of the free baggage allowance, and, with no more than 30 days' experience, the carrier has decided that this charge is insufficient to discourage this traffic and that this embargo-like rule for year-round effect

¹ Revisions to Tariff C.A.B. No. 55, issued by Air Tariffs Corp., Agent.

is required; instead of providing in its justification the data and statistics necessary to justify this rule, Eastern recites that it is having problems and that the proposal is the solution; American's rule that no excess baggage will be accepted to certain Caribbean points between December 1 and 25 does not support Eastern's proposal since that rule is limited geographically and is of short duration; Eastern has failed to state the extent of the problem: such failure of proof deprives the Board of the information essential to determine whether Eastern has demonstrated the need for a rationing system different from its recent price increase and whether its proposal is reasonable.

In support of its proposal and in answer to the complaint, Eastern asserts, among other things, that: the proposed limitation is designed to alleviate baggage problems that it has continued to experience in its U.S.-Caribbean service; on flights departing for the Caribbean tremendous volumes of excess baggage are being loaded, often with some items left behind; recently it has had to charter flights merely to transport excess baggage that, due to space limitations, could not be carried on its regularly scheduled service; these charters have resulted in delays of up to a week in delivering baggage to the passenger and have resulted in additional costs; excess baggage on southbound flights normally consists of large amounts of household and other commercial goods purchased in the U.S., and are in fact, freight; the proposed limit is designed to have such items shipped as freight since any additional baggage over the maximum of four pieces could be shipped as freight; although Eastern was permitted to increase its excess baggage charges recently, the rate increase has not alleviated the problem; the concept of limiting excess baggage was initiated by American with its recent embargo in certain Caribbean markets; and Eastern has followed American's strategy, but has extended its applicability to the entire year since it believes the problem is a continuing one.

The Board finds that the prohibition of excess baggage proposed by Eastern may be unlawful and should be investigated.

We have decided not to suspend Eastern's proposal because we are generally reluctant to interfere with management decisions on matters like this where, as here, the markets are competitive. As the Board stated in connection with the recent Pan American and TWA passenger fare filings, "our efforts to regulate even [international] fares are characterized more by our caution in making sure that we allow the airlines enough flexibility to provide good service and earn an adequate return than by our ability to eliminate all abuse of monopoly power." Order 79-9-75, p. 5.

We are, however, instituting an investigation because we are particularly concerned with the impact of the proposal on the traveling public and want to explore whether there are other alternatives which may meet Eastern's concerns but which will also alleviate the effect which this proposal would appear to have on the traveling public. In the meantime, we are concerned that this rule will disrupt the passengers' anticipated travel plans, particularly at this time of year. We direct Eastern to make every effort to inform passengers of this restriction at the time they make their reservations. It is our intent that these provisions be applied with the least amount of inconvenience as possible to the passenger.²

Accordingly,

1. We institute an investigation to determine whether the provisions set forth in Appendix A hereof, and rules and regulations or practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful; and if we find them to be unlawful, to act appropriately to prevent the use of such provisions or rules, regulations, or practices;

2. We shall defer dismissal of the complaint of DHL Corporation in Docket 36741 pending investigation; and

3. We shall serve copies of this order upon Eastern Air Lines, Inc. and DHL Corporation.

² We would hope that the various alternatives can be explored by our staff and the parties on an informal basis. We have asked our staff to complete this process in the next two weeks and to report back to us.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board.³

Phyllis T. Kaylor,
Secretary.

Appendix A—Passenger Rules Tariff No. PR-3, C.A.B. No. 55, Issued by Air Tariffs Corporation, Agent

On 19th Revised Page 46-0, Rule No. 16(X)(1)(d).

[FR Doc. 79-36335 Filed 11-23-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37109]

Limitation of Excess Baggage Allowance Proposed By Eastern Air Lines, Inc., In Certain Caribbean Markets; Conference

Pursuant to Board Order 79-11-125, notice is hereby given that a conference in the above-entitled proceeding will be held on November 28, 1979, at 10:00 a.m., in Room 1003C (North Building), 1875 Connecticut Avenue, N.W., Washington, D.C., for the purpose of exploring "alternatives which may meet Eastern's concerns but which will also alleviate the effect which" Eastern's "proposal would appear to have on the traveling public." Copies of this notice shall be served on the parties named in Order 79-11-125, November 16, 1979. All interested persons are invited to attend.

Phyllis T. Kaylor,
Secretary.

November 20, 1979.

[FR Doc. 79-36332 Filed 11-23-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 33363]

Former Large Irregular Air Service Investigation; Continuance of Hearings

The hearings heretofore set for 20 November 1979 on the application of Joseph S. Norman II and for 27 November 1979 on the application of Lone Star Airways, Inc., are continued at the same time and place as follows: Lone Star Airways, February 5, 1980, Joseph S. Norman II, February 11, 1980.

Dated at Washington, D.C., 19 November 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[FR Doc. 79-36330 Filed 11-23-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-11-123; Docket 37106]

Oklahoma City/Tulsa Service Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-11-123, Oklahoma City/Tulsa Service Show-Cause Proceeding, Docket 37106.

SUMMARY: The Board is proposing to grant nonstop authority between the alternate terminal points Oklahoma City and Tulsa, on the one hand, and the alternate terminal points Atlanta, Chicago (O'Hare), Chicago (Midway), Rockford, Los Angeles, San Diego, San Francisco, Memphis, Phoenix, Tucson and St. Louis, on the other, to Continental Air Lines (Docket 36402), USAir (Docket 36583) and Ozark Air Lines (Docket 36610); nonstop authority between the alternate terminal points Oklahoma City and Tulsa, on the one hand, and the alternate terminal points Memphis, St. Louis, Kansas City, Chicago (O'Hare), Chicago (Midway), Rockford, Atlanta, Tucson, Phoenix, San Diego, Los Angeles, San Francisco, Houston, Denver, Salt Lake City and Las Vegas, on the other, to Western Air Lines (Docket 36584); and nonstop authority between the alternate terminal points Oklahoma City and Tulsa, on the one hand, and the alternate terminal points Chicago (O'Hare), Chicago (Midway), Rockford, Memphis, Phoenix, St. Louis and Tucson, on the other, to Southwest Airlines (Docket 36597), and any other fit, willing and able applicant whose fitness can be established by officially noticeable material. The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by December 20, 1979, a statement of objections together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon parties listed below.

ADDITIONAL DATA: All existing and further applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) estimates of fuel to be consumed in the first year and statements of fuel availability are directed to do so no later than December 5, 1979.

ADDRESSES: Objections to issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 37106, which we have entitled the *Oklahoma City/Tulsa Service Show-Cause Proceeding*.

FOR FURTHER INFORMATION CONTACT:

Mary Catherine Terry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5384.

SUPPLEMENTARY INFORMATION:

Objections should be served upon: Continental Air Lines, Ozark Air Lines, Southwest Airlines, USAir and Western Air Lines; the governors and state commissioners or Departments of Transportation of the states of Georgia, Illinois, Colorado, Texas, Missouri, Nevada, California, Tennessee, Arizona, Utah and Oklahoma; and the mayors and airport managers of the cities of Atlanta, Chicago, Rockford, Denver, Houston, Kansas City, Las Vegas, Los Angeles, Memphis, Oklahoma City, Phoenix, St. Louis, Salt Lake City, San Diego, San Francisco, Tulsa and Tucson.

The complete text of Order 79-11-123 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a post-card request for Order 79-11-123 to the Distribution Section, Civil Aeronautics Board, Washington, D.C., 20428.

By the Bureau of Domestic Aviation,
November 16, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-36334 Filed 11-23-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37077]

United States-Peru Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled matter will be held on December 11, 1979, at 9:30 a.m. (local time) in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge William A. Kane, Jr.

Civil Aeronautics Board Order 79-11-89 served on November 19, 1979 contained as an appendix the Bureau of International Aviation's request for information and evidence in this proceeding. In accordance with the Board's order comments of the other parties on the Bureau's request shall be circulated on or before December 4, 1979. The submissions of the other parties shall be limited to points on which they differ with the Bureau of International Aviation, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

³ All members concurred.

Dated at Washington, D.C., November 20, 1979.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 79-36329 Filed 11-23-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37077]

United States-Peru Case; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to Judge Kane.

Dated at Washington, D.C., November 19, 1979.

Joseph J. Saunders,

Chief, Administrative Law Judge.

[FR Doc. 79-36331 Filed 11-23-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

Duke University et al.; Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before December 17, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 735 at 666-11th Street N.W., Washington, D.C.

Docket No. 79-00455. Applicant: Duke University, Durham, North Carolina 27706. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: The article is intended to be used for studies of primary spermatocytes of the grasshopper and chromatin isolated from sea urchin cells. Investigations will be conducted to determine whether kinetochore microtubules arise by nucleation or by binding. The

arrangement of kinetochore microtubules immediately after their appearance and during their earliest interactions with the rest of the spindle will also be investigated. Application received by Commissioner of Customs: October 15, 1979.

Docket No. 79-00456. Applicant: Sandia Laboratories, Sandia Corporation, P.O. Box 5800, Albuquerque, New Mexico 87185. Article: Thermoelectric Generator System. Manufacturer: Global Thermoelectric Power Systems Ltd., Canada. Intended use of article: The Article is intended to be used in a prototype National Seismic Station (NSS) an unmanned remote seismic station that collects seismic data and relays it through a satellite to a central control and receiving station. The article will provide the power necessary to operate the seismometers, transmitter and associated electronics. The primary intent of the program is to develop an extremely reliable station that can operate unmanned with only annual refueling and maintenance. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 79-00457. Applicant: National Radio Astronomy Observatory, Associated Universities, Inc., 2010 N. Forbes Blvd., Suite 100, Tucson, Arizona 85705. Article: Two (2) each, Varian VAT-2002 B14 Water Cooled Heat Sink; and Varian VAB-2001 B13 Water Cooled Heat Sink. Manufacturer: Varian Associates Canada, Ltd. Canada. Intended use of article: The articles are accessories to existing klystron systems which are being used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver that is used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 79-00458. Applicant: National Radio Astronomy Observatory, Associated Universities Inc., 2010 N. Forbes Blvd., Suite 100, Tucson, Arizona 85705. Article: Repair of Varian Klystron Type VRB-2112A) SN 70299. Manufacturer: Varian Associates of Canada Ltd., Canada. Intended use of article: The article will be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 79-00459. Applicant: National Radio Astronomy Observatory, Associated Universities Inc., 2010 N.

Forbes Blvd., Suite 100, Tucson, Arizona 85705. Article: Klystron, Model VRT-2124B and Accessories. Manufacturer: Varian Associates of Canada Ltd., Canada. Intended use of article: The article will be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 79-00460. Applicant: The University of Texas at Austin, Electric Engineering Research Laboratory, 10100 Burnet Road, Austin, Texas 78758. Article: Millimeter Reflex Klystron. Manufacturer: Varian Associates of Canada, Canada. Intended use of article: The article will be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 79-00461. Applicant: University of California, Department of Chemistry, Santa Barbara, California 93106. Article: MMZAB 2F High Resolution Mass Spectrometer. Manufacturer: The Vacuum Generators Micromass Co., United Kingdom. Intended use of article: The article is intended to be used for a variety of purposes including (1) analytical applications to allow compound identification, (2) determination of ion structure, (3) measurement of kinetic energy release, (4) properties of reaction coordinates and structures of products of ion molecule reactions, (5) mixture analysis without prior separation, and (6) analytical application of chemical ionization. The experiments to be conducted will include the following projects: 1. Reaction mechanism and details of potential surfaces along the reaction path. 2. Determination of ion structures. 3. Ion Energy Distributions. 4. Production Identification. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 79-00463. Applicant: Texas A & M University—Texas Veterinary Medical Diag. Lab., P.O. Drawer 3040, College Station, Texas 77840. Article: Electron Microscope, Model EM-109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of ultrastructure of viruses and cellular changes caused by animal viruses.

Experiments to be conducted which will involve obtaining specimens from animals suspected of being affected with a viral disease, identifying viruses directly by negative staining, and studying their pathogenesis at the cellular level in vivo as well as in vitro experiments. The article will also be used to instruct residents, staff and graduate students in electron microscopy. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 79-00464. Applicant: Department of the Interior, U.S. Geological Survey, Topographic Division, 12201 Sunrise Valley Drive, National Center, (#526) Reston, Virginia 22092. Article: Stereoplotting Systems with Accessories, Model PG2. Manufacturer: Kern and Co., Ltd., Switzerland. Intended use of Article: The article is intended to be used for studies of aerial photographs of the earth's surface used in stereopairs which permit accurate measurement of the earth's features thus permitting compilation of data which may be combined to produce accurate topographic maps. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 80-00002. Applicant: Harvard Medical School, Purchasing Department, 75 Mount Auburn Street, Cambridge, Massachusetts 02138. Manufacturer: Varian MAT, West Germany. Intended use of article: The article is intended to be used for biomedical research of the interplay of cells with their environment. In pursuing this research, it will be necessary to relate the pathophysiological consequences to known modifications of the interacting compound, i.e. the carbohydrate and glycoconjugate structures, on biosurfaces. Specific projects will include investigations of the following: 1. Heparin Structure 2. Metabolism and function of membrane derived oligosaccharides 3. Glycoconjugate studies 4. Structural studies of lipid-linked oligosaccharides 5. Development studies in Glycoconjugate Analysis. Application received by Commissioner of Customs: October 18, 1979.

Docket No.: 80-00003. Applicant: University of Wisconsin-Madison Department of Physics, 1150 University Avenue, Madison, Wisconsin 53706. Article: ANAC Model 2976 Crossfield Spin Precessor and Accessories. Manufacturer: ANAC Incorporated, New Zealand. Intended use of article: The article is intended to be used for the study of the nuclei of atoms throughout the periodic table involving the effect of

proton or deuteron polarization on the scattering process. The experiments to be conducted will involve the acceleration of a beam of polarized hydrogen ions to the energies where nuclear phenomena are important. Observations will be concerned with the number and type of interactions that occur as a function of the polarization state and scattering angle. In addition, the article will be used in connection with Physics Department Course No. 990, Graduate Research. Application received by Commissioner of Customs: October 18, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-36228 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-25-M

The George Washington University; Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301.).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00335. Applicant: The George Washington University, Washington, D.C. 20052. Article: Mobile Solar Test Facility. Manufacturer: Solarfin Products, Canada. Intended use of article: The article is intended to be used for educational purposes in the courses: ME 194—Energy Conversion, Undergraduate Mechanical Engineering—designed to provide the students engineering information on fundamentals and design of energy conversion systems including the solar energy applications. ME 259—Solar Heating and Cooling System; Graduate Mechanical Engineering—dealing with the application of solar energy for heating and cooling of buildings.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article permits demonstration of a variety of collector

principles (utilizing several different collectors with different absorption rates). The National Bureau of Standards advises in its memorandum dated October 19, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use. The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-36224 Filed 11-23-79; 8:45 a.m.]

BILLING CODE 3510-25-M

Moody College of Marine Sciences; Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301.).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666 11th Street, NW. (Room 735) Washington, D.C.

Docket Number: 79-00299. Applicant: Moody College of Marine Sciences of Texas A&M University, Pelican Island, Galveston, Texas 77553. Article: Nuclear Magnetic Resonance Spectrometer, Model PS-400 and Accessories. Manufacturer: Spin Tech Electronics Ltd., Canada. Intended use of article: The article is intended to be used in conjunction with a magnetic system to measure proton relaxation times T_1 and T_2 in a variety of samples including plant and animal tissues, marine sediments and hydrated minerals. The relaxation times will provide detailed information about the nature of the interactions between the protons of the water molecules and the molecular surfaces of the various samples, and in addition they will provide a measure of the restrictions imposed on the translation and rotational mobility of the water molecules themselves.

Temperature studies will be conducted on the depression of the

freezing point of water in the various samples. Polymerization and denaturation process in various protein solutions will also be studied with the apparatus since the relaxation times are quite sensitive to the conformational changes in the protein substrate accompanying these processes. In addition, the article will be used in at least two courses: Marine Science 485 (Special Research Problems in Marine Science) and Marine 489 (Special Topics in Electrical and Physical Measurements for the Marine Sciences).

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a portable 30 megahertz instrument that provides a wide multipulse capability (for example, for T_1 , T_2 , $T_{1\rho}$, $T_{1\rho}$ etc.). Comparable domestic instruments, such as the Praxis PR-103 manufactured by the Praxis Corporation, do not provide this capability. The National Bureau of Standards and the Department of Health, Education, and Welfare advises in their memoranda dated October 14, 1979 and September 18, 1979 respectively that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no comparable domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other comparable instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105 Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-36225 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-25-M

New Mexico Institute of Mining & Technology; Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897)

and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00354. Applicant: New Mexico Institute of Mining and Technology, Campus Station, Socorro, NM 87801. Article: TH 600 Fluid Inclusion Heating Stage and Control Unit. Manufacturer: Linkam Scientific Instruments, United Kingdom. Intended use of Article: The article will be used for microscopic study of fluid inclusions which may yield the temperature of the mineral depositing fluids, the pressure (or depth) at which deposition occurred and some knowledge of the chemistry of depositing fluids. Fluid inclusions studies will also be used to study hydrothermal ore deposits and metamorphic rocks to determine temperature and pressure during metamorphism. The foreign article will also be used for the education of graduate students in ore deposits in their thesis research.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article permits the study of a specimen at temperatures between -80 and 600 degrees centigrade with its combined heating and cooling capability. The National Bureau of Standards advises in its memorandum dated October 22, 1979 that (1) the capability of the foreign article described no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-36226 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-25-M

University of California; Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00365.

APPLICANT: University of California, San Diego, Marine Life Research Group, Scripps Institution of Oceanography, T-6, SIO, A028, La Jolla, CA 92093. Article: 8 (each) Deep Ocean Command Releases, 30 (each) Pyro Technical Releases and Accessories.

Manufacturer: Institute of Oceanographic Sciences, United Kingdom. Intended use of article: The article is intended to be used for the study of particulate sediment as an index to the chemical and biological conditions of the ocean. Experiments are conducted to achieve the objectives of seasonal collection of particles, the analysis of these particles in terms of their chemical and biologic constituents to more standard oceanographic measurement parameters such as temperature, nutrients, current flow, productivity and net filter samples.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a dual release system that provides for system release and sample closure functions by command of one acoustic system. The National Oceanic and Atmospheric Administration advises in its memorandum dated October 23, 1979 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-36227 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-25-M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, December 18, 1979, at 9:30 a.m. in Room B841, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

The subcommittee meeting agenda has four parts:

- (1) Opening remarks by the Subcommittee Chairman.
- (2) Presentation of papers or comments by the public.
- (3) Pending items of business:
 - a. Swiss Blue Certificate
 - b. Technical Data rewrite
 - c. Qualified License concept
- (4) Pre-licensing evaluation of equipment; formulation of Subcommittee recommendation and
- (5) Discussion of improved method and format for submitting export license applications.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: November 19, 1979.

Kent Knowles,

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

[FR Doc. 79-36379 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-25-M

Maritime Administration

[Docket No. S-655]

Application

Notice is hereby given that Waterman Steamship Corporation (Waterman), by letter dated May 11, 1979, has advised that it continues to seek and desires the award of operating-differential subsidy (ODS) for service on Trade Routes (TRs) 5-7-8-9 (U.S. North Atlantic/United Kingdom and Continental Europe) as described in its application of June 16, 1975, for a twenty-year ODS Agreement pursuant to Title VI (46 USC 1171-1183) of the Merchant Marine Act, 1936, as amended (the Act). Waterman's June 16, 1975 application was previously noticed in the Federal Register on July 11, 1975 (40 FR 29315) under Docket No. S-455 and was consolidated for hearing with another Waterman application in Docket No. S-421. In a decision served

on September 5, 1978, the Maritime Subsidy Board concluded, *inter alia*, that section 605(c) of the Act was a bar to the award of ODS to Waterman for service on TRs 5-7-8-9.

On June 18, 1979, Waterman filed a motion for partial summary disposition of issues arising under section 605(c) of the Act in connection with its June 16, 1975 application for ODS for service on TRs 5-7-8-9. Waterman states that the inadequacy of U.S.-flag service on TRs 5-7-8-9 has recently been established in Docket No. S-610, relating to the application for ODS by Farrell Lines Incorporated, therefore no material factual issues exists with respect to the present and future inadequacy of U.S.-flag service on TRs 5-7-8-9 and no evidentiary hearing is required. Waterman requests that the Board make the necessary "adequacy" determination under section 605(c) of the Act with respect to Waterman's pending ODS application for service on TRs 5-7-8-9. On November 7, 1979, Waterman filed a request for expedited consideration of its motion for partial summary disposition.

Waterman's submissions will be considered as a new application for ODS on TRs 5-7-8-9. Interested parties may inspect Waterman's submissions in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th & E Streets, N.W., Washington, DC 20230.

Any person, firm or corporation having an interest in such application and who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit such views and comments in writing, with 15 copies, to the Secretary, Maritime Subsidy Board, by the close of business on December 20, 1979. The Maritime Subsidy Board will consider such views and comments and take such actions with respect thereto and with respect to Waterman's motion as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating Differential Subsidy (ODS)).

By Order of the Maritime Subsidy Board.

Dated: November 20, 1979.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 79-36378 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-15-M

Minority Business Development Agency

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise, announces that it is seeking applications under its program to operate one project for a 12 month period beginning February 1, 1980 in the State of Delaware. The cost of the project is estimated to be \$35,000 and the Project Number is 03-10-55170-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide, at no cost to the public, direct general business services to minority individuals and firms seeking business information, counseling, financial packaging assistance, and assistance in identifying and exploiting business opportunities in new and/or expanded markets.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, Washington Regional Office, 1730 K Street, N.W., Suite 402, Washington, D.C. 20006.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local Government, Federally recognized Indian Tribal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit.

If an application is approved, an initial award will be made for a period

specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 9, 1979.

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36347 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise, announces that it is seeking applications under its program to operate one project for a 12 month period beginning February 1, 1980 in the State of Minnesota.

The cost of the project is estimated to be \$134,000 and the Project Number is 05-60-01056-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to establish a capability for the collection and dissemination of business information; establish a capability to promote increased investment and private sector participation in minority business enterprise development; promote the adoption and implementation of corporate policies that will encourage the purchase of goods and services from minority owned companies; and participate in and support programs that will increase the level of Federal, State and local Government purchases from minority companies.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may either be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency,

Chicago Regional Office, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local government, federally recognized Indian Tribal Unit, educational institution, hospital, other type of nonprofit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking.

The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit.

If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 20, 1979.

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36348 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA) formerly the Office of Minority Business Enterprise (OMBE), announces that it is seeking applications under its program to operate one project for a 12 month period beginning February 1, 1980 in the State of Ohio. The cost of the project is estimated to be \$395,500 and the Project Number is 05-60-00816-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects

which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to establish a capability for the collection and dissemination of business information; establish a capability to promote increased investment and private sector participation in minority business enterprise development; promote the adoption and implementation of corporate policies that will encourage the purchase of goods and services from minority owned companies; and participate in and support programs that will increase the level of Federal, State, and local Government purchases from minority companies.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local government, Federally recognized Indian Tribal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: November 20, 1979.

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36349 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise, announces that it is seeking applications under its program to operate one project for a 12 month period beginning February 1, 1980 in the State of Ohio. The cost of the project is estimated to be \$395,500 and the Project is 05-60-00635-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide the collection and dissemination of business information; business packaging; management services, and technical assistance; mobilization of private sector involvement; participation and support of programs that will increase the level of Federal, State, and local Government purchases from minority companies; promotion, adoption and implementation of corporate policies that will encourage the purchase of goods and services from minority-owned companies.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603. In requesting an application kit, the applicant must specify its profit status (i.e., a State or local Government, Federally recognized Indian Tribal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked

as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application kit is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: November 20, 1979.

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36350 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise, announces that it is seeking applications under its program to operate one project for a 12 month period beginning February 1, 1980 in the City of Philadelphia, Pennsylvania.

The cost of the project is estimated to be \$675,000 and the Project Number is 03-10-55110-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide general business services, and other related business services, of a business development center to the private sector. Such services include loan packaging, management and technical assistance, marketing advice, procurement opportunities, and construction contractor's assistance.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may either be

requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, Washington Regional Office, 1730 "K" Street, N.W., Suite 402, Washington, D.C. 20006.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local Government, Federally recognized Indian Tribal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: November 20, 1979.

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36351 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA) [formerly the Office of Minority Business Enterprise] announces that it is seeking applications under its program to operate one project for a 10 month period beginning February 1, 1980 in the city of Pittsburgh, Pennsylvania. The cost of the project is estimated to be \$356,889 and the Project Number is 03-10-55120-00.

Funding Instrument: It is anticipated that the funding instrument, as designed by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide the general business services, of a business development center to the private sector. Such services include loan packaging, management and technical assistance, marketing advice, procurement opportunities, and construction contractor's assistance.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may either be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, Program Support Staff, Room 5713, Box FR 9, 14th & Constitution Avenue, N.W., Washington, D.C. 20230 or by calling (202) 377-1714.

In requesting an application kit, specify the profit status of the applicant (i.e., a State or local Government, Federally recognized Indian Tribal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach, and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: November 20, 1979.

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36352 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise (OMBE), announces that it is seeking application under its program to operate one project for a 12 month period beginning in February 1, 1980 in Region I and II in the States of New York, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, Connecticut, Vermont, Puerto Rico, and the Virgin Islands. The cost of the project is estimated to be \$300,000. The Project Number is 02-20-7000-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide feasibility studies in all disciplines on an as needed basis. The recipient will be required to evaluate clients so as to determine the feasibility of further in-depth studies and expenditures for specific projects as the need arises. Recipients must also demonstrate the ability to contract specialized projects with proper consultants for final studies of excellence.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may either be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, New York Regional Office, 26 Federal Plaza, Room 3707, New York, New York 10007 or by telephoning (212) 264-2097.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local Government, Federally recognized Indian Tribal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the

instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit.

If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: November 19, 1979.

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36353 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise (OMBE), announces that it is seeking applications under its program to operate one project for a 12 month period beginning February 1, 1980 in the State of West Virginia.

The cost of the project is estimated to be \$30,000. The Project Number is 03-10-55160-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide a Financial Services Component in the State of West Virginia.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Applications Materials: An application kit for each of the projects may be requested by writing to the following address: U.S. Department of Commerce, Minority Business

Development Agency, Washington Regional Office, Suite 420, 1730 K Street, N.W., Washington, D.C. 20006.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local Government, Federally recognized Indian Tribal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit.

If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: November 20, 1979.

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36354 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise (OMBE), announces that it is seeking applications under its program to operate one project for a 12-month period beginning February 1, 1980 in the State of Georgia. The cost of the project is estimated to be \$500,000. The Project Number is 04-60-30450-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and

management assistance to minority business enterprises. This proposed project is specifically designed to mobilize and apply educational and business information; develop procurement opportunities; develop financial, technical, management, and marketing resources of the private, federal, State, and local sectors on behalf of the minority business community, in general, and their client portfolio, specifically. Provide management services and technical assistance to upgrade the construction marketing and performance skills among minority contractors in the areas of cost accounting, estimating, bidding, bonding, and construction management.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may either be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, Atlanta Regional Office, 1371 Peachtree Street, N.E., Suite 505, Atlanta, Georgia 30309.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local Government, Federally recognized Indian Tribal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit.

If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of December 21, 1979. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Allan A. Stephenson,
Deputy Director.

[FR Doc. 79-36223 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit

On September 5, 1979, Notice was published in the Federal Register (44 FR 51836), that an application had been filed with the National Marine Fisheries Service by Dr. Jennifer Buchwald, Department of Physiology, University of California-Los Angeles, Los Angeles, California 90024 to take by marking sixty (60) Northern elephant seals (*Mirounga angustirostris*) for the purpose of scientific research.

Notice is hereby given that on October 16, 1979, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to Dr. Jennifer Buchwald, subject to certain conditions set forth therein.

The Permit is available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 16, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-36358 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council's Scientific and Statistical Committee; Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), has established a Scientific and Statistical Committee (SSC), which will meet to discuss: Sea Scallop Fishery Management Plan (FMP), Logbooks, Icelandic Fishery Management, Lobster FMP development, and other Council business.

DATES: The meeting will convene on Wednesday, December 12, 1979, at 10 a.m. and adjourn at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Holiday Inn, Peabody, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts, Telephone: (617) 535-5450.

Dated: November 20, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-36380 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council's Scientific and Statistical Committee; Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), has established a Scientific and Statistical Committee (SSC) which will meet to: (1) Review the Billfish Fishery Management Plan (FMP); (2) Review the Mackerel Fall Out Study; (3) Discuss the Optimum Yield (OY) concept; (4) Discuss performance monitoring; and (5) Discuss other management business.

DATES: The meeting will convene on Monday, December 17, 1979, at 2 p.m. and will adjourn on Tuesday, December 18, 1979, at approximately 4 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at Council Headquarters, 1 Southpark Circle, Suite 306, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571-4366.

Dated: November 20, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-36381 Filed 11-23-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 8, 1980; Tuesday, January 15, 1980; Tuesday, January 22, 1980; and Tuesday, January 29, 1980 at 10:00 a.m. in Room 3D-325, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552, (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b (c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b (4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage

Committee, Room 3D-281, The Pentagon, Washington, D.C.

Dated: November 20, 1979.

H. B. Lofdahl,

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

[FR Doc. 79-36265 Filed 11-23-79; 8:45 a.m.]

BILLING CODE 3810-70-M

Modification of Procedures Regarding Review of Decisional Documents Issued by the Army, Navy, and Air Force Discharge Review Boards; Correction

In FR Doc 79-33781 appearing on page 62929 in the issue for Thursday, November 1, 1979, third column, paragraph 7, line 13, insert the following after "..... by the JSRA: "No member may participate in any action" concerning a case with.....

The above line was inadvertently omitted from the manuscript.

H. E. Lofdahl,

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

November 19, 1979.

[FR Doc. 79-36268 Filed 11-23-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[DOE-EIS-0060]

Availability of Draft Environmental Statement for Proposed Fiscal Year 1981 Program

Notice is hereby given that the Bonneville Power Administration (BPA), Department of Energy (DOE), has issued a Draft Environmental Impact Statement (DEIS) on BPA's Proposed Fiscal Year 1981 Program (DOE/EIS 0060). This DEIS assesses the generic and cumulative impacts expected from the construction and maintenance programs proposed by BPA for FY 1981. Site specific impacts of major components of the program are discussed in facility location supplements, included in the DEIS as a facility evaluation appendix.

Copies of the DEIS are available for public inspection at designated Federal depositories (for location, contact the Environmental Manager, BPA, P.O. Box 3621, Portland, Oregon 97208) and at DOE public document rooms located at:

Library, FOI—Public Reading Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C.

BPA, Washington, D.C., Office, Federal Building, Room 3352, 12th & Pennsylvania Avenue NW., Washington, D.C.

Library, BPA Headquarters, 1002 NE Holladay Street, Portland, Oregon
And in the following BPA Area and District Offices:

Eugene District Office, U.S. Federal Building, 211 East 7th Street, Room 206, Eugene, Oregon
Idaho Falls District Office, 531 Lomax Street, Idaho Falls, Idaho
Kalispell District Office, Highway 2 (East of Kalispell), Kalispell, Montana
Portland Area Office, 919 NE. 19th Avenue, Room 201, Portland, Oregon
Seattle Area Office, 415 First Avenue North, Room 250, Seattle, Washington
Spokane Area Office, U.S. Court House, Room 561, W. 920 Riverside Avenue, Spokane, Washington
Walla Walla Area Office, West 101 Poplar, Walla Walla, Washington
Wenatchee District Office, U.S. Federal Building, Room 314, 301 Yakima Street, Wenatchee, Washington

This document is being furnished to various Federal, State, and local agencies with environmental expertise, or which are otherwise likely to be interested in, or affected by, the proposed program. Copies of the document are also being furnished to State and local clearinghouses and to other interested groups and individuals.

A limited number of single copies are available for distribution by contacting the Environmental Manager, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, or the BPA Area and District Offices mentioned above.

Dated at Portland, Oregon, this 19th day of October 1979.

Ray Foleen,

Acting Administrator.

[FR Doc. 79-36341 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Airport Texaco, Miami, Fla.; 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 Airport Texaco, 2721 NW 42nd Avenue, Miami, Florida, 33142, on September 24, 1979.

This Proposed Remedial Order charges Airport Texaco with selling two grades of gasoline in excess of the maximum lawful selling price in violation of 10 CFR 212.93. It was determined that Airport Texaco violated the Federal Energy Pricing Guidelines by selling above the maximum lawful selling price in the amounts of 11.3¢ per gallon for Regular Leaded and 11.5¢ per gallon for Regular Unleaded. Additionally, Airport Texaco failed to

properly post the maximum lawful selling price for each grade of gasoline as required by 10 CFR 212.129.

Pursuant to 10 CFR 205.192, Airport Texaco is required by the Proposed Remedial Order to rollback its prices at the pump to effect a refund of \$1,178.40 in overcharges to its customers.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, Southeast District, Office of Enforcement, 1855 Peachtree Street, N.E., Atlanta, Georgia, 30309, Phone: (404) 881-2661. On or before December 11, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C., 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Ga., on the 14th day of November 1979.

James C. Easterday,

District Manager.

[FR Doc. 79-36244 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

Ancora-Citronelle Corp.; 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 (PRO) which was issued to Ancora-Citronelle Corporation, 332 Pine Street, Suite 508, San Francisco, California, on November 2, 1979. This PRO charges Ancora-Citronelle Corporation with pricing violations in the amount of \$861,497.13 connected with the sale of crude oil during the period September 1, 1973, through March 18, 1975, in the State of Mississippi.

A copy of the November 2, 1979, PRO, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia, 30309, Phone: (404) 881-2661. On or before December 11, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C., 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Ga., on the 14th day of November, 1979.

James C. Easterday,

District Manager of Enforcement, Southeast District.

[FR Doc. 79-36250 Filed 11-23-79; 8:45 a.m.]

BILLING CODE 6450-01-M

B. A. Wales, d.b.a. J&C Drilling Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective Date: July 25, 1979.

COMMENTS BY: On or before December 26, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone 214/767-7745.

SUPPLEMENTARY INFORMATION: On July 25, 1979, the Office of Enforcement of the ERA executed a Consent Order B. A. Wales dba J&C Drilling Company of Corpus Christi, Texas. Under 10 CFR 205.199(j), the Consent Order which involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

B. A. Wales, with its office located in Corpus Christi, Texas, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA, and B. A. Wales, entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1973 through May 31, 1978, and it included all sales of crude oil which were made during that period.
2. B. A. Wales allegedly improperly applied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart

D, when determining the prices to be charged for crude oil; and as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and B. A. Wales have agreed to a settlement in the amount of \$350,000. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and B. A. Wales.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily identifiable, the refund will be made through the DOE in accordance with CFR Part 205, Subpart V as provided below.

5. The provisions of 10 CFR 205.199j, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, B. A. Wales agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of \$350,000 in accordance with the provisions set forth in Payment Schedule as outlined below:

Date	Lease	Minimum amount to be paid to the U.S. Treasury each quarter
Sept. 1, 1979...	H. M. Roark...	\$25,000
Dec. 1, 1979...	H. M. Roark...	25,000
March 1, 1980...	H. M. Roark...	25,000
June 1, 1980...	H. M. Roark...	55,000
Sept. 1, 1980...	H. M. Roark...	55,000
Dec. 1, 1980...	H. M. Roark...	55,000
March 1, 1981...	H. M. Roark...	55,000
June 1, 1981...	H. M. Roark...	55,000
Total.....		350,000

Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to

subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199(i).

III. Submission of Written Comments

A. Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on B. A. Wales Consent Order." We will consider all comments we received by 4:30 p.m., local time, on December 26, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 15th day of November 1979.

Wayne I. Tucker,
District Manager, Southwest District
Enforcement, Economic Regulatory
Administration.

[FR Doc. 79-36252; Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

**Chana's Auto Service Center;
Proposed Remedial Order**

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Chana's Auto Service Center, 240 North Virgil Ave., Los Angeles, California 90004. This proposed Remedial Order charges Chana's Auto Service Center with pricing violations in the amount of \$1,811.02, connected with the resale of Motor gasoline during the period August 1, 1979 through September 29, 1979, in the State of California.

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 December 11, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR § 205.193.

Issued in Washington, D.C. on the 16th day of November 1979.

Robert D. Gerring,

Director, Program Operation Division.

[FR Doc. 79-36248 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

Charles M. Bryant; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Charles M. Bryant, Chuck Bryant's Chevron Service, 11403 East Whittier Blvd., Whittier, CA 90601. This proposed Remedial Order Charges Charles Bryant, Chuck Bryant Chevron with pricing violations in the amount of \$1,027.36, connected with the resale of Motor gasoline during the period August 1, 1979 through September 27, 1979, in the State of California.

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 December 11, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C. on the 16th day of November 1979.

Robert D. Gerring,

Director, Program Operation Division.

[FR Doc. 79-36245 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

Cosby Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: September 10, 1979. Comments by: December 26, 1979.

ADDRESS: Sent comments to: Jack L. Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Jack L. Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111. Phone: (415) 556-7200.

SUPPLEMENTARY INFORMATION: On September 10, 1979, the Office of Enforcement of the ERA executed a Consent Order with Cosby Oil Company of Whittier, California. Under 10 CFR 205.199(b), a Consent Order which involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. Consent Order

Cosby Oil Company, with its home office in Whittier, California, is a firm engaged in the purchase and resale of motor gasoline and is subject to the Mandatory Petroleum Price and Allocation Regulation at 10 CFR, Parts 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and Cosby Oil Company entered into a Consent Order to resolve certain actions which could be brought by ERA as a result of its audit of the motor gasoline products sold by Cosby Oil Company. This Consent Order only settles those matters relative to DOE's audit of Cosby

Oil Company doing business as a reseller of motor gasoline.

The significant terms of the Consent Order with Cosby Oil Company are as follows:

1. The period covered by the audit was November 1, 1973 through April 30, 1974.

2. DOE alleges that Cosby Oil Company charges prices for motor gasoline liquid products in excess of the maximum allowable to its customers in violation of the DOE regulations in 10 CFR 212.93 and predecessor regulations.

3. Cosby Oil Company does not admit to any violation of the DOE regulations. Cosby Oil Company agrees to refund to the DOE the sum of \$47,616.73, including interest. This amount will be refunded on or before September 10, 1979.

4. The provision of 10 CFR 205.199j are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

1. Refunded overcharges as described in I. 3 above will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 C.F.R. 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 C.F.R. 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 C.F.R. 205.199(a).

2. Refunded overcharges as determined in accordance with I. 3c. above will be distributed either: (a) In the manner described in II.1. where DOE is unable to readily identify the persons entitled to the refund; or (b) by certified check directly to entitled parties readily identified by DOE.

III. Submission of Written Comments

A. Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Jack Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111. You may obtain a free copy of this Consent Order by writing to the same address or by calling (415) 556-7200.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Cosby Oil Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on December 26, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 C.F.R. 205.9(f).

Issued in Washington, D.C. on the 16th day of November, 1979.

Robert D. Gerring,
Director, Program Operations Division,
Economic Regulatory Administration.

[FR Doc. 79-36243 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

David Davidson, Corona Hall Service Center; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to David Davidson, Corona Hall Service Center, 309 S. Main Street, Corona California 92720. This proposed Remedial Order charges David Davidson, Corona Hall Service with pricing violations in the amount of

\$1,205.92, connected with the resale of Motor gasoline during the period August 1, 1979 through September 29, 1979, in the State of California.

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 December 11, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, 2000 M Street, NW, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C. on the 16th day of November 1979.

Robert D. Gerring,
Director, Program Operation Division.

[FR Doc. 79-36417 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

Delano & Arias Texaco Service Center; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Lupe Arias, Delano & Arias Texaco Service, Highway 126, Piru, California 93040. This proposed Remedial Order charges Lupe Arias, Delano & Arias Texaco Service with pricing violations in the amount of \$3,740.36, connected with the resale of Motor gasoline during the period August 1, 1979 through October 2, 1979, in the State of California.

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 December 11, 1979 any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C. on the 16th day of November 1979.

Robert D. Gerring,
Director, Program Operation Division.

[FR Doc. 79-36246 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Development of California, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the consent Order.

DATES: Effective date: October 19, 1979.

COMMENTS BY: December 26, 1979.

ADDRESS: Send comments to: Jack L. Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Jack L. Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111; Phone: (415) 556-7200.

SUPPLEMENTARY INFORMATION: On October 19, 1979, the Office of Enforcement of the ERA executed a Consent Order with Energy Development of California, Inc. (EDOC). Under 10 CFR 205.199(b), a Consent Order which involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and EDOC wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with EDOC effective as of the date of its execution.

I. Consent Order

EDOC, with its home office in Los Angeles County, California, is engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and EDOC entered into a Consent Order to resolve certain actions which could be brought by ERA as a result of its audit of the EDOC's production and sale of crude oil, the significant terms of which are as follows:

1. The period covered by the audit was August 15, 1974 through November 30, 1977.

2. DOE alleges that EDOC charged prices for crude oil produced from certain properties in excess of the maximum allowable to its customers in violation of the ceiling prices prescribed by 10 CFR 212.73 and 10 CFR 212.74.

3. EDOC, without admitting to any violation of the DOE regulations, agrees

to refund to the DOE \$41,000.00 plus interest thereon. Interest through July 31, 1979 totals \$6,727.09.

4. The refund shall be made by EDOC as follows:

- a. \$20,500.00 plus interest thereon on October 19, 1980;
- b. \$10,250.00 plus interest thereon on April 19, 1981; and
- c. \$10,250.00 plus interest thereon on October 19, 1981.

5. The provisions of 10 CFR 205.199], including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges in the total amount described in I.3 in the form of certified checks made payable to the United States Department of Energy will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical possibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within

the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Jack Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111. You may obtain a free copy of this Consent Order by writing to the same address or by calling (415) 556-7200.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Energy Development Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on December 26, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C., on the 16th day of November 1979.

Robert D. Gerrig,

Director, Program Operations Division,
Economic Regulatory Administration.

[FR Doc. 79-36249 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

Estate of Gladys O'Donnell, d.b.a. O'Donnell Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective Date: October 1, 1979. Comments by: December 26, 1979.

ADDRESS: Send comments to: Jack L. Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Jack L. Wood, District Manager of Enforcement Western District Office,

Department of Energy, 111 Pine Street, San Francisco, CA 94111, Phone: (415) 556-7200.

SUPPLEMENTARY INFORMATION: On October 1, 1979, the Office of Enforcement of the ERA executed a Consent Order with the Estate of Gladys O'Donnell, d.b.a. O'Donnell Oil Company (O'Donnell) of Los Angeles County, California. Under 10 CFR 205.199(b), a Consent Order which involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and O'Donnell wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with O'Donnell effective as of the date of its execution.

I. Consent Order

O'Donnell, with its home office in Los Angeles County, California, is firm engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulation at 10 CFR Parts 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and O'Donnell entered into a Consent Order to resolve certain actions which could be brought by ERA as a result of its audit of the O'Donnell production and sale of crude oil, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1973 through May 31, 1979.

2. DOE alleges that O'Donnell charged prices for crude oil produced from a property during the period March 1, 1976 through May 31, 1979 in excess of the maximum allowable to its customers in violation of the ceiling prices prescribed by 10 CFR 212.73 and 10 CFR 212.74.

3. O'Donnell without admitting to any violation of the DOE regulations, agrees to refund to the DOE \$81,579.55 plus interest thereon. Interest through September 30, 1979 totals \$9,276.99.

4. The refund was paid in full by O'Donnell upon execution of the Consent Order.

5. O'Donnell paid \$8,500.00 upon execution of the Consent Order in settlement of potential civil penalties.

6. The provisions of 10 CFR 205.199], including the publication of this Notice, are applicable to the Consent Orders.

II. Disposition of Refunded Overcharges

1. Refunded overcharges in the total amount described in I.3 in the form of a certified check made payable to the U.S.

Department of Energy will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers of offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199(a).

III. Submission of Written Comments

A. Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification of the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Jack Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111. You may obtain a free copy of this Consent Order by writing to the same address or by calling (415) 556-7200.

You should identify your comments or written notification of a claim on the

outside of your envelope and on the documents you submit with the designation, "Comments on O'Donnell Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on December 26, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C. on the 16th day of November 1979.

Robert D. Gerring

*Director, Program Operations Division,
Economic Regulatory Administration.*

[FR Doc. 79-36241 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

N. C. Ginther; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective Date: November 14, 1979.

COMMENTS BY: December 26, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone 214/767-7745.

SUPPLEMENTARY INFORMATION: On November 14, 1979, the Office of Enforcement of the ERA executed a Consent Order with N. C. Ginther of Houston, Texas. Under 10 CFR 205.199(b), the Consent Order which involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

N. C. Ginther, with its office located in Houston, Texas, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and

Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA, and N. C. Ginther, entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1973 through December 31, 1977, and it included all sales of crude oil which were made during that period.

2. N. C. Ginther allegedly improperly applied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D, when determining the prices to be charged for crude oil; and as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and N. C. Ginther have agreed to a settlement in the amount of \$40,000. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and N. C. Ginther.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily identifiable, the refund will be made through the DOE in accordance with CFR Part 205, Subpart V as provided below.

5. The provisions of 10 CFR 205.199, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, N. C. Ginther agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the total sum of \$40,000 to be paid in three (3) equal quarterly installments. The first payment will be due on January 1, 1980, or the first day of the month following the month in which the Consent Order becomes effective, and subsequent quarterly payments will be due on the first day of the next two subsequent quarters. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded

overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199(a).

III. Submission of Written Comments

A. Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on N. C. Ginther Consent Order." We will consider all comments we received by 4:30 p.m., local time, on December 26, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 14th day of November 1979.

Wayne I. Tucker,
District Manager, Southwest District
Enforcement, Economic Regulatory
Administration.

[FR Doc. 79-38253 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

Reinhard Distributors, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action Taken and Opportunity for Comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the consent Order.

DATES: Effective date: September 14, 1979. Comments by: December 26, 1979.

ADDRESS: Send comments to: Jack L. Wood, District Manager, Office of Enforcement, 111 Pine Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Jack L. Wood, District Manager, Office of Enforcement, 111 Pine Street, San Francisco, CA 94111 (415) 556-7200.

SUPPLEMENTARY INFORMATION: On September 14, 1979, the Office of Enforcement of the ERA executed a Consent Order with Reinhard Distributors, Inc., a firm which includes Puget Oil Company.

Reinhard Distributors, Inc., is located in Kent, Washington. Order 10 CFR 205.199(b), a Consent Order which involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective on its execution.

I. The Consent Order

Reinhard Distributors, Inc., with its home office in Kent, Washington, is a firm engaged in the distribution of petroleum products and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Reinhard Distributors, Inc., the Office of Enforcement, ERA, and Reinhard Distributors, Inc., entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was all retail and wholesale sales from November 1973 through April 1974 of No. 1 heating oil and No. 2 diesel fuel; and November 1973 through May 15, 1974 for motor gasoline.

2. DOE alleges that Reinhard Distributors, Inc. improperly applied the provision of 6 CFR 150.355 and § 150.359 as amended, and 10 CFR 212.93 when determining the prices to be charged for No. 1 heating oil, No. 2 diesel fuel and motor gasoline. As a result, Reinhard's customers were overcharged on some of their purchases.

3. Reinhard Distributors, Inc., by entering into this Consent Order, does not otherwise concur in the DOE's allegations, nor does it admit any liability or violation of any statute or DOE regulations or rule.

Reinhard Distributors, Inc., however, agrees to refund \$89,530 as specified under II below and pay a \$1,000 penalty.

4. The provision of 10 CFR 205.199], including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Reinhard Distributors, Inc., agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I-1 above, the sum of \$89,530.24, plus interest accruing after May 1, 1979. The \$89,530.24 shall be refunded as follows:

(a) Refunded overcharges related to purchases other than ultimate consumers, in the amount of \$20,583.97, will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition. Payment will be made on or before October 14, 1979.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the

overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199(a).

(b) Refunded overcharges in the amount of \$1,243.78 will be made by cash or check, on or before October 14, 1979, to Puget Power, Puget Power Building, Bellevue, WA 98060. This refund amount relates to No. 2 diesel oil purchased by Puget Power.

(c) Refunded overcharges in the amount of \$67,702.49 will be made by a reduction in selling prices, beginning on or before December 14, 1979, at retail service stations operated by Reinhard. The price reduction will be made at a rate of between \$0.01 and \$0.02 per gallon.

III. Submission of Written Comments

A. Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount described in II(a) should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111. You may obtain a free copy of this Consent Order by writing to the same address or by calling (415) 556-7200.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Reinhard Distributors, Inc., Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on December 26, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in

accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C., on the 16th day of November, 1979.

Robert D. Gerring,

Director, Enforcement Program Operations Division, Economic Regulatory Administration.

[FR Doc. 79-36242 Filed 11-23-79; 8:46 am]

BILLING CODE 6450-01-M

Smith's Exxon; Action Taken On Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Agreement.

SUMMARY: The Economic Regulatory Administration (ERA) Of the Department of Energy (DOE) hereby gives Notice that a Consent Order was entered into between the Office of Enforcement, and the firm listed below on November 7, 1979. The Consent Order represents an agreement between the DOE and the firm which involves a

reduction of the selling prices for gasoline to be in compliance with the Federal Energy pricing regulations. These Consent Orders are concerned exclusively with the consenting firm's current compliance with the Mandatory Petroleum Price Regulations and do not address the possible non-compliance with these regulations prior to September 13, 1979. This Consent Order requires the consenting firm to come into compliance with legal requirements by reducing selling prices to the established lawful level for each grade of gasoline sold, to properly post maximum lawful selling prices and to properly maintain required records. The consenting firm is a retailer of gasoline as defined in 10 CFR 212.31 of the Federal Energy guidelines.

A copy of the November 7, 1979, Consent Order, with confidential information deleted, may be obtained from James C. Easterday, District Manager, Southeast District, Office of Enforcement, 1655 Peachtree Street, NE., Atlanta, Georgia, 30309, Telephone: (404) 881-2661.

Firm name and address	Settlement amount	Product	Audit period	Beneficiaries of price rollback
Smith's Exxon, Route 1, Box 408, Semmes, Ala. 36575.	Price rollback \$903.72, penalty \$2,500.00.	Motor gasoline.....	9/13/79-9/18/79....	Product consumers.

Issued in Atlanta, Ga., on the 14th day of September 1979.

James C. Easterday,

District Manager of Enforcement Southeast District.

[FR Doc. 79-36251 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP80-39]

Arkansas Louisiana Gas Co.; Proposed Amendments To Purchased Gas Cost Adjustment Provisions

November 16, 1979.

Take notice that on November 1, 1979 Arkansas Louisiana Gas Company (Arkla) tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 3, Rate Schedule No. X-26, as follows:

Original Sheet No. 185A
3rd Revised Sheet No. 187
Original Sheet No. 187A
Original Sheet No. 187B
Original Sheet No. 187C
Original Sheet No. 187D
3rd Revised Sheet No. 188
2nd Revised Sheet No. 188A
2nd Revised Sheet No. 188B
2nd Revised Sheet No. 188C

These proposed changes, to be effective January 1, 1980, are being filed pursuant to Order No. 49, issued by the Federal Energy Regulatory Commission on September 28, 1979. These tariff sheets set forth the incremental pricing provisions as directed in Order No. 49.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 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. 79-38156 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. RP72-142, RP76-135 (PGA79-3 and AP7-3)]

Cities Service Gas Co.; Proposed Changes in FERC Gas Tariff

November 15, 1979.

Take notice that Cities Service Gas Company (Cities Service) on November 8, 1979, tendered for filing Substitute First Revised Fourth Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1. Cities Service states that this filing is in compliance with the Commission's order of October 23, 1979, accepting Cities Service's September 26, 1979 filing and requiring that a substitute tariff sheet be filed which would eliminate such charges by suppliers which they were not authorized to charge Cities Service at October 23, 1979.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket Nos. RP72-142 and RP76-135.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 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. 79-38157 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP80-43]

Cities Services Gas Co.; Proposed Changes in FERC Gas Tariff

November 16, 1979.

Take notice that Cities Service Gas Company (Cities Service) on November

9, 1979, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheets:

Original sheet Nos. 72, 73, 74, 75, 76 and 77

First Revised Sheet Nos. 61, 63, 64, 65 and 66

Second Revised Sheet Nos. 59, 60 and 62

The above tariff sheets are being filed in compliance with Section 282.601 of the Commission's Regulations consisting of Cities Service's revised PGA provision and Incremental Pricing Surcharge provision. Cities Service also proposes with this filing to correctly reflect the rate and procedure for computing carrying charges on the PGA account balance pursuant to Commission revisions to Sections 154.38(d)(4)(iv)(c) and 154.67(d)(2)(iii)(B) of the Regulations as prescribed in Order No. 47 issued September 10, 1979 in Docket No. RM77-22.

Cities Service sells gas to Colorado Interstate Gas Company (CIG) under its Rate Schedule X-12 pursuant to a transportation agreement whereby CIG has the option to purchase up to 25 percent of the gas it transports for Cities Service in Wyoming. Cities Service states that its rate to CIG is based solely on costs related to this Wyoming gas supply and is not subject to or affected by the operation of Cities Service's PGA provisions. Cities Service also states that it does not sell any other gas to CIG. To prevent special hardship, inequity and unfair distribution of burdens, Cities Service requests a waiver of the Commission's Regulations to permit the exclusion of Cities Service's sale to CIG from Cities Service's Incremental Pricing Provision.

The proposed effective date of the above tariff sheets is December 1, 1979 as required by the Commission.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 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. 79-38158 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RE80-4]

Clark County Public Utility District No. 1; Application for Exemption

November 15, 1979.

Take notice that Clark County Public Utility District #1, on October 30, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48; 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Clark County Public Utility District #1 states that it should not be required to file the specified data for the following reason: Clark County Public Utility District #1 "represents that its present cost, load, and study methods are in substantial compliance with the purpose of PURPA and do provide interested parties with timely high quality information on the costs of service, which applicant actively supports through its rate making processes."

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 4, 1980.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-38159 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-90]

Commonwealth Edison Co.; Proposed Tariff Change

November 16, 1979.

The filing Company submits the following: Take notice that Commonwealth Edison Company on November 6, 1979 tendered for filing proposed changes in its FERC Electric Service Tariff No. 16, an Interconnection Agreement, dated March 1, 1975, between Commonwealth Edison Company and Wisconsin Power and Light Company.

The proposed changes, which the parties have agreed upon, modify certain compensation provisions in Service Schedule B and Service Schedule D.

Copies of the proposed rate schedule changes were served upon the Illinois Commerce Commission, Springfield, Illinois, the Public Service Commission of Wisconsin, Madison, Wisconsin and Wisconsin Power and Light Company, Madison, Wisconsin.

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 Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 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. 79-36160 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-79]

Consolidated Edison Co. of New York, Inc.; Filing of Rate Schedule

November 15, 1979.

The filing Company submits the following: Take notice that on November 7, 1979, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, copies of a sale agreement (the "Agreement") between Con Edison and three companies of the Northeast Utilities system (the "NU Companies"): The Connecticut Light and Power Company, The Hartford Electric Light Company and Western Massachusetts Electric Company.

The Agreement, dated as of April 23, 1979, provides for Con Edison to sell off-peak energy on an interruptible basis during April 28-May 31, 1979 (the "First Outage Period") and any subsequent periods of outage of the NU Companies' Northfield Mountain Pumped Storage Hydro Electric Project.

Under the Agreement, the NU Companies pay Con Edison \$0.02 per kWh during the First Outage Period, and an energy charge, to be separately agreed, during subsequent outages for any energy taken by them under the Agreement.

The Agreement has been executed by Con Edison and by the NU Companies and copies mailed to the NU Companies.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 4, 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. 79-36161 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 785, et al.]

Consumers Power Co., et al.; Expiration

November 16, 1979.

So that the Congress may have an adequate opportunity to decide whether upon the expiration of the licenses, to take over the projects under Section 14 of the Federal Power Act, as amended (16 U.S.C. 807), and that the Licensees for the projects and others may have adequate notice and opportunity to file timely application for new licenses under Section 15 of the Act, as amended (16 U.S.C. 808), public notice is hereby given that the license issued for the designated and described projects on the appended tables will expire on the dates specified.

Kenneth F. Plumb,
Secretary.

Table 1.—Projects for Which Licenses Will Expire Between Jan. 1, 1980, and Dec. 31, 1985, Inclusive, Which Are Subject To Relicensing or Takeover¹

License expiration date	Licensee	FERC project No.	State, county, and stream	Installation (kilowatts)	Period of license (years)	Facilities under license
Apr. 10, 1980	Consumers Power Co.	785	Michigan; Allegan; Kalamazoo River	2,550	50	Dam, reservoir, powerhouse and transmission line.
Apr. 21, 1980	Safe Harbor Water Power Corp.	1,025	Pennsylvania; York and Lancaster; Susquehanna River.	196,000	50	Dam and powerhouse.
May 22, 1980	The Montana Power Co.	5	Montana; Flathead and Lake; Flathead Lake and River.	168,000	50	Dam, reservoir, 2 penstocks, powerhouse and transmission lines.
June 30, 1980	Moon Lake Electric Association.	190	Utah; Duchesne; Pole Creek and Uinta River	1,200	50	Dam, canal, diversion dam, powerhouse and transmission line.
June 30, 1981	Appalachian Power Co.	739	Virginia; Pulaski; New River	77,400	50	Dam, reservoir, powerhouse and transmission line.
Sept. 30, 1982	Pacific Gas and Electric Co.	1,962	California; Butte and Plumas; North Fork of Feather River.	180,900	35	Two dams, 2 reservoirs, 2 powerhouses and transmission lines.
Jan. 15, 1984	Kanawha Valley Power Co.	1,175	West Virginia; Kanawha and Fayette; Kanawha River..	28,800	50	Two dams, 2 powerhouses and transmission lines.
Jan. 16, 1984	Kanawha Valley Power Co.	1,290	West Virginia; Kanawha and Putnam; Kanawha River..	14,760	48	Powerhouse and transmission lines.
June 10, 1984	Idaho Power Co.	18	Idaho; Jerome and Twin Falls; Snake River	8,438	50	Dam, powerhouse and transmission line.
Feb. 10, 1985	Duke Power Co.	1,267	South Carolina; Greenwood, Laurens, and Newberry; Saluda River.	15,000	50	Dam, reservoir and powerhouse.
Mar. 31, 1985	Pacific Gas and Electric Co.	1,988	California; Fresno; Kings River, N. Fork Kings River, Helms Creek.	179,100	30	Six dams, 2 reservoirs, tunnel, 2 powerhouses and transmission lines.

¹Sec. 14 of the Federal Power Act (16 U.S.C. 807), reserves the right of the United States to take over the project works upon expiration of the license at a price to be determined under that section, but may be waived pursuant to Sec. 10(i) to the act (16 U.S.C. 803(i)). Sec. 14 is not applicable to any project owned by a State or municipality, pursuant to the act of Aug. 15, 1953 (67 Stat. 587).

Table 2.—Projects for Which Licenses Will Expire Between Jan. 1, 1980, and Dec. 31, 1980, Inclusive, Which Are Not Subject To Takeover¹

License expiration date	Licensee	FERC project No.	State, county, and stream	Installation (kilowatts)	Period of license (years)	Facilities under license
Jan. 20, 1980	Public Utility District No. 1 of Chelan County and Puget Sound Power & Light Co.	943	Washington; Chelan and Douglas; Columbia River	212,000	50	Dam, reservoir, 2 powerhouses, and transmission lines.
Apr. 10, 1980	City of Ottumwa	925	Iowa; Wapello; Des Moines River	3,000	50	Dams and powerhouse.
May 1, 1980	New England Fish Co.	1,299	Alaska; Kodiak Island; One Mile Creek ²	53	10	Diversion dam, pipeline and 2 turbines.
Aug. 23, 1983	City of Ephraim	1,212	Utah; Sanpete; City Creek ³	205	50	Pipeline and powerhouse.
Dec. 6, 1983	City of Radford	1,235	Virginia; Montgomery and Pulaski; Little Creek ³	800	50	Dam, reservoir and powerhouse.
Apr. 16, 1984	Loup River Public Power District	1,258	Nebraska; Platte, Nance, Madison, Stanton, Wayne, Dixon, Colfax, Dodge, Douglas, Butler, Saunders, and Lancaster; Loup River.	47,738	50	Diversion dams, reservoirs, powerhouses and transmission lines.
May 30, 1984	City of Pasadena	1,250	California; Los Angeles; San Gabriel River	3,000	50	Diversion dam and powerhouse.
Oct. 31, 1985	Utah Power & Light Co.	703	Idaho; Bear Lake; Paris Creek	650	10	Diversion dam, canal, forebay and powerhouse.

¹ Sec. 14 of the Federal Power Act (16 U.S.C. 807) reserves the right of the United States to take over the project works upon expiration of the license at a price to be determined under that section, but may be waived pursuant to Sec. 10(f) to the Act (16 U.S.C. 803(f)). Section 14 is not applicable to any project owned by a State or municipality, pursuant to the Act of Aug. 15, 1953 (67 Stat. 587).

² Minor license.

³ Includes equivalent kW for 60 hp (mechanical).

⁴ Does not include an additional 410 mW in second powerhouse currently under construction.

[FR Doc. 79-38162 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-89]

The Connecticut Light and Power Co.; Amendment to Purchase Agreement

November 16, 1979.

The filing company submits the following: Take notice that on November 9, 1979, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed Amendment to Purchase Agreement With Respect to Various Gas Turbine Units (Amendment) dated February 16, 1979 between (1) CL&P, The Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO), and (2) Village of Ludlow Electric Light Department (Ludlow).

CL&P states that the Amendment provides for a change of percentage of capability available to Ludlow from Silver Lake Unit Nos. 10, 11, 12 and 13, due to the rerating of Silver Lake Unit No. 11 to zero capacity as of March 1, 1979.

HELCO and WMECO have filed certificates 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, WMECO, West Springfield, Massachusetts and Ludlow, Ludlow, Vermont.

CL&P also states that no facilities are to be installed or modified in order to

supply the service to be furnished under the Amendment.

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 Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 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 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. 79-38163 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-82]

Duke Power Co.; Supplement to Electric Power Contract

November 15, 1979.

The filing company submits the

following: Take notice that Duke Power Company (Duke Power) tendered for filing on November 9, 1979 a supplement to the Company's Electric Power Contract with Yadkin, Inc. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 11.

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 increases in contract demand: from 40,000 KW to 55,000 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 September 1, 1979.

According to Duke Power copies of this filing were mailed to the customer 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 Capitol Street, N.E., Washington,

D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 4, 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. 79-36164 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-86]

Duke Power Co.; Supplement to Electric Power Contract

November 16, 1979.

The filing Company submits the following: Take notice that Duke Power Company (Duke Power) tendered for filing on November 10, 1979, 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 increases in contract demand: Delivery Point No. 1 from 8,000 KW to -0- KW and Delivery Point No. 2 from 3,000 KW to 10,000 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 January 18, 1980.

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 Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 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. 79-36165 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-87]

Duke Power Co.; Supplement to Electric Power Contract

November 16, 1979.

The filing company submits the following: Take notice that Duke Power Company (Duke Power) tendered for filing on November 10, 1979 a supplement to the Company's Electric Power Contract with the Town of Maiden. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 246.

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 increases in contract demand: Delivery Point No. 1 from 5,000 KW to 3,500 KW and Delivery Point No. 2 from 2,700 KW to 5,700.

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 January 18, 1980.

According to Duke Power copies of this filing were mailed to the Town of Maiden 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 Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 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. 79-36166 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-88]

Duke Power Co.; Supplement to Electric Power Contract

November 16, 1979.

The filing company submits the following: Take notice that Duke Power Company (Duke Power) tendered for filing on November 10, 1979 a supplement to the Company's Electric Power Contract with Laurens Electric Cooperative, Inc. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 244.

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 increases in contract demand: Delivery Point No. 26 from -0- KW to 10,000 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 January 18, 1980.

According to Duke Power copies of this filing were mailed to Laurens Electric Cooperative, Inc. and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 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. 79-36167 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ES80-14]**El Paso Electric Co.; Application**

November 16, 1979.

Take notice that on November 9, 1979, El Paso Electric Company (Applicant), filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to Section 204 of the Federal Power Act to issue up to 1,500,000 shares of common stock, no par value, via competitive bidding. The Applicant is a Texas Corporation, with its principal business office at El Paso, Texas, and is engaged in the electric utility business in Texas and New Mexico.

The proceeds from the sale of the New Commission Stock will be used to reduce outstanding short-term debt incurred for construction purposes. The short-term debt is expected to aggregate approximately \$57.8 million at the time of sale and prior to the application of the proceeds. The Company estimates that its cash construction expenditures for the period 1979-1982 will be approximately \$457.5 million.

Any persons desiring to be heard or to make any protest with reference to said application should, on or before December 4, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36168 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RE80-7]**Green River Electric Corp.; Application for Exemption**

November 16, 1979.

Take notice that Green River Electric Corporation (Green River), on October 31, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Green River states that it should not be required to file the specified data "because its gathering and reporting the information required by Section 133 of

PURPA are not likely to carry out the purposes of that section or the Act, and will be unduly burdensome upon Green River's tariff customers."

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 11, 1980.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36169 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. PE80-6]**Henderson-Union Rural Electric Cooperative Corp.; Application for Exemption**

November 15, 1979.

Take notice that Henderson-Union Rural Electric Cooperative Corporation (Henderson-Union), on October 31, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Henderson-Union states that it should not be required to file the specified data "because its gathering and reporting the information required by Section 133 of PURPA are not likely to carry out the purposes of that section or the Act, and will be unduly burdensome upon Henderson-Union's tariff customers."

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official

State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 4, 1980.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36170 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER77-578]**Kansas Gas & Electric Co.; Filing**

November 16, 1979.

The filing Company submits the following: Take notice that on November 1, 1979, Kansas Gas and Electric Company tendered for filing a statement of compliance pursuant to the Commission's order of October 19, 1979.

Since this filing was under Section 206 of the Federal Power Act, no billings were rendered on rates subject to refund.

A copy of this filing has been sent to the Kansas State Corporation Commission.

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 the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before December 7, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36171 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-31]**Kansas Nebraska Natural Gas Co., Inc.; Substitute Tariff Filing Pursuant to Order No. 29**

November 15, 1979.

Take notice that on November 9, 1979, Kansas Nebraska Natural Gas Company, Inc. (KN) tendered for filing substitute tariff sheets, in Docket No. TC80-31, to its FERC Gas Tariff, Third Revised Volume No. 1. The tendered

sheets, Substitute First Revised Sheet No. 24B and Substitute First Revised Sheet No. 24C, would replace First Revised Sheet No. 24B and First Revised Sheet No. 24C, respectively, which were filed on October 31, 1979 and publicly noticed on November 8, 1979.

KN states that it has now discovered that, in two cases, the wording or provisions of the existing sheets containing KN's plan for the allocation of delivery capability on its system was changed in ways not required by Section 401 of the Natural Gas Policy Act of 1978 (NGPA). The filed sheets eliminate the changes in wording not required by NGPA Section 401.

KN requests that the Commission grant such waivers as may be required to permit the substitute sheets to become effective on December 1, 1979, the same effective date requested for the revised tariff sheets filed October 31, 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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 26, 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. 79-36172- Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[No. 114]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

November 9, 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.

Kentucky Department of Mines and Minerals,
Oil and Gas Division

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator

5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated Annual Volume
9. Date received at FERC.
10. Purchaser(s)
1. 80-04606/ERC-220
2. 16-195-00000-0000
3. 108 000 000
4. C D Jacobs
5. Varney No 2
6. Appalachian
7. Pike KY
8. 4.9 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04607/ERC-221
2. 16-195-00000-0000
3. 108 000 000
4. C D Jacobs
5. Varney No 1
6. Appalachian
7. Pike KY
8. 4.9 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04608/ERC-222
2. 16-195-00000-0000
3. 108 000 000
4. C D Jacobs
5. Varney No 3
6. Appalachian
7. Pike KY
8. 4.9 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04609/ERC-223
2. 16-195-00000-0000
3. 108 000 000
4. C D Jacobs
5. Sol Johnson No 1
6. Appalachian
7. Pike KY
8. 1.7 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04610/ERC-224
2. 16-195-00000-0000
3. 108 000 000
4. C D Jacobs
5. No 1 Weddington Lease
6. Appalachian
7. Pike KY
8. 18.2 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04611/ERC-225
2. 16-195-00000-0000
3. 108 000 000
4. Glen W Smith Agt/Succ to
5. William Steele-Well #1
- 6.
7. Pike KY
8. 1.9 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04612/ERC-226
2. 16-159-00000-0000
3. 108 000 000
4. Anna Lowe
5. Joseph James #1
6. Appalachian
7. Martin KY
8. 12.0 million cubic feet
9. October 29, 1979

10. Columbia Gas Trans Corp
1. 80-04613/ERC-227
2. 16-051-00000-0000
3. 108 000 000
4. Charles Gabbard
5. Gabbard #1
6. Oneeda
7. Clay KY
8. 8.4 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04614/ERC-228
2. 16-051-00000-0000
3. 108 000 000
4. Charles Gabbard
5. Gabbard #2
6. Onida
7. Clay KY
8. .0 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04615/ERC-229
2. 16-195-00000-0000
3. 108 000 000
4. W W Lindsey and W E Elliott
5. Laura Jackson Well #1
- 6.
7. Pike KY
8. 4.0 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04616/ERC-230
2. 16-195-00000-0000
3. 108 000 000
4. W W Lindsey & W E Elliott
5. Burgess Burchett Well #1
- 6.
7. Pike KY
8. .0 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04617/ERC-231
2. 16-195-00000-0000
3. 108 000 000
4. W W Lindsey and W E Elliott
5. Cline Burchett Well #2
- 6.
7. Pike KY
8. 7.5 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04618/ERC-232
2. 16-195-00000-0000
3. 108 000 000
4. W W Lindsey & W E Elliott
5. Cline Burchett Well #1
- 6.
7. Pike KY
8. 7.5 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp
1. 80-04619/ERC-233
2. 16-159-00379-0000
3. 108 000 000
4. Columbia Gas Transmission Corp
5. 804579
- 6.
7. Martin KY
8. 17.0 million cubic feet
9. October 29, 1979
10. Columbia Gas Trans Corp

Michigan Department of Natural Resources

1. Control Number (FERC/State)
2. API well number

3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. Country, State or Block No.
8. Estimated Annual Volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04603
2. 21-101-31422-0000
3. 102 000 000
4. Miller Brothers
5. Miller Brothers Miller 35
6. Bear Lake-35-23N-15W
7. Manistee MI
8. 1008.0 million cubic feet
9. October 26, 1979
10. Consumers Power Company

1. 80-04604
2. 21-035-00000-0000
3. 102 000 000
4. Dart Oil & Gas Corporation
5. Fox #2-32 N32 966)
6. Winterfield-29 Field
7. Clare MI
8. 20.0 million cubic feet
9. October 26, 1979
10. Consumers Power Company

Mississippi Oil and Gas Board

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. Country, State or Block No.
8. Estimated Annual Volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04605/98-79-467
2. 23-091-20080-0000
3. 107 000 000
4. Tomlinson Interests Inc
5. H L Beacham No 1
6. East Morgantown
7. Marion MI
8. 3460.0 million cubic feet
9. October 23, 1979
10. Transcontinental Gas Pipeline Corp

New Mexico Department of Energy and Minerals, Oil Conservation Division

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. Country, State or Block No.
8. Estimated Annual Volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04620
2. 30-045-23481-0000
3. 103 000 000
4. Blackwood & Nicholas Co Ltd
5. NE Blanco Unit #201
6. South Los Pinos Pictured Cliffs SW
7. San Juan NM
8. 100.0 million cubic feet
9. October 30, 1979
10. El Paso Natural Gas Company
1. 80-04621
2. 30-045-23335-0000

3. 103 000 000
4. Southland Royalty Company
5. Hubbard #5
6. Blanco Pictured Cliffs
7. San Juan NM
8. 150.0 million cubic feet
9. October 30, 1979
10. Southern Union Gathering Company

1. 80-04622
2. 30-045-23367-0000
3. 103 000 000
4. Southland Royalty Company
5. Hedges #3
6. Undesignated Fruitland
7. San Juan NM
8. 100.0 million cubic feet
9. October 30, 1979
10. El Paso Natural Gas Company

1. 80-04623
2. 30-045-23351-0000
3. 103 000 000
4. Southland Royalty Company
5. Decker #5
6. Blanco Pictured Cliffs
7. San Juan NM
8. 100.0 million cubic feet
9. October 30, 1979
10. Southern Union Gathering Company

1. 80-04624
2. 30-005-00000-0000
3. 103 000 000
4. Stevens Oil Company
5. O'Brien K No 2
6. Twin Lakes-San Andres Assoc
7. Chaves NM
8. 163.0 million cubic feet
9. October 30, 1979
10. Transwestern Pipeline Co, Steven Oil Co

1. 79-20155 (Revised)
2. 30-025-00000
3. 108 Denied
4. Texaco Inc
5. L R Kershaw No 9
6. Skagg Drinkard
7. Lea NM
8. 9.5 million cubic feet
9. September 13, 1979
10. Warren Petroleum Co

1. 79-20156 (Revised)
2. 30-025-00000
3. 108 Denied
4. Texaco Inc
5. Ch Weir B No 4
6. Weir
7. Lea NM
8. 9.0 million cubic feet
9. September 13, 1979
10. Warren Petroleum Co

North Dakota Geological Survey

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04625/166-NGPA
2. 33-007-00357-0000
3. 102 000 000
4. Gulf Oil Corporation
5. Joe Tachenko 2-9-4B

6. Little Knife
7. Billings ND
8. 79.0 million cubic feet
9. October 30, 1979
10. Montana-Dakota Utilities
1. 80-04626/167-NGPA
2. 33-007-00336-0000
3. 102 000 000
4. Gulf Oil Corporation
5. Anton Zabolotny 1-4-4C
6. Little Knife
7. Billings ND
8. 96.0 million cubic feet
9. October 30, 1979
10. Montana-Dakota Utilities

Ohio Department of Natural Resources, Division of Oil and Gas

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04520/03678
2. 34-105-21548-0014
3. 108 000 000
4. Cameron Brothers
5. Frank Herald #1
- 6.
7. Meigs OH
8. 6.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04521/03677
2. 34-105-21640-0014
3. 108 000 000
4. Cameron Brothers
5. Glen Vance #6
- 6.
7. Meigs OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04522/03676
2. 34-105-21639-0014
3. 108 000 000
4. Cameron Brothers
5. Glen Vance #7
- 6.
7. Meigs OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04523/03675
2. 34-105-21638-0014
3. 108 000 000
4. Cameron Brothers
5. Glen Vance #5
- 6.
7. Meigs OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04524/03674
2. 34-105-21653-0014
3. 108 000 000
4. Cameron Brothers
5. Glen Vance #8
- 6.
7. Meigs OH

8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04525/03673
2. 34-105-21554-0014
3. 108 000 000
4. Cameron Brothers
5. Frank Herald #2
6.
7. Meigs OH
8. 3.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04526/03671
2. 34-119-23552-0014
3. 108 000 000
4. Cameron Brothers
5. A Batteiger #1
6.
7. Muskingum OH
8. 8.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04527/03670
2. 34-119-22710-0014
3. 108 000 000
4. Cameron Brothers
5. Clarence Gadd #1
6.
7. Muskingum OH
8. 8.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04528/02311
2. 34-169-21565-0014
3. 108 000 000
4. John C. Mason
5. Louis C. Gruver #2
6.
7. Wayne OH
8. 20.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04529/03698
2. 34-053-20211-0014
3. 108 000 000
4. Cameron Brothers
5. James Baird #2
6.
7. Gallia OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04530/03697
2. 34-053-20228-0014
3. 108 000 000
4. Cameron Brothers
5. James Baird #3
6.
7. Gallia OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04531/03696
2. 34-053-20230-0014
3. 108 000 000
4. Cameron Brothers
5. James Baird #4
6.
7. Gallia OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04532/03695

2. 34-053-20227-0014
3. 108 000 000
4. Cameron Brothers
5. James Baird #5
6.
7. Gallia OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04533/03694
2. 34-053-20226-0014
3. 108 000 000
4. Cameron Brothers
5. James Baird #6
6.
7. Gallia OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04534/03693
2. 34-119-23427-0014
3. 108 000 000
4. Cameron Brothers
5. Ross Johnston #1
6.
7. Muskingum OH
8. 2.5 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04535/03688
2. 34-119-22720-0014
3. 108 000 000
4. Cameron Brothers
5. Aloysius Schwallie #1
6.
7. Muskingum OH
8. 11.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04536/03687
2. 34-119-23115-0014
3. 108 000 000
4. Cameron Brothers
5. Aloysius Schwallie #2
6.
7. Muskingum OH
8. 11.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04537/03686
2. 34-119-22702-0014
3. 108 000 000
4. Cameron Brothers
5. Mary Swindler #2
6.
7. Muskingum OH
8. 6.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04538/03685
2. 34-119-22938-0014
3. 108 000 000
4. Cameron Brothers
5. Herald Bunting #1
6.
7. Muskingum OH
8. 3.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04539/03682
2. 34-105-21637-0014
3. 108 000 000
4. Cameron Brothers
5. Granvel Wamsey #4
6.

7. Meigs, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04540/03681
2. 34-105-21570-0014
3. 108 000 000
4. Cameron Brothers
5. Granvel Wamsey #3
6.
7. Meigs, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04541/03680
2. 34-105-21551-0014
3. 108 000 000
4. Cameron Brothers
5. Granvel Wamsey #2
6.
7. Meigs, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04542/03679
2. 34-105-21555-0014
3. 108 000 000
4. Cameron Brothers
5. Granvel Wamsey #1
6.
7. Meigs, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04543/03843
2. 34-105-21577-0014
3. 108 000 000
4. Cameron Brothers
5. Frank Herald #1
6.
7. Meigs, OH
8. 1.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04544/03842
2. 34-053-20173-0014
3. 108 000 000
4. Cameron Brothers
5. Harold & Lucille Brannon #1
6.
7. Gallia, OH
8. 6.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04545/03841
2. 34-053-20174-0014
3. 108 000 000
4. Cameron Brothers
5. Harold & Lucille Brannon #2
6.
7. Gallia, OH
8. 6.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04546/03839
2. 34-119-22719-0014
3. 108 000 000
4. Cameron Brothers
5. Raymond France #1
6.
7. Muskingum, OH
8. 2.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04547/03836

2. 34-119-22658-0014
 3. 108 000 000
 4. Cameron Brothers
 5. Mary Swindler #1
 6.
 7. Muskingum, OH
 8. 6.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Trans Corp
 1. 80-04548/03705
 2. 34-053-20164-0014
 3. 108 000 000
 4. Cameron Brothers
 5. Henry Cameron #1
 6.
 7. Gallia, OH
 8. 3.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Trans Corp
 1. 80-04549/03704
 2. 34-053-20163-0014
 3. 108 000 000
 4. Cameron Brothers
 5. Henry Cameron #2
 6.
 7. Gallia, OH
 8. 3.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Trans Corp
 1. 80-04550/03703
 2. 34-053-20162-0014
 3. 108 000 000
 4. Cameron Brothers
 5. Henry Cameron #3
 6.
 7. Gallia, OH
 8. 3.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Trans Corp
 1. 80-04551/03702
 2. 34-053-20172-0014
 3. 108 000 000
 4. Cameron Brothers
 5. Henry Cameron #4
 6.
 7. Gallia, OH
 8. 3.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Trans Corp
 1. 80-04552/03699
 2. 34-053-20208-0014
 3. 108 000 000
 4. Cameron Brothers
 5. James Baird #1
 6.
 7. Gallia, OH
 8. 5.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Trans Corp
 1. 80-04553/03844
 2. 34-119-23035-0014
 3. 108 000 000
 4. Cameron Brothers
 5. K R Greiner #1
 6.
 7. Muskingum, OH
 8. 6.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Trans Corp
 1. 80-04555/07117
 2. 34-059-22313-0014
 3. 103 000 000
 4. Oneal Productions Inc
 5. Wilford Hill #2
 6.

7. Guernsey, OH
 8. .0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Transmission Corp
 1. 80-04556/07175
 2. 34-169-22202-0014
 3. 103 000 000
 4. Smith Shafer Smith
 5. William Moore #3
 6. Wooster
 7. Wayne, OH
 8. 26.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Transmission Corp
 1. 80-04557/07192
 2. 34-167-24782-0014
 3. 103 000 000
 4. The Oxford Oil Co
 5. A. G. Sharitz et al. #1
 6.
 7. Washington, OH
 8. 9.0 million cubic feet
 9. October 26, 1979
 10.
 1. 80-04558/07193
 2. 34-031-23483-0014
 3. 103 000 000
 4. The Oxford Oil Co
 5. Wayne A. Waite #2
 6.
 7. Coshecton, OH
 8. 9.0 million cubic feet
 9. October 26, 1979
 10.
 1. 80-04559/07194
 2. 34-121-22168-0014
 3. 103 000 000
 4. Guernsey Petroleum Corporation
 5. Reed Unit 1MH
 6.
 7. Noble, OH
 8. .0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Company
 1. 80-04560/07195
 2. 34-121-22158-0014
 3. 103 000 000
 4. Guernsey Petroleum Corp
 5. Hedge #1-MH
 6.
 7. Noble, OH
 8. .0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Company
 1. 80-04561/07196
 2. 34-121-22159-0014
 3. 103 000 000
 4. Guernsey Petroleum Corp
 5. B. C. Farms Inc. #1-MH
 6.
 7. Noble, OH
 8. .0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Company
 1. 80-04562/07197
 2. 34-121-22155-0014
 3. 103 000 000
 4. Guernsey Petroleum Corp
 5. Stiers 2-MH
 6.
 7. Noble, OH
 8. .0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Company
 1. 80-04563/07198

2. 34-121-22514-0014
 3. 103 000 000
 4. Guernsey Petroleum Corp
 5. Stiers #1-MH
 6.
 7. Noble, OH
 8. .0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Company
 1. 80-04564/07199
 2. 34-059-22565-0014
 3. 103 000 000
 4. Guernsey Petroleum Corp
 5. Tobin #1-ME
 6.
 7. Guernsey, OH
 8. 24.0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Company
 1. 80-04565/07200
 2. 34-119-24702-0014
 3. 103 000 000
 4. Guernsey Petroleum Corp
 5. Hans-Williston #4-ME
 6.
 7. Muskingum, OH
 8. 1.0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Company
 1. 80-04566/07201
 2. 34-119-24703-0014
 3. 103 000 000
 4. Guernsey Petroleum Corp
 5. Hans-Williston #3-ME
 6.
 7. Muskingum, OH
 8. 8.0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Company
 1. 80-04567/07202
 2. 34-059-22335-0014
 3. 103 000 000
 4. Guernsey Petroleum Corp
 5. Johnson Heirs #1-ME
 6.
 7. Guernsey, OH
 8. 25.0 million cubic feet
 9. October 26, 1979
 10. Columbia Gas Transmission Corp
 1. 80-04568/07204
 2. 34-019-21292-0014
 3. 103 000 000
 4. Enterprise Gas & Oil Inc
 5. Clark-Morrison #4-E
 6.
 7. Carroll, OH
 8. 36.0 million cubic feet
 9. October 26, 1979
 10. East Ohio Gas Co
 1. 80-04569/07216
 2. 34-119-24271-0014
 3. 103 000 000
 4. The Oxford Oil Co
 5. Robert E. Charey #4
 6.
 7. Muskingum, OH
 8. 9.0 million cubic feet
 9. October 26, 1979
 10.
 1. 80-04570/07217
 2. 34-083-22637-0014
 3. 103 000 000
 4. Richard C Meyer
 5. Jean M Potts et al No 1
 6. Bladensburg-Northwest

7. Knox, OH
8. 12.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04571/07221
2. 34-099-21029-0014
3. 103 000 000
4. Rowley & Brown Petroleum Corp
5. Bishop #1
- 6.
7. Mahoning, OH
8. 27.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas
1. 80-04572/07222
2. 34-133-22003-0014
3. 103 000 000
4. Orion Energy Corp
5. Cash #2
- 6.
7. Portage, OH
8. 14.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04573/07223
2. 34-031-23536-0014
3. 103 000 000
4. Joe L Schrimsher
5. Archie Williamson #4
- 6.
7. Coshocton, OH
8. 20.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04574/07224
2. 34-119-24445-0014
3. 103 000 000
4. The Benatty Corporation
5. D Crawford #3
- 6.
7. Muskingum, OH
8. 25.0 million cubic feet
9. October 26, 1979
10. The East Ohio Gas Company
1. 80-04575/07225
2. 34-119-24454-0014
3. 103 000 000
4. The Benatty Corporation
5. D Crawford #2
- 6.
7. Muskingum, OH
8. 25.0 million cubic feet
9. October 26, 1979
10. The East Ohio Gas Company
1. 80-04576/07226
2. 34-053-20360-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. Elmer Fife #1
- 6.
7. Gallia, OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04577/07227
2. 34-053-20376-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. Thomas Skinner #1
- 6.
7. Gallia, OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04578/07228
2. 34-053-20423-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. Moles-Curnutte Unit #1
- 6.
7. Gallia, OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04579/07229
2. 34-053-20421-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. Sherman Buchman #1
- 6.
7. Gallia, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04580/07230
2. 34-053-20410-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. Ronial Jividen #1
- 6.
7. Gallia, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04581/07231
2. 34-053-20377-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. Bernard Nuhm #1
- 6.
7. Gallia, OH
8. 6.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04582/07232
2. 34-121-22049-0014
3. 103 000 000
4. Oneal Productions Inc
5. Ruth Shriver #3
- 6.
7. Noble, OH
8. 4.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04583/07233
2. 34-121-22048-0014
3. 103 000 000
4. Oneal Productions Inc
5. Clifford Secrest #1
- 6.
7. Noble, OH
8. 30.0 million cubic feet
9. October 20, 1979
10. East Ohio Gas Company
1. 80-04584/07234
2. 34-121-22051-0014
3. 103 000 000
4. Oneal Productions Inc
5. C Hedge #1
- 6.
7. Noble, OH
8. 22.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04585/07235
2. 34-133-22002-0014
3. 103 000 000
4. Orion Energy Corp
5. Cash #1
- 6.
7. Portage, OH
8. 10.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04586/07236
2. 34-031-23322-0014
3. 103 000 000
4. Cyclops Corporation
5. Chester & Onie Pew #1
- 6.
7. Coshocton, OH
8. 36.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04587/07240
2. 34-127-24268-0014
3. 103 000 000
4. Wilson Petroleum Corporation
5. W Garren No 1
- 6.
7. Perry, OH
8. .0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04588/07242
2. 34-119-24388-0014
3. 103 000 000
4. Wilson Petroleum Corporation
5. V Gebhart #1
- 6.
7. Muskingum, OH
8. 12.0 million cubic feet
9. October 26, 1979
10. Roseville Gas Co
1. 80-04589/07243
2. 34-127-24199-0014
3. 103 000 000
4. Wilson Petroleum Corporation
5. H Sluss #1
- 6.
7. Perry, OH
8. .0 million cubic feet
9. October 26, 1979
10. Foraker Gas Co
1. 80-04590/07244
2. 34-053-20425-0014
3. 103 000 000
4. R Gene Brasel d.b.a. Brasel & Brasel
5. Clyde Burnutte #1
- 6.
7. Gallia, OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04591/07245
2. 34-053-20424-0014
3. 103 000 000
4. R Gene Brasel d.b.a. Brasel & Brasel
5. Dale Workman #1
- 6.
7. Gallia, OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04592/07246
2. 34-053-20422-0014
3. 103 000 000
4. R Gene Brasel d.b.a. Brasel & Brasel
5. Harry Wood #1
- 6.
7. Gallia, OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04593/07247

2. 34-089-23666-0014
3. 103 000 000
4. The Oxford Oil Co
5. Anne Williams #1
- 6.
7. Licking, OH
8. 10.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04594/07248
2. 34-031-23597-0014
3. 103 000 000
4. The Oxford Oil Co
5. John Graham #4
- 6.
7. Coshocton, OH
8. 10.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04595/07249
2. 34-031-23551-0014
3. 103 000 000
4. The Oxford Oil Co
5. Edna Maston #2
- 6.
7. Coshocton, OH
8. 9.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04596/07250
2. 34-083-22634-0014
3. 103 000 000
4. The Oxford Oil Co
5. Robert Gulcher #3
- 6.
7. Knox, OH
8. 9.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04597/07251
2. 34-039-20758-0014
3. 103 000 000
4. Bill Blair Incorporated
5. Atlee Tescher #1
6. Homeworth Field
7. Columbiana, OH
8. 34.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04598/07252
2. 34-029-20752-0014
3. 103 000 000
4. Bill Blair Incorporated
5. Ray Orlando #1
6. Homeworth Field
7. Columbiana, OH
8. 38.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04599/07253
2. 34-029-20753-0014
3. 103 000 000
4. Bill Blair Incorporated
5. Edward Kibler #3
6. Homeworth Field
7. Columbiana, OH
8. 38.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04600/07254
2. 34-029-20747-0014
3. 103 000 000
4. Bill Blair Incorporated
5. Edward Kibler #1
6. Homeworth Field

7. Columbiana OH
8. 40.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04601/07255
2. 34-155-21281-0014
3. 103 000 000
4. Pyramid Oil & Gas Company
5. Kleis #2
- 6.
7. Trumbull OH
8. 30.0 million cubic feet
9. October 26, 1979
- 10.
1. 80-04554/07117
2. 34-119-24680-0014-0
3. 103
4. Petroc Co
5. N Rollins #3
- 6.
7. Muskingum, OH
8. 10.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Co

U.S. Geological Survey Metairie, La.

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)
1. 80-04602/C9-508
2. 17-707-00000-0000-0
3. 102 000 000
4. Pelto Oil Company
5. OCS-G-2300 A2D
6. South Marsh Island
7. 235
8. 75.0 million cubic feet
9. October 26, 1979
10. Tennessee Gas Pipeline Company Sea Robin Pipeline Co

United States Geological Survey, Albuquerque, N. Mex.

1. Control Number (FERC./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)
1. 80-04470/COA-3171-79
2. 05-067-06191-0000-0
3. 103 000 000
4. Arco Oil and Gas Company
5. Southern Ute No. 2-3 32-8
6. Ignacio Blanco
7. La Plata CO
8. 110.0 million cubic feet
9. October 26, 1979
10. Western Slope Gas Company
1. 80-04474/COA-3172-79
2. 05-067-06193-0000-0
3. 103 000 000
4. Arco Oil and Gas Company
5. Southern Ute No 12-3 32-8

6. Ignacio Blanco
7. La Plata CO
8. 110.0 million cubic feet
9. October 26, 1979
10. Western Slope Gas Company
1. 80-04475/COA-3177-79
2. 05-067-06206-0000-0
3. 103 000 000
4. Arco Oil and Gas Company
5. South Ute 6-2 32-7MV
6. Ignacio Blanco
7. La Plata CO
8. 110.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation
1. 80-04476/COA-3179-79
2. 05-067-06203-0000-0
3. 103 000 000
4. Arco Oil and Gas Company
5. Southern Ute No 2-4 32-8
6. Ignacio Blanco
7. La Plata County CO
8. 110.0 million cubic feet
9. October 26, 1979
10. Western Slope Gas Company
1. 80-04478/COA-3190-79
2. 05-067-06194-0000-0
3. 103 000 000
4. Arco Oil and Gas Company
5. Southern Ute 18-3 32-7
6. Ignacio Blanco
7. La Plata CO
8. 155.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation
1. 80-04479/COA-3191-79
2. 05-067-06192-0000-0
3. 103 000 000
4. Arco Oil and Gas Company
5. Southern Ute No 12-4 32-8
6. Ignacio Blanco
7. La Plata CO
8. 110.0 million cubic feet
9. October 26, 1979
10. Western Slope Gas Company
1. 80-04481/COA-3162-79
2. 05-067-06205-0000-0
3. 103 000 000
4. Arco Oil and Gas Company
5. Southern Ute No 7-2 32-7
6. Ignacio Blanco
7. La Plata CO
8. 110.0 million cubic feet
9. October 26, 1979
10. Western Slope Gas Company
1. 80-04514/COA-2615-79
2. 05-067-05153-0000-0
3. 108 000 000
4. Murchison Trusts
5. Southern Ute Block 5#2-4
6. Ignacio—Blanco
7. La Plata County CO
8. 13.1 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation
1. 80-04515/COA-2616-79
2. 05-067-05281-0000-0
3. 108 000 000
4. Murchison Trusts
5. Southern Ute Block 10#2-30
6. Ignacio—Blanco
7. La Plata County CO
8. 18.4 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Company

1. 80-04518/COA-2617-79
2. 05-067-05045-0000-0
3. 108 000 000
4. Murchison Trusts
5. Southern Ute Block 7#4-14
6. Ignacio-Blanco
7. La Plata County Co
8. 9.9 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation
1. 80-04517/COA-2618-79
2. 05-067-05219-0000-0
3. 108 000 000
4. Murchison Trusts
5. Southern Ute Block 6#1-32
6. Ignacio-Blanco
7. La Plata County Co
8. 10.7 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Company
1. 80-04518/COA-2619-79
2. 05-067-05037-0000-0
3. 108 000 000
4. Murchison Trusts
5. Southern Ute Block 7#1-16
6. Ignacio-Blanco
7. La Plata County Co
8. 11.8 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation
1. 80-04519/COA-2620-79
2. 05-067-05009-0000-0
3. 108 000 000
4. Murchison Trusts
5. Southern Ute Block 7#3-14
6. Ignacio-Blanco
7. La Plata County Co
8. 6.5 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation
1. 80-04477/COA-3186-79
2. 05-067-06204-0000
3. 103 000 000
4. Arco Oil and Gas Company
5. Southern Ute 1-3 32-8
6. Ignacio Blanco
7. La Plata Co
8. 110.0 million cubic feet
9. October 26, 1979
10. Western Slope Gas Company
1. 80-04480/COA-3148-79
2. 05-067-06209-0000
3. 103 000 000
4. Arco Oil and Gas Company
5. Southern Ute 1-4 32-8
6. Ignacio Blanco-Mesaverde
7. La Plata Co
8. 110.0 million cubic feet
9. October 26, 1979
10. Western Slope Gas Company
1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)
1. 80-04468A/NM-3325-79A
2. 30-039-21453-0000-1
3. 103 000 000
4. Amoco Production Company
5. San Juan Unit 29-4 #21 (MV)
6. Blanco MV & E Blanco PC
7. Rio Arriba NM
8. 180.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corp
1. 80-04468B/NM-3325-79B
2. 30-039-21453-0000-2
3. 103 000 000
4. Amoco Production Company
5. San Juan Unit 29-4 #21 (PC)
6. Blanco MV & E Blanco PC
7. Rio Arriba NM
8. 180.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corp
1. 80-04486/NM-3237-79
2. 30-045-10850-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. San Juan 32-8 Unit #5
6. Blanco
7. San Juan NM
8. 4.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Co
1. 80-04487/NM-3238-79
2. 30-039-06897-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. Jicarilla 92 #2
6. Blanco
7. Rio Arriba NM
8. 12.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation Jicarilla Apache Tribe
1. 80-04488/NM-3241-79
2. 30-039-82390-0000-0
3. 108 000 000
4. Northwest pipeline Corporation
5. S/J 31-6 Unit #23
6. Blanco
7. Rio Arriba NM
8. 11.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Co
1. 80-04489/NM-3242-79
2. 30-045-10715-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. SJ 32-7 Unit #8
6. Blanco
7. San Juan NM
8. 12.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation
1. 80-04490/NM-3244-79
2. 30-039-07514-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. Indian E #1
6. Choza Mesa
7. Rio Arriba NM
8. 3.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation Jicarilla Apache Tribe Phillips Petroleum Company
1. 80-04491/NM-3248-79
2. 30-045-11207-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. San Juan 32-7 Unit #22
6. Blanco
7. San Juan NM
8. 4.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Company
1. 80-04492/NM-3265-79
2. 30-039-07924-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. S/J 31-6 Unit #20
6. Blanco MV
7. Rio Arriba NM
8. 13.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Company
1. 80-04493/NM-3266-79
2. 30-039-07937-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. San Juan 31-6 Unit #11
6. Blanco
7. Rio Arriba NM
8. 14.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Co
1. 80-04494/NM-3267-79
2. 30-039-07955-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. Rosa Unit #19
6. Blanco MV
7. Rio Arriba NM
8. 15.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Company
1. 80-04495/NM-3268-79
2. 30-039-07975-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. Rosa Unit #9
6. Blanco MV
7. Rio Arriba NM
8. 10.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Company
1. 80-04496/NM-3269-79
2. 30-039-07942-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. Rosa Unit #23
6. Blanco
7. Rio Arriba NM
8. 6.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Company
1. 80-04497/NM-3270-79
2. 30-039-07761-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation
5. S/J 30-5 Unit #31
6. Blanco
7. Rio Arriba NM
8. 6.0 million cubic feet
9. October 26, 1979
10. Northwest Pipeline Corporation El Paso Natural Gas Company
1. 80-04498/NM-3271-79
2. 30-039-00000-0000-0
3. 108 000 000
4. Northwest Pipeline Corporation

5. S/J 30-5 Unit #2 R
 6. Blanco
 7. Rio Arriba NM
 8. 19.0 million cubic feet
 9. October 26, 1979
 10. Northwest Pipeline Corporation El Paso Natural Gas Company
 1. 80-04499/NM-03311-79
 2. 30-045-22662-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Heath Gas Com E #1A
 6. Blanco Mesaverde
 7. San Juan NM
 8. 80.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04500/NM-03314-79
 2. 30-045-22336-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. A L Elliott A #1A
 6. Blanco Mesaverde
 7. San Juan NM
 8. 145.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04501/NM-03315-79
 2. 30-045-22663-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. W D Heath A #1A
 6. Blanco Mesaverde
 7. San Juan NM
 8. 193.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04502/NM-03317-79
 2. 30-039-21475-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Valencia Canyon Unit #15
 6. Choza Mesa
 7. Rio Arriba NM
 8. 35.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04503/NM-3321-79-3
 2. 30-039-21476-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Valencia Canyon Unit #10
 6. Choza Mesa
 7. Rio Arriba NM
 8. 17.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04504/NM-3321-79-8
 2. 30-039-21476-0000-0
 3. 108 000 000
 4. Amoco Production Company
 5. Valencia Canyon Unit #10
 6. Choza Mesa-Pictured Cliffs
 7. Rio Arriba NM
 8. 21.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04505/NM-3322-79
 2. 30-039-21473-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Valencia Canyon Unit #12
 6. Choza Mesa
 7. Rio Arriba NM
 8. 300.0 million cubic feet

9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04506/NM-3323-79
 2. 30-045-22739-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Ute Indians A #11
 6. Ute Dome Paradox
 7. San Juan NM
 8. 237.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04508/NM-3331-79
 2. 30-045-22667-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. A L Elliott C #1A
 6. Blanco Mesaverde
 7. San Juan NM
 8. 89.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04509/NM-3337-79
 2. 30-039-21320-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Jicarilla Apache 102 #21
 6. Tapacito Pictured Cliffs
 7. Rio Arriba NM
 8. 40.0 million cubic feet
 9. October 26, 1979
 10. Gas Company of New Mexico
 1. 80-04510/NM-3338-79
 2. 30-039-21321-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Jicarilla Apache 102 #22
 6. Tapacito Pictured Cliffs
 7. Rio Arriba NM
 8. 75.0 million cubic feet
 9. October 26, 1979
 10. Gas Company of New Mexico
 1. 80-04511/NM-3339-79
 2. 30-039-21403-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Jicarilla Apache 102 #23
 6. Tapacito Pictured Cliffs
 7. Rio Arriba NM
 8. 110.0 million cubic feet
 9. October 26, 1979
 10. Gas Company of New Mexico
 1. 80-04512/NM-3340-79
 2. 30-039-21319-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Jicarilla Apache 102 #24
 6. Tapacito Pictured Cliffs
 7. Rio Arriba NM
 8. 110.0 million cubic feet
 9. October 26, 1979
 10. Gas Company of New Mexico
 1. 80-04513/NM-3342-79
 2. 30-039-21317-0000-0
 3. 103 000 000
 4. Amoco Production Company
 5. Jicarilla Apache 102 #18
 6. Tapacito Pictured Cliffs
 7. Rio Arriba NM
 8. 20.0 million cubic feet
 9. October 26, 1979
 10. Gas Company of New Mexico

U.S. Geological Survey Albuquerque, N. Mex.

1. Control Number (FERC/State)

2. API well number
 3. Section of NGPA
 4. Operator
 5. Well name
 6. Field or OCS area name
 7. County, State or Block No.
 8. Estimated Annual Volume
 9. Date Received at FERC
 10. Purchaser(s)
 1. 80-04463A/UA-3222-79A
 2. 43-037-30365-0000-1
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit I-19 (Desert Crk)
 6. Greater Aneth
 7. San Juan UT
 8. 4.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04463B/UA-3222-79B
 2. 43-037-30365-0000-2
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit I-19 (Ismay)
 6. Greater Aneth
 7. San Juan UT
 8. 4.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04464A/UA-3228-79A
 2. 43-037-30364-0000-1
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit H-18 (Desert Crk)
 6. Greater Aneth
 7. San Juan UT
 8. 44.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04464B/UA-3228-79B
 2. 43-037-30364-0000-2
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit H-18 (Ismay)
 6. Greater Aneth
 7. San Juan UT
 8. 44.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04465A/UA-3227-79A
 2. 43-037-30367-0000-1
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit I-17 (Desert Crk)
 6. Greater Aneth
 7. San Juan UT
 8. 69.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04465B/UA-3227-79B
 2. 43-037-30367-0000-2
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit I-17 (Ismay)
 6. Greater Aneth
 7. San Juan UT
 8. 69.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04466A/UA-3233-79A
 2. 43-037-30378-0000-1
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit G-17 (Desert Crk)
 6. Greater Aneth

7. San Juan UT
 8. 18.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04466B/UA-3233-79B
 2. 43-037-30378-0000-2
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit G-17 (Ismay)
 6. Greater Aneth
 7. San Juan UT
 8. 18.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04467A/UA-3235-79A
 2. 43-037-30366-0000-1
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit H-16 (Desert Crk)
 6. Greater Aneth
 7. San Juan UT
 8. 8.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Company
 1. 80-04467B/UA-3235-79B
 2. 43-037-30366-0000-2
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit H-16 (ISMAY)
 6. Greater Aneth
 7. San Juan UT
 8. 8.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04469/UA-3223-79
 2. 43-037-30415-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit H-17B
 6. Greater Aneth
 7. San Juan UT
 8. 16.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04471/UA-3231-79
 2. 43-037-30385-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit C-17
 6. Greater Aneth
 7. San Juan UT
 8. 18.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04472/UA-3230-79
 2. 43-037-30353-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit O-7
 6. Greater Aneth
 7. San Juan UT
 8. 3.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04473/UA-3229-79
 2. 43-037-30379-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit C-13
 6. Greater Aneth
 7. San Juan UT
 8. 12.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04482/UA-3232-79

2. 43-037-30390-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit E-17
 6. Greater Aneth
 7. San Juan UT
 8. 6.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04483/UA-3226-79
 2. 43-037-30363-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit G-13
 6. Greater Aneth
 7. San Juan UT
 8. 8.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04484/UA-3234-79
 2. 43-037-30359-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit K-11
 6. Greater Aneth
 7. San Juan UT
 8. 13.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04485/UA-3225-79
 2. 43-037-30377-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit G-15
 6. Greater Aneth
 7. San Juan UT
 8. 14.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co
 1. 80-04507/UA-3224-79
 2. 43-037-30361-0000-0
 3. 103 000 000
 4. The Superior Oil Company
 5. McElmo Creek Unit I-15
 6. Greater Aneth
 7. San Juan UT
 8. 11.0 million cubic feet
 9. October 26, 1979
 10. El Paso Natural Gas Co

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 within fifteen (15) days of the date of publication of this notice in the *Federal Register*.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36173 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP76-93]

Kentucky West Virginia Gas Co.; Report of Refunds

November 15, 1979.

Take notice that on November 6, 1979, Kentucky West Virginia Gas Company (Kentucky West) in compliance with the Commission's ordering paragraph (C) of its Order issued May 31, 1977, at Docket No. RP76-93, tendered for filing a Report of Refunds Made on October 22, 1979.

Kentucky West states that the Report of Refunds Made encompasses its two pipeline customers for sales under Rate Schedule PLS-1: Equitable Gas Company and Columbia Gas Transmission Corporation. Of said refund totaling \$8,739,751.72, Kentucky West has distributed to Equitable Gas Company \$6,630,097.45 plus additional accrued interest thereon to the date of distribution aggregating \$870,121.87 for a total of \$7,500,219.32 and has distributed to Columbia Gas Transmission Corporation \$2,109,654.27 plus additional accrued interest thereon to the date of distribution aggregating \$274,096.29 for a total of \$2,383,750.56.

Kentucky West states that a copy of its filing has been served upon each party on the service list of Docket No. RP76-93.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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. 79-36174 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-44]**Kentucky West Virginia Gas Co.;
Proposed Changes in FERC Gas Tariff**

November 16, 1979.

Take notice that Kentucky West Virginia Gas Company, on November 2, 1979, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed changes establish an incremental pricing surcharge provision and a revised PGA provision in compliance with Part 282 of the Regulations of the Federal Energy Regulatory Commission.

The proposed changes are mandated by the Natural Gas Policy Act of 1978 and by the Commission's Regulations, and are now issued to comply with Order No. 49 of the Federal Energy Regulatory Commission, Docket No. RM79-14, dated September 28, 1979.

Kentucky West Virginia Gas Company states that a copy of the filing has been served upon each of the Company's jurisdictional customers, the West Virginia Public Service Commission, the Pennsylvania Public Utilities Commission and the Energy Regulatory Commission of Kentucky.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 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. 79-36175 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-84]**Louisville Gas & Electric Co.; Proposed
Tariff Change**

November 16, 1979.

The filing Company submits the following:

Take notice that Louisville Gas and Electric Company (LG&E), on November 9, 1979, tendered for filing proposed changes in its Interconnection Agreement between LG&E and Tennessee Valley Authority (TVA),

designated Louisville Gas and Electric Company FERC Rate Schedule No. 28.

The purpose of this filing is to increase the demand charge for Short Term Power as set forth on Service Schedule C from 60¢ per kilowatt per week to 70¢ per kilowatt per week.

Copies of the filing were served upon TVA and the Energy Regulatory Commission of Kentucky.

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 Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 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. 79-36176 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RE80-3]**Madison Gas & Electric Co.;
Application for Exemption**

November 15, 1979.

Take notice that Madison Gas and Electric Company (MGE), on October 30, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, MGE states that it should not be required to file the specified data for the following reasons:

(1) On May 31, 1979, MGE filed an application with the Public Service Commission of Wisconsin (PSCW) for authority to increase its electric and natural gas rates. By virtue of Section 290.103 of the regulations, this filing may be considered an alternative method of fulfilling the filing requirements of Subparts B, C, D, and E of the regulations.

(2) To require MGE to file information in addition to that which is already available (MGE's filing with PSCW for authority to increase its electric and natural gas rates) and in line with the intent of Section 133 would not carry out the purposes of the section. The purposes of Section 133 will continue to be served by existing rules of PSCW.

(3) Regardless of whether the PSCW uses MGE's 1979 test year filing or a 1980 test year, providing the information required in Subparts B, C, D, and E would serve no useful purpose to anyone in MGE's current rate proceeding or any future proceeding.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 4, 1980.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36177 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP80-42]**Michigan Wisconsin Pipe Line Co.;
Filing of Revised Tariff**

November 16, 1979.

Take notice that Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) on November 7, 1979, tendered for filing Second Revised Sheet Nos. 39 through 44, Original Sheet Nos. 7a, 43a, 43b and 43c to its FERC Gas Tariff, Original Volume No. 1. The proposed Tariff Sheets reflect compliance with the incremental pricing provisions of the NGPA and Commission Regulations promulgated thereunder.

Copies of this filing have been mailed to each of Michigan Wisconsin's jurisdictional customers and to appropriate State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 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. 79-36178 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP80-37]

Mid Louisiana Gas Co.; Proposed Change in Tariff

November 15, 1979.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on November 5, 1979 tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff the following tariff sheets:

Third Revised Sheet No. 26a
Fifth Revised Sheet No. 26b
Third Revised Sheet No. 26c
Third Revised Sheet No. 26d
Original Sheet No. 26d.1
Original Sheet No. 26d.2
Original Sheet No. 26d.3
Original Sheet No. 26d.4

Mid Louisiana states that the filing is to comply with Commission Order No. 49 issued at Docket No. RM79-14. Specifically, Section 19 of its tariff has been changed to include provisions for the calculation of incremental pricing adjustments in its PGA rate adjustments. In addition, Mid Louisiana revised Section 19.10 *Carrying Charges* to comply with the Commission's Regulations in Order No. 47 at Docket No. RM77-22.

Mid Louisiana has requested a waiver of notice requirements so as to permit the proposed tariff sheets to become effective December 1, 1979.

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 Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36179 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RE80-5]

Montana-Dakota Utilities Co.; Application for Exemption

November 15, 1979.

Take notice that Montana-Dakota Utilities Company, on October 30, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts C, D, and portions of Subpart E of Subchapter K, Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA, for only Montana-Dakota Utilities Company's Sheridan, Wyoming, electric system.

In its application for partial exemption, Montana-Dakota Utilities Company (MDU) states that it should not be required to file the specified data for the following reasons:

- (1) The Sheridan, Wyoming, electric system is completely isolated from MDU's interconnected electric system.
- (2) MDU purchases all power requirements for the Sheridan system from Pacific Power and Light Company.
- (3) Much of the data required relates to the facilities of Pacific Power and Light Company.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825

North Capitol Street, N.E., Washington, D.C. 20426, on or before January 4, 1980.
Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36180 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP78-78]

Natural Gas Pipeline Co. of America; Filing of Revised Tariff Sheets

November 15, 1979.

Take notice that on November 7, 1979 Natural Gas Pipeline Company of America (Natural) tendered for filing revised tariff sheets for Third Revised Volume No. 1 and Second Revised Volume No. 2 of its FERC Gas Tariff.

Natural states the revised tariff sheets, filed pursuant to the applicable provisions of the Stipulation and Agreement accepted and approved by Commission letter order issued October 4, 1979, at Docket No. RP78-78, set out the rates effective as of December 1, 1978, January 1, 1979, March 1, 1979, April 1, 1979, and September 1, 1979, along with the required amendment to Natural's PGA as provided for in Article XVII.

Copies of this filing were served upon the company's jurisdictional customers and interested parties to Docket No. RP78-78.

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 Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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. 79-36181 Filed 11-23-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP79-71]

Natural Gas Pipeline Co. of America; Application To Withdraw Rate Increase Filing

November 15, 1979.

Take notice that on November 7, 1979, Natural Gas Pipeline Company of

America (Natural) filed an application to withdraw its suspended rate increase filing of May 31, 1979.

Natural states that its application for withdrawal has been made pursuant to Article XVI of the settlement agreement in Docket No. RP78-78 approved by Commission letter order dated October 4, 1979. Since no application for rehearing of the Commission's order approving the Docket No. RP78-78 settlement was filed by November 5, 1979, the Commission's Order is now final and nonappealable.

Copies of this filing were served upon the company's jurisdictional customers, interested state commissions, and interested parties to Docket No. RP79-71.

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 Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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. 79-36182 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-91]

Northern Indiana Public Service Co.; Proposed Tariff Change

November 16, 1979.

The filing Company submits the following:

Take notice that Northern Indiana Public Service Company, on November 13, 1979, tendered for filing twelve (12) Assignment of Power Contracts from twelve (12) individual Rural Electric Membership Corporations to Wabash Valley Power Association, Inc., and twelve (12) Consent to Assignment executed on behalf of Northern Indiana Public Service Company.

Said twelve (12) Assignment of Power Contracts provide for the assignment and transfer to Wabash Valley Power Association, Inc., all of the rights, title and interest which each of the twelve (12) individual Rural Electric Membership Corporations have in the

Power Contracts (Agreement for Supply of Electric Energy for Resale) with Northern Indiana Public Service Company.

Copies of the filing were served upon Wabash Valley Power Association, Inc., and the Northern Indiana Public Service Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 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. 79-36183 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 1121]

Pacific Gas & Electric Co.; Application for Amendment of License

November 15, 1979.

Take notice that an application for an amendment of license was filed on July 10, 1979, under the Federal Power Act (16 U.S.C. §§ 791(a)-825(r)), by the Pacific Gas and Electric Company (applicant) for the Battle Creek Project No. 1121. The project is located on the Cross Country Canal in Shasta County near Manton, California. Correspondence with applicant regarding the application should be sent to: Mr. W. M. Gallavan, Vice President—Rates and Valuation, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106.

The applicant seeks to amend the project license to authorize construction of the proposed Volta 2 Hydroelectric Plant, which would consist of: (1) a 4-foot-diameter, 492-foot-long steel penstock to be located parallel to and about 15 feet from a pipe section of the Cross Country Canal, and that would receive water from the canal; (2) a semi-indoor type powerhouse containing a 1,000-kW generating unit that would discharge water back into the canal; and (3) a 1,500-foot-long, 12-kV pole-type transmission line to be located within the penstock-pipeline right-of-way,

connecting the powerhouse with the non-project Manton Branch of the Volta 1101 distribution line.

The new unit would develop energy that is now being lost in an energy dissipation device within the conduct system. This energy would enter applicant's distribution system to serve existing and future customers. No land outside the existing project boundary would be occupied by the new facilities.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 31, 1979. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36184 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA-80-26]

Utah Gas Service Co.; Application for Adjustment

November 15, 1979.

On November 6, 1979 Utah Gas Service Company filed with the Federal Energy Regulatory Commission an Application for an Adjustment under Order Nos. 24 and 49 wherein Utah Gas Service Company seeks not to apply the incremental pricing provisions of the Natural Gas Policy Act of 1978. Utah Gas Service Company asserts that the implementation of these incremental pricing provisions will create a special hardship, inequity and unfair distribution of burdens to all of its customers. The application also requests temporary relief in the event the Commission is unable to complete final action by December 31, 1979.

The procedures applicable to the conduct of this adjustment proceeding are found in Sec. 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24 issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of Sec. 1.41. All petitions to intervene must be filed on or before December 11, 1979.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36165 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 814]

Utah Power & Light Co.; Issuance of Annual License(s)

November 16, 1979.

On June 27, 1977, Utah Power and Light Company, Licensee for the Beaver Project No. 814, located on the Beaver River in Beaver County, Utah, filed an application for a new license pursuant to the Federal Power Act and Commission regulations thereunder.

The license for Project No. 814 was issued effective September 1, 1929, for a period ending August 31, 1979. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Utah Power and Light Company.

Take notice that an annual license has been issued to Utah Power and Light Company for the period September 1, 1979 to August 31, 1980, or until Federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Beaver Project No. 814, subject to the terms and conditions of the original license. Take further notice that if Federal takeover or issuance of a new license does not take place on or before August 31, 1980, a new annual license will be in effect each year thereafter, effective September 1 of each year, until such time as Federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36166 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RE80-9]

Public Utility District No. 1 of Snohomish County; Application for Exemption

November 16, 1979.

Take notice that Public Utility District No. 1 of Snohomish County, on October 31, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Public Utility District No. 1 of Snohomish County states that it should not be required to file the specified data for the following reason: "Compliance is unlikely to carry out the purposes of Section 133 to any greater degree than the applicant's present procedures which provide generally comparable information on costs of service on a timely basis which is readily available to everyone concerned."

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 11, 1980.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36167 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-41]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 16, 1979.

Take notice that South Georgia Natural Gas Company (South Georgia) on November 7, 1979, tendered for filing proposed changes in its FPC Gas Tariff, First Revised Volume No. 1, to become

effective December 1, 1979. South Georgia states that the proposed tariff sheets have been filed to establish an Incremental Pricing Surcharge provision, all in compliance with the Commission's Order No. 49.

Copies of the filing are being served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 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. 79-36168 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP77-62]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Tariff Filing in Compliance With Settlement Agreement

November 16, 1979.

Take notice that on November 13, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) tendered for filing revised tariff sheets to its FERC Gas Tariff, to be effective November 1, 1979, consisting of the following:

Ninth Revised Volume No. 1

Twenty-Seventh Revised Sheet Nos. 12A and 12B

Sixth Revised Volume No. 2

Third Revised Sheet No. 141A.
Fourth Revised Sheet Nos. 246D, 247D, 248D, 249H and 249I
Fifth Revised Sheet No. 245D
Sixth Revised Sheet Nos. 76 and 215
Seventh Revised Sheet Nos. 53, 54 and 77
Eighth Revised Sheet No. 141
Tenth Revised Sheet Nos. 11 and 12

Tennessee states that Article III of the Second Stipulation and Agreement (August 13, 1979) (Agreement) in this proceeding, which the Commission approved by its letter order dated November 6, 1979, provided for Tennessee to file a \$30 million rate

reduction. Under the terms of the Agreement, Tennessee states that the rate reduction would become effective January 1, 1980, if no applications for rehearing of the November 8, 1979 letter order are filed. However, Tennessee is proposing to make the tariff sheets listed above, which reflect the rate reduction, effective on November 1, 1979, on the condition that the November 8, 1979 letter order become final and nonappealable on December 7, 1979.

Tennessee states that copies of the filing have been mailed to all its jurisdictional customers, affected State regulatory commissions and parties to Docket No. RP77-62.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 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 persons wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36189 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2830]

Town of Madison Electric Works Department; Granting Interventions

November 16, 1979.

On December 13, 1977 the Town of Madison Electric Works Department (Madison Electric) filed an application for preliminary permit for the proposed Kennebec River Hydroelectric Project. Public notice of the application was given setting October 31, 1978, as the last date for filing protests and petitions to intervene. Petitions to intervene were filed on October 31, 1978 by both The Natural Resources Council of Maine, *et al.* (NRCM, *et al.*) and Madison Paper Corporation.

NRCM, *et al.* is composed of: the Natural Resources Council of Maine, a group dedicated to natural resources conservation; North Kennebec Regional

Planning Commission, the regional planning commission for most of the municipalities that would be affected by the proposed project; the Sandy River Watershed Association, a non-profit membership corporation to encourage appropriate conservation, development and management of the Sandy River Watershed; and a number of individuals who own property in, make recreational use of, or reside in the Sandy or Carabassett River Watershed. NRCM, *et al.* asserts that the substantial interests it represents will be adversely affected by the proposed project. In its petition to intervene, NRCM, *et al.* also requested that the application of Madison Electric be denied with prejudice to the submission of a revised application reflecting "adequate coordination and consultation with all relevant State and regional commissions and agencies" and accompanied by "an initial or preliminary environmental assessment." This notice disposes only of NRCM, *et al.*'s request for status as an intervenor.

Madison Paper Corporation operates a pulp and paper mill at Madison, Maine and operates two licensed hydroelectric projects on the Kennebec River (FERC Nos. 2364 and 2365). The site of the Madison Hydroelectric Plant, one of the developments proposed in the Kennebec River Hydroelectric Project, would be within the boundaries of Madison Paper's Abenaki Project, FERC No. 2364. It is Madison Paper's position that, as the licensee for the Abenaki Project, it should have a first priority over all others to develop further its project so long as such priority does not prevent the prompt economical development of the resource. In an amendment to its petition to intervene filed March 13, 1978, Madison Paper moved that the Commission reject the application of the Town of Madison Electric Works Department for Project No. 2830 and rule that no applications for preliminary permits related to the Abenaki Project, FERC No. 2364, will be entertained so long as the licensee is actively pursuing further development of its project. Should the Commission decide not to so rule, Madison Paper seeks a preliminary permit as set forth in its "conditional" application for preliminary permit filed March 13, 1979.¹ This notice addresses only Madison Paper's request for intervention in this proceeding.

It appears that the public interest may be served by granting the The Natural Resources Council of Maine, *et al.* and

¹ On April 12, 1979, Madison Electric filed a response to Madison Paper's amendment of its petition to intervene. The substance of that response did not address the question of intervention, but was directed to the additional relief requested by Madison Paper.

Madison Paper Corporation intervention in this proceeding.

Pursuant to Section 3.5(a) of the Commission's Rules of Practice and Procedure (Rules), 18 CFR § 3.5(a) (1978), as promulgated by Federal Energy Regulatory Commission Rulemaking RM78-19 (issued August 14, 1978) amended in Docket No. RM79-59 (July 23, 1979), the above petitioners are permitted to intervene in this proceeding subject to the Commission's Rules and Regulations under the Federal Power Act. Participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene. The admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order entered in this proceeding.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36190 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-80]

Virginia Electric & Power Co.; Filing

November 15, 1979.

The filing company submits the following:

Take notice that on November 9, 1979, the Virginia Electric and Power Company (VEPCO) tendered for filing a request for a new delivery point in Albermarle County, Virginia which has been designated Schuyler Delivery Point. The projected connection date for this delivery point is a date in December, 1979.

VEPCO requests that the Commission allow the Schuyler Delivery Point Supplement to become effective on the date the facilities are connected with the understanding that they will notify the Commission of the effective date to be placed in each copy of the supplement.

VEPCO states that there will be no significant increase in the unit cost of electricity to the Central Virginia Electric Cooperative as a result of the planned connection of facilities and therefore, request a waiver of the required billing data.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before December 4, 1979. Protests will be considered by the Commission in

determining the appropriate actions to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36191 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-81]

Virginia Electric Power Co.; Filing

November 15, 1979.

Take notice that on November 8, 1979, Virginia Electric Power Company (VEPCO) tendered for filing a supplement to the Company's FERC Rate Schedule No. 83-81 with Prince William Electric Cooperative (PVEC).

VEPCO states that it has installed and will own and maintain additional 69 kV substation bus-work at the Harrison Delivery Point as requested by PVEC. VEPCO further states that the excess substation facilities were requested to serve PVEC's 69 kV excess feeder circuit.

VEPCO requests an effective date of December 6, 1977, 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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 4, 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. 79-36192 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-85]

Wisconsin Power & Light Co.; Filing Wholesale Power Agreement

November 16, 1979.

The filing Company submits the following:

Take notice that on November 9, 1979, Wisconsin Power and Light Company (WPL) tendered for filing a Wholesale Power Contract dated November 1, 1979,

between the City of Wisconsin Dells and Wisconsin Power and Light Company. WPL states that this contract will supersede an existing contract for wholesale electric service dated October 9, 1972.

WPL requests a proposed effective date of May 4, 1979.

WPL states that a copy of the Wholesale Power Contract and the filing have been sent to the City of Wisconsin Dells.

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 Paragraphs 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 December 7, 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 persons 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. 79-36193 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-83]

Wisconsin Public Service Corp.; Filing

November 15, 1979.

The filing Company submits the following:

Take notice that Wisconsin Public Service Corporation (WPSC) on November 9, 1979, tendered for filing Annual Contract Demand Quantities of Manitowoc, Wisconsin. This Agreement will revise the Contract Demand Quantities for peak load, intermediate load and base load in accordance with the Agreement including the renomination of demand as provided for in Article III of the Settlement Agreement of Docket No. ER78-506, Federal Energy Regulatory Commission Approval Letter Dated October 15, 1979.

Copies of this filing were served upon the City of Manitowoc.

The Agreement is to be effective immediately.

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 Sections

1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 4, 1979. Protests will 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. 79-36194 Filed 11-23-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1365-5]

Ambient Air Monitoring Reference and Equivalent Methods; Amendment to Equivalent Method for SO₂

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7044, February 18, 1975), has approved an amendment to SO₂ equivalent method number EQSA-0877-024 (Federal Register, Vol. 42, page 44264, September 2, 1977). While the designation number of the method remains the same, the method identification is amended as follows:

EQSA-0877-024, "ASARCO Model 500 Sulfur Dioxide Monitor", operated on a 0-0.5 ppm range; or "ASARCO Model 600 Sulfur Dioxide Monitor", operated on a 0-1.0 ppm range. (Both models are identical except the range).

This method is available from ASARCO Inc., 3422 South 700 West Salt Lake City, Utah 84119.

This change is made in accordance with 40 CFR 53.14, based on additional information submitted by the applicant subsequent to the original designation (42 FR 44264, September 2, 1977). As a designated equivalent method, this method is acceptable for use by States and other control agencies for purposes which require use of a reference or equivalent monitoring method.

Additional information concerning the use of this designated method may be obtained from the original Notice of Designation (42 FR 44264) or by writing to: Director, Environmental Monitoring Systems Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Technical questions

concerning the method should be directed to the manufacturer.

November 14, 1979

Stephen J. Gage,
Assistant Administrator for Research and Development.

[FR Doc. 79-36298 Filed 11-23-79; 8:45 am]

BILLING CODE 6560-01-M

[OTS-53007; FRL 1365-4]

Premanufacture Notices Status Report for October 1979

AGENCY: Environmental Protection Agency (EPA or the Agency).

ACTION: Monthly Summary of Premanufacture Notices.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to publish a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and the PMN's for which the review period has expired since publication of the last monthly summary. This is the report for October 1979.

DATE: Any person who wishes to file written comments on a specific chemical substance should submit those comments no later than 30 days before the expiration of the applicable notice review period.

ADDRESS: Written comments should bear the PMN number of the particular substance and should be addressed to the Document Control Office (TS-793), Office of Toxic Substances, EPA, 401 M St., SW, Washington, DC 20460.

Nonconfidential portions of the PMN's and other documents in the public record are available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday (excluding holidays), in Room E-447 at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Smith, Premanufacturing Review Division (TS-794), Office of Toxic Substances, EPA, Washington, DC 20460, 202/426-8816.

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA at least 90 days before he begins manufacture or import. A "new" chemical substance is any chemical substance that is not on the inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the inventory on June 1, 1979 (44 FR 28558, May 15, 1979). The section 5 requirements are effective for all new

chemical substances manufactured or imported for a commercial purpose after July 1, 1979. Once EPA receives a PMN, the Agency normally has 90 days to review it. However, under section 5(c) of TSCA, the Agency may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that such an extension is necessary, the Agency publishes the reasons for the extension in the **Federal Register**.

The monthly status report required under section 5(d)(3) will identify: (a) PMN's received during the month; (b)

PMN's received previously and still under review at the beginning of the month; (c) PMN's for which the notice review period has ended since the last monthly summary; and (d) chemical substances that EPA has added to the inventory since the last monthly summary.

(Sec. 5 of the Toxic Substances Control Act (90 Stat. 2012; 15 U.S.C. 2604).

Dated: November 15, 1979.

Marilyn C. Bracken,
Deputy Assistant Administrator for Program Integration and Information.

Premanufacture Notices

[Status Report for October 1979]

PMN No.	Identity/generic name	FR citation	Expiration date
I. Premanufacture Notices Received During the Month			
5AHQ-1079-0030	Magnesium dodecylbenzene sulfonate salt	44 FR 59953 (10/17/80)	Dec. 30, 1979.
5AHQ-1079-0035(S)	2-tert-butyl-4-sec butylphenol	44 FR 59954 (10/17/79)	Jan. 1, 1980.
5AHQ-1079-0019A	Benzene, ethenyl-, tribromo derivative, homopolymer.	In preparation	Jan. 23, 1980.
5AHQ-1079-0037(A)	Dodecenyl succinic acid mono alkylester	In preparation	Jan. 27, 1980.
II. Premanufacture Notices Received Previously and Still Under Review at the Beginning of the Month			
5AHQ-0979-0016	n-Methanesulfonyl-p-toluene sulfonamide	44 FR 54118 (9/18/79)	Dec. 4, 1979.
5AHQ-0979-0022	Potassium salt of polyfunctional aliphatic acid oligomer.	44 FR 55416 (9/26/79)	Dec. 17, 1979.
5AHQ-0979-0023	Ammonium salt of polyfunctional aliphatic acid oligomer.	do.	Do.
5AHQ-0979-0011(A)	Poly (vinyl acetate, acrylic acid, butylacrylate dioctyl maleate, 2 ethylhexyl acrylate).	44 FR 57488 (10/5/79)	Dec. 23, 1979.
5AHQ-0979-0024	2,2'-methylenebis (4-secbutyl-6-tert-butylphenol).	44 FR 58800 (10/11/79)	Dec. 25, 1979.
5AHQ-0979-0025	2,2'-ethyldienebis (4-secbutyl-6-tert-butylphenol).	do.	Do.
III. Premanufacture Notices for Which the Notice Review Period Has Ended Since the Last Monthly Summary			
5AHQ-0779-0004	Amine salts of dicarboxylic acids	44 FR 44931 (7/31/79)	Oct. 17, 1979.
IV. Chemical Substances That EPA has Added to the Inventory Since the Last Monthly Summary			
5AHQ-0779-0004	Amine salts of dicarboxylic acids	44 FR 44931 (7/31/79)	

[FR Doc. 79-36299 Filed 11-23-79; 8:45 am]

BILLING CODE 6580-01-M

[FRL 1365-1]

Science Advisory Board; Subcommittee on Energy-Related Health Effects Research; Meeting

Under Public Law 92-463, notice is hereby given that a two-day meeting of the Subcommittee on Energy-Related Health Effects Research of the Science Advisory board will be held on December 18 and 19, 1979 in Conference Room 3906-08, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. The meeting will start at 9:00 a.m. on December 18, 1979.

The purpose of the meeting will be to review and comment on the Agency's tentative plans for redirecting certain portions of the Energy-Related Health Effects Research of EPA's Office of Air Quality Planning and Standards (OAQPS). Specifically, the portion of the Energy-Related Health Effects Research Program to be reviewed and discussed, addresses the health effects of

pollutants from fossil fuel combustion and complements research carried out under the Air Health Research Program (Base Program) of EPA's Office of Research and Development.

Pertinent background information follows. This is the second meeting of the Subcommittee. At an earlier meeting, on November 13 and 14, 1979, the Subcommittee was briefed on and discussed (1) programs and needs of EPA's Office of Air Quality Planning and Standards (OAQPS) as regards health effects of energy-related air pollutants, (2) relevant aspects of the Air Health Research Program (Base Program) of EPA's Office of Research and Development, and (3) research carried out or planned under the Energy-Related Health Effects Research Program. Further meetings of the Subcommittee will be scheduled if needed.

The meeting will be open to the

public. Any member of the public wishing to attend or submit a paper, or wishing further information, should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c.o.b. December 13, 1979. Please ask for Mr. Kenneth B. Goggin. The telephone number is (202) 472-9444.

Richard M. Dowd,
Staff Director, Science Advisory Board.
November 20, 1979.

[FR Doc. 79-36301 Filed 11-23-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL-13658]

Science Advisory Board; Water Quality Criteria Subcommittee; Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Water Quality Criteria Subcommittee of the Science Advisory Board will be held on December 13 and 14, 1979, beginning at 9:00 a.m., in the Shenandoah Conference Room^{AB} and C, Ramada Inn Rosslyn, 1900 N. Fort Myers Dr., Arlington, Virginia.

This is the fourth meeting of the Water Quality Criteria Subcommittee. The Agenda includes consideration of the Subcommittee's revision of the draft report on the methodologies used in the development of water quality to protect aquatic life and human health for the 27 specified pollutants, listed in the Federal Register, Part V, pages 15926-15981, March 15, 1979, and for the 26 specified pollutants listed in the Federal Register, Part III, pages 43660-43697, July 25, 1979, and on selected criteria documents.

The meeting is open to the public. Because of the limited seating capacity of the meeting room, all members of the public desiring to attend must preregister no later than December 7, 1979, and receive a confirmed reservation from Dr. J. Frances Allen, Staff Officer, Water Quality Criteria Subcommittee, or Ms. Anita Najera, (202) 472-9444.

Dated: November 19, 1979.

Richard M. Dowd,
Staff Director, Science Advisory Board.

[FR Doc. 79-36390 Filed 11-23-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1366-2]

Virginia Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the Commonwealth of Virginia requesting a determination by the Administrator, Environmental Protection Agency,

pursuant to Section 312(f)(3) of Pub. L. 92-500, as amended by Pub. L. 95-217, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of certain portions of the Rappahannock River and its tributaries. The area covered by the petition includes the Rappahannock River from its mouth (determined by a line extending between Windmill Point and Stingray Point), upstream to the Thomas Downing Bridge at

Tappahannock, and including all creeks, coves, and estuaries within the specified area.

The Commonwealth of Virginia has certified that there are seven pumpout facilities within the area covered by the petition. In addition, the Commonwealth has identified an eighth pumpout facility which is on the north shore of the Piankatank River, and outside the area covered by the petition.

The eight pumpout facilities identified by the Commonwealth are as follows:

Table I

Name of marina	Geographic location	Nautical miles from mouth of river	Operating hours	Days per week
(1) Norview Marina.....	Broad Creek, in Middlesex County.	1.8	January 1 to December 31, 6 a.m. to 5 p.m.	7
(2) Regent Point Marina.....	Lockies Creek, in Middlesex County.	9.3	April 1 to October 31, 10 a.m. to 6 p.m.	7
(3) Tides Lodge Marina.....	Carter Creek, in Lancaster County.	11.0	March 15 to December 31, 8 a.m. to 6 p.m.	7
(4) Yankee Point Sailboat Marina.....	Myers Creek, in Lancaster County.	14.5	March 1 to October 31, 8 a.m. to 9 p.m.	7
(5) Urbanna Bridge Marina.....	Urbanna Creek, in Middlesex County.	15.8	January 1 to December 31, 8 a.m. to 5 p.m.	6 (closed Wed.)
(6) Urbanna Marine Corp. Marina.....	Urbanna Creek in Middlesex County.	15.8	January 15 to December 1, 8 a.m. to 5 p.m.	6 (closed Sun.)
(7) Garrett's Marina.....	On the south shore of the Rappahannock River, in Essex County.	29.3	April 1 to November 30, 8 a.m. to 5 p.m.	6 (closed Sun.)
(8) Ruark's Boat Yard and Marina.....	On the north shore of the Piankatank River, in Middlesex County.	9	April 15 to November 1, 9 a.m. to 4 p.m.	5 (closed Sat. and Sun.)

It should be noted that Ruark's Boat Yard and Marina is located on the Piankatank River, and is 9 nautical miles outside the mouth of the Rappahannock River. The Commonwealth acknowledges that Ruark's Boat Yard and Marina is outside the area covered by the petition; however, the marina is

in a location contiguous to the area covered by the petition, and can provide pumpout facilities for vessels moored in the lower reaches of the Rappahannock River.

The Commonwealth of Virginia has further certified the following information pertaining to the eight pumpout facilities:

Table II

Name of Marina	Available minimum water depth at mean low water (feet)	Method of disposal of collected sanitary waste	Number of vessels moored of marina	Number of transient vessels serviced per week
(1) Norview Marina.....	7	(*)	112	6
(2) Regent Point Marina.....	6	(*)	9	0
(3) Tides Lodge Marina.....	6	(*)	29	30
(4) Yankee Point Sailboat Marina.....	8	(*)	55	3
(5) Urbanna Bridge Marina.....	7	(*)	35	0
(6) Urbanna Marine Corp. Marina.....	8	(*)	80	30
(7) Garrett's Marina.....	7	(*)	40	25
(8) Ruark's Boat Yard and Marina.....	8	(*)	45	1

* Sanitary wastes pumped to an onshore holding tank; contents of tank removed by septic tank contractor.

* Sanitary wastes pumped to raw sewage pump station which discharges to Tides Golf Lodge sewage treatment plant; NPDES permit number VA0029343.

* Sanitary wastes pumped into town of Urbanna sewerage system; NPDES permit number VA0026263.

* Sanitary wastes pumped to onshore holding tank, which discharges to Town of Urbanna sewerage system; NPDES permit number VA0026263.

* Sanitary wastes pumped to septic tank; contents of tank removed by septic tank contractor.

In addition, the Commonwealth has certified that there are an estimated 2298 vessel slips at marinas and other places where vessels are moored in the area covered by the petition, and that all marina slips are filled to capacity, year-round. The Commonwealth has estimated that 50 percent of the vessels moored in the area covered by the

petition have marine sanitation devices installed.

Finally, the Commonwealth has certified that the cost of a pumpout at seven of the eight facilities identified is five dollars (\$5.00); the exception is the Norview Marina, where the charge is eight dollars (\$8.00).

Comments and views regarding this request for action may be filed within 45 days of the date of publication of this notice. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Joseph A. Krivak, Acting Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460.

Dated: November 15, 1979.

Swept T. Davis,

Acting Assistant Administrator for Water and Waste Management.

[FR Doc. 79-36303 Filed 11-23-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1366-4]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104), U.S. Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements (EISs) which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of November 13 to November 16, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from November 23, 1979 and will end on January 7, 1980. The 30-day review period for final EIS's as calculated from November 23, 1979 will end on December 24, 1979.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed on EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following sources:

For hard copy reproduction: Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, DC 20036.

For hard copy reproduction or microfiche: Information Resources Press, 2100 M Street, NW, Suite 316, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Kathi L. Wilson, Office of Environmental Review (A-104), Environmental

Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 245-3006.

SUMMARY OF NOTICE: On July 30, 1979, the CEQ Regulations became effective. Pursuant to § 1506.10(a), the 30-day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of November 13, 1979 to November 16, 1979 the 30-day review period will be calculated from November 23, 1979. The review period will end on December 24, 1979.

Appendix I sets forth a list of EIS's filed with EPA during the week of November 13, 1979 to November 16, 1979. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this Notice. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or EPA has approved a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the newly established date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agency.

Appendix V sets forth a list of reports or additional supplemental information relating to previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: November 20, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

Appendix I—EIS'S Filed With EPA During The Week of November 13 to 16, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture,

Room 412-A, Admin. Building, Washington, D.C. 20250, (202) 447-3965.

Forest Service

Final

Sullivan-Salmo Unit Plan, Colville NF, Boundary County, Idaho and Pend Oreille County, Wash., November 14: The proposed action is the development of a land management plan for the Sullivan-Salmo Planning Unit of the Colville National Forest located in Pend Oreille County, Washington and Boundary County, Idaho. The major issues identified include: (1) Determination of the planning units contribution toward renewable resource targets, (2) relationship of unit management and local industrial and domestic water uses, (3) recreational experiences associated with Sullivan Lake, (4) timber yield and economic stability, (5) maintenance of winter habitat, and (6) protection of scientific, educational, or recreational values. (USDA-FS-06-21-79-07). Comments made by: USDA, DOE, FERC, DOI, EPA, State and local agencies, groups, individuals, and businesses. (EIS Order No. 91160.)

Tuolumne River Wild and Scenic River Study, Yosemite NP, Tuolumne County, Calif., November 15: Proposed is the designation of certain segments of the Tuolumne River located in Tuolumne County, California, as units of the National Wild and Scenic River System. A 92-mile portion of the river, was identified as a possible candidate for wild and scenic designation. A 62-mile portion of the river, including an ineligible 8-mile reservoir, within Yosemite National Park is recommended for inclusion in the system and is currently managed as such. The remaining 30-mile portion, including an ineligible 1-mile segment within the Tuolumne National Forest, offer potential for a variety of future uses. The alternatives consider no action and inclusion of various portions of the river in the system. (FEIS-05-16-78-09). Comment made by: FERC, EPA, USA, COE, State and local agencies, groups, individuals and businesses. (EIS Order No. 91163.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.

Final

Ice Harbor Lock and Dam, O&M, Snake River, Franklin and Walla Walla Counties, Wash., November 13: Proposed is the operation and maintenance of the Ice Harbor Lock and Dam on the Snake River, Franklin and Walla Walla Counties, Washington. The project is essentially completed with the exception of some continued recreation development and provision for fish and wildlife compensation. The project includes a navigation lock, a six turbine generator unit hydroelectric spillway dam, and lake with associated recreation facilities. Project operation is tied to the system of water resources developments in the Pacific Northwest (Walla Walla District). Comments made by: DOI, FERC, DOT, DOC, EPA, USDA, and State agencies. (EIS Order No. 91154.)

Draft Supplement: Los Angeles Harbor Deepening Project, Los Angeles County, Calif., November 14: This statement supplements a final EIS, No. 61283, filed 8-31-76. Proposed is the deepening of navigation channels and turning basins in the Los Angeles Harbor, Los Angeles County, California. Dredged material will be used to create new land in the Harbor for Port development. The alternatives considered include: (1) No action, (2) lightering, (3) ocean disposal of dredged material, (4) land disposal of dredged material, and (5) size and location of landfill. (Los Angeles District). (EIS Order No. 91158).

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

National Oceanic and Atmospheric Administration.

Draft

Jack Mackerel Fishery of the Pacific, FMP, Pacific Ocean, November 15: Proposed is a fishery management plan for the jack mackerel fishery of the Pacific. The objectives of the plan are: (1) To prevent overfishing, (2) to achieve optimum yield on a continuing basis, (3) development of cooperative international management, (4) reduce conflict between user groups, (5) to avoid interference with development of the Pacific whiting fishery, (6) to promote efficiency in the utilization of the jack mackerel, and (7) to explore the productivity of the resource through controlled expansion of the fishery. Optimum yield and the total allowable level for foreign fishing are examined. (EIS Order No. 91164.)

Channel Island Marine Sanctuary, Regulatory, Santa Barbara County, Calif., November 16: Proposed is the creation of a marine sanctuary in the waters around the northern Channel Islands and Santa Barbara Island in the northern portion of the Southern California Bight in Santa Barbara County, California. Through regulatory control the following activities would be restricted: (1) Oil and gas operations, (2) discharging, (3) alteration of construction of the seabed, (4) navigation and operation of vessels and aircraft overflights below 1000 feet, and (5) removal or otherwise deliberately harming cultural or historical resources. (EIS Order No. 91165.)

DEPARTMENT OF ENERGY

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station 4G-064, Forrestal Bldg., Washington, DC 20585 (202) 252-4600.

Final

Residential Conservation Service Program, Regulatory, Programmatic, November 13: Proposed is the establishment of the Residential Conservation Service Program to implement Part 1—Title II of the National Energy Conservation Policy Act. The program would require large regulated and nonregulated utilities with specified residential sales to prepare and administer programs for consumer information and

services, including home energy audits, designed to promote the installation of energy conservation and renewable measures in residential buildings. The range of alternatives considered for the program include the scope and duration of post-installation inspection; scope of installation standards for loose fill insulation; and a material standard for attic insulation. Comments made by: EPA, State agencies, groups and businesses. (EIS Order No. 91153.)

The Draft EIS for the above EIS was not filed with EPA. The Department of Energy published a notice of availability in the Federal Register of July 16, 1979 (44 FR 41206).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6306.

Final

Southborough 8 and Pinehurst Planned Developments, El Paso County, Colorado, November 14: Proposed is the issuance of HUD home mortgage insurance for the Southborough 8 and Pinehurst planned developments located in Colorado Springs, El Paso County, Colorado. Combined, the projects will encompass 905 single family lots and a maximum of 4,343 multi-family units on approximately 259 acres. (HUD-R08-EIS-79-XIVF.) Comments made by: DOC, HEW, COE, State and local agencies. (EIS Order No. 91161.)

Denver Metropolitan Area-wide Plan, several counties, Colo., November 14: Proposed is the approval of the Denver Regional Council of Governments (DRCOG) regional growth and development plan as the basis for evaluating future housing development applications of HUD assisted or insured housing in the Denver metropolitan area. The counties involved are: Denver, Boulder, Jefferson, Adams, and Arapahoe. Approval of the plan would allow HUD to discontinue its practice of preparing a full EIS for each project unless conditions are found which have not been dealt with adequately in this statement which examines the over all cumulative impacts of area-wide development. Comments made by: USDA, DOC, DOE, EPA, HEW, DOT, COE, State and local agencies, groups, individuals and businesses. (EIS Order No. 91099.)

Final Supplement

Shenandoah new community, grant, Coweta County, Ga., November 16: This statement supplements a final EIS, No. 25718, filed 12-6-72 concerning the awarding of a discretionary fund grant for the construction of a water treatment system for the Shenandoah new community, Coweta County, Georgia. This supplement discusses a different system than that examined in the final EIS. Proposed is the construction of a 2.5 million gallon per day water treatment system. The construction will involve additions and improvements to existing facilities including upgrading of supply, treatment and distribution facilities. Comments made by: GSA, EPA, USDA, DOE, COE. (EIS Order No. 91166.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343-3891.

Bureau of Reclamation

Final

Salt-Gila Aqueduct and Transmission System, Maricopa and Pinal Counties, Ariz., November 13: Proposed is the construction and operation of the Salt-Gila Aqueduct and associated electrical transmission system in Maricopa and Pinal Counties, Arizona. The aqueduct would convey Colorado River water from the terminus of the Granite Reef Aqueduct to the beginning of the Tucson Aqueduct. Water would enter the aqueduct at the Salt-Gila Pumping Plant forebay, be raised 74 feet and would flow by gravity through the open, concrete-lined canal for 58 miles to service areas. (FES-79-60). Comments made by: DOE, STAT, USDA, DOE, FPC, DOT, HEW, DLAB, DOD, ICC, EPA, DOC, DJUS, AHP, COE, HUD, State and local agencies, groups, individuals and businesses. (EIS Order No. 91155.)

TENNESSEE VALLEY AUTHORITY

Contact: Dr. Harry G. Moore, Jr., Acting Director, Division of Environmental Planning, Tennessee Valley Authority, 268 401 Building, Chattanooga, Tennessee 37401 (615) 755-3161 FTS 854-3161.

Revised Draft

Mallard-Fox Creek Area Development and Use, Morgan and Lawrence Counties, Ala., November 13: Proposed is a development and use plan for the Mallard-Fox Creek area on Wheeler Reservoir in Morgan and Lawrence Counties, Alabama. The TVA owns approximately 1,950 acres of the area and has received two industrial requests for portions of the property which is currently being managed as a wildlife area. As a result, TVA proposes to make available 44 acres for the construction of a rail barge facility, up to 200 acres for the construction of a plastics manufacturing plant, and 206 acres for future industrial use. The remaining 1,500 acres would be committed to long-term, intensive wildlife management. The draft EIS No. 90284, filed 3-16-79 is replaced by revised draft No. 91157, filed 11-13-79. (EIS Order No. 91157.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (202) 426-4357.

Federal Highway Administration

Final

I-691, Cheshire, Southington and Meriden, Hartford and New Haven Counties, Conn., November 14: The proposed action is the construction of a new section of Interstate Route 691, passing through the towns of Southington and Cheshire, Connecticut. This section is approximately 3.5 miles long and would link the existing I-691 in Meriden, Connecticut, with I-84 at the Southington-Cheshire town line, thus completing the I-691

facility between I-91 and I-84. The route would be a four lane, limited access highway on a new right-of-way. (FHWA-CONN-EIS-78-02-F.) Comments made by: USDA, DOC, FEA, EPA, HUD, DOI, DOT, State and local agencies. (EIS Order No. 91159.)

Final Supplement

Bridge over Missouri River, MT-236, Winifred FS-1, Chouteau and Fergus Counties, Mont., November 13: This statement supplements a final EIS filed with CEQ on September 17, 1974 (EIS No. 41452). The purpose of the supplement is to assess the environmental impacts the project may have regarding three recent decisions

involving the Wild and Scenic Rivers System, National Register of Historic Places and the feasibility of a recommended alternative. The proposed project is located in Chouteau and Fergus Counties, Montana, along the Missouri River. The proposed bridge will span the river on route 236 between Big Sandy and Winifred. (FHWA-MT-4(F)-79-01-FS.) Comments made by: DOI, AHP, COE, EPA, USDA, DOT, HEW, local agencies. (EIS Order No. 91156.)

U.S. Coast Guard

Final

Tanker safety and pollution prevention, regulatory, November 15: Proposed are amendments to certain pollution prevention regulations concerning tanker safety and pollution prevention. These amendments would implement ship/tanker construction and equipment requirements under the International Conference on Tanker Safety and Pollution Prevention, and the Port and Tanker Safety Act. These amendments will apply to both new and existing crude and product carriers. Comments made by: STAT, TREA, DOD, DOI, DOC, DOT, EPA, State agencies, groups. (EIS Order No. 91162.)

EIS's Filed During the Week of November 13 to 16, 1979

[Statement Title Index—By State and County]

State	County	Status	Statement Title	Accession No.	Date filed	Orig. agency No.
Alabama	Lawrence	Draft	Mallard-Fox Creek Area Development and Use	91157	11-13-79	TVA.
	Morgan	Draft	Mallard-Fox Creek Area Development and Use	91157	11-13-79	TVA.
Arizona	Maricopa	Final	Salt-Gila Aqueduct and Transmission System	91155	11-13-79	DOI.
	Pinal	Final	Salt-Gila Aqueduct and Transmission System	91155	11-13-79	DOI.
California	Santa Barbara	Draft	Channel Island Marine Sanctuary	91165	11-16-79	DOC.
	Los Angeles	Supple	Los Angeles Harbor Deepening Project	91158	11-14-79	COE.
	Tuolumne	Final	Tuolumne River Wild and Scenic Study, Yosemite NP, Tuolumne NF.	91163	11-15-79	USDA.
Colorado	El Paso	Final	Southborough 8 and Pinehurst Planned Developments.	91161	11-14-79	HUD.
	Several	Final	Denver Metropolitan Area-wide Plan	91099	11-14-79	HUD.
Connecticut	Hartford	Final	I-691, Cheshire, Southington and Meriden	91159	11-14-79	DOT.
	New Haven	Final	I-691, Cheshire, Southington and Meriden	91159	11-14-79	DOT.
Georgia	Coweta	F Suppl New Community, Grant.		91166	11-16-79	HUD.
Idaho	Boundary	Final	Sullivan-Salmo Unit Plan, Colville NF	91160	11-14-79	USDA.
Montana	Chouteau	F Suppl	Bridge Over Missouri River, MT-236, Winifred FS-1	91156	11-13-79	DOT.
	Fergus	F Suppl	Bridge Over Missouri River, MT-236, Winifred FS-1	91156	11-13-79	DOT.
Pacific Ocean		Draft	Jack Mackerel Fishery of the Pacific, FMP	91164	11-15-79	DOC.
Programmatic		Final	Residential Conservation Service Program	91153	11-13-79	DOE.
		Draft	Channel Island Marine Sanctuary	91165	11-16-79	DOC.
Regulatory		Final	Residential Conservation Service Program	91153	11-13-79	DOE.
		Final	Tanker Safety and Pollution Prevention	91162	11-15-79	DOT.
Washington	Pend Oreille	Final	Sullivan-Salmo Unit Plan, Colville NF	91160	11-14-79	USDA.
	Franklin	Final	Ice Harbor Lock and Dam, O&M, Snake River	91154	11-13-79	COE.
	Walla Walla	Final	Ice Harbor Lock and Dam, O&M, Snake River	91154	11-13-79	COE.

Appendix II.—Extension/Waiver of Review Periods on EIS's Filed With EPA

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/extension	Date review terminates
DEPARTMENT OF THE INTERIOR					
Mr. Bruce Blanchard, Director, Environmental Project Review, Rm. 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343-3891.	1980 OCS Sale Nos. 82A and 62 Gulf of Mexico.	Draft 91029	October 5, 1979	Extension	November 26, 1979.
DEPARTMENT OF COMMERCE					
Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.	Jack Mackerel Fishery of the Pacific, Fishery Management Plan.	Draft 91164	November 23, 1979 (See Appendix I).	Extension	January 12, 1979.
	Channel Island Marine Sanctuary, Santa Barbara County, California.	Draft 91165	November 23, 1979 (See Appendix I).	Extension	January 23, 1979.

Appendix III.—EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—Notice of Official Retraction

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—Availability of Reports/Additional Information Relating to EIS's Previously Filed with EPA

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—Official Correction

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
None.				

[FR Doc. 79-36384 Filed 11-23-79; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 79-138]

American Telephone & Telegraph Co.; Revisions to Tariff F.C.C. No. 260, Increased Rates Relating to Common Control Switching Arrangements (CCSA); Memorandum Opinion and Order

Adopted: November 14, 1979.

Released: November 15, 1979.

1. Before the Chief, Common Carrier Bureau are motions filed October 17, 1979, and October 29, 1979; in the above proceeding by the Ad Hoc Telecommunications Committee ("Committee") and the General Services Administration (GSA) seeking to compel the American Telephone and Telegraph Company ("AT&T") to produce certain information and data within 14 days.¹ Should this motion be granted, the Committee further requests an extension of time in which to file its reply case until four weeks after the information has been provided by AT&T. For reasons to be discussed we find that some of the information requested will aid us in fully exploring the issues and accordingly will allow a number of the requests to be served upon AT&T. [See 44 FR 63573, November 5, 1979]

¹Also before the bureau are oppositions to both motions filed by AT&T and a reply to AT&T's opposition filed by the Committee.

Background

2. This proceeding has its genesis in tariff revisions filed by AT&T which purport to raise the earnings level of common control switching arrangements (CCSA) service from 4.44 percent to a level closer to the company's authorized rate of return. By Order FCC 79-330, 72 FCC 2d 313 (1979), the Commission allowed the filing to go into effect but initiated the present limited investigation into proposed investment shifts away from CCSA and certain of AT&T's support information. However, because of the limited nature of the questions involved, the Commission found no need to conduct its investigation as a formal evidentiary hearing. Rather, it found conduct of a "paper" proceeding would be the most efficient approach under the circumstances. *Id.* at 322-23. Moreover, the Commission delegated authority to the Chief, Common Carrier Bureau to "require the submission of additional information, make further inquiries, and modify dates and procedures, if necessary, to provide for a fuller record and more efficient proceeding." *Id.* at 324.

3. On September 27, 1979 and October 4, 1979, GSA and the Committee served their respective information requests upon AT&T. AT&T refused to respond, contending that the Commission had not contemplated the use of discovery type procedures in this investigation.

Accordingly, the Committee and GSA proceeded to file the motions before us.

Discussion

4. As a general matter, we agree with AT&T that the specific pleading cycle which the Commission fashioned here was not intended to include even limited discovery.² As such, it was unquestionably improper for the Committee and GSA to have tendered information requests to AT&T without first having moved the Bureau for an appropriate modification of procedures. Notwithstanding these infirmities, however, we have determined to treat them, on our own motion, as requests to engage in limited discovery and to modify procedures.

5. We have carefully reviewed the information requests and the justification provided by the parties to determine whether the modification sought will result in a fuller exploration of the issues without undue delay. In this regard, we are persuaded that a number of the questions may elicit information relevant to the central issues of this limited investigation.³

²See 72 FCC 2d at 324. The Commission also left open the possibility of oral cross-examination before an administrative law judge upon a showing of a substantial dispute over facts critical to the resolution of the issues involved. See 72 FCC 2d at 323, note 15. No such request or showing has been made by any party, however.

³The Commission has clearly stated that the focus of this proceeding will be primarily on determining the validity of the planned investment shifts and, secondarily, on analyzing the revenue/cost projections. 72 FCC 2d at 323.

Moreover, we find that circumstances warrant a brief delay in this proceeding to obtain this information. Accordingly, we have attached to this order, as Appendix A, references to those questions which we will permit GSA and the Committee to serve upon AT&T.

6. Accordingly, it is ordered that the General Services Administration, on behalf of the Executive Agencies of the United States, and the Ad Hoc Telecommunications Users Committee may serve information requests, consistent with the foregoing opinion, upon AT&T, within three (3) days of the release of this order.

7. It is further ordered that AT&T shall respond to the requests for additional information which are attached to this order as Appendix A and served upon it either by the General Services Administration or the Ad Hoc Telecommunications Users Committee, within thirty (30) days of the release of this order.

8. It is further ordered that the date for the filing of reply cases in this proceeding is extended until thirty (30) days after AT&T submits its response to the information requests.

Federal Communications Commission.

Thomas J. Casey,

Deputy Chief, Operations, Common Carrier Bureau.

Appendix A—Requests for Additional Information, Designated by the Number of the Questions as They Appear in the Respective Motions

A. General Services Administration:

- (1) 2(a)
- (2) 2(b), use percentage
- (3) 3(a)
- (4) 3(b), use percentage
- (5) 4
- (6) 7

B. Ad Hoc Telecommunications Users Committee:

- (7) 1, page 2
- (8) 3 (a), (b), (c), (d), (e), page 2
- (9) 12(a), provide copies only of market studies submitted by ADL, page 6
- (10) 13 (a), (b), page 7
- (11) 14 (a), (b), (c), page 7
- (12) 15 (a), (b), (c), pages 7-8
- (13) 18(a), page 9
- (14) 7(b), exclude internal documents, page 11
- (15) 1 (a), (b), (IV), page 12
- (16) 1 (a), (b), (V), pages 12-13
- (17) 2 (a), (b), page 14
- (18) 3(a), pages 14-15
- (19) 2, page 16
- (20) 3, page 16
- (21) 4, page 16
- (22) 5, page 16
- (23) 6, page 17

[FR Doc. 79-36339 Filed 11-23-79; 8:45 am]

BILLING CODE 6712-01-M

[BC Dockets Nos. 79-291 and 79-292; Files Nos. BPH-10,442 and BPH-10,469]

Nevada County Broadcasters, Inc., and Mother Lode Broadcasting Co.; Applications for Construction Permits

In the matter of applications for construction permits of Nevada County Broadcasters, Inc., Grass Valley, California (BC Docket No. 79-291, File No. BPH-10,442); Req: 94.3 MHz; Channel No. 232A, 487 watts (H&V); 784 feet and Jack J. Lawson, d/b/a Mother Lode Broadcasting Company, Grass Valley, California (BC Docket No. 79-292, File No. BPH-10,469); Req: 94.3 MHz; Channel No. 232A, 560 watts (H&V); 680 feet: memorandum opinion and order designating applications for consolidated hearing on stated issues.

Adopted: October 31, 1979. Released: November 19, 1979.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications.

2. Analysis of the financial data submitted by Nevada County Broadcasters, Inc. (Nevada County) reveals that \$46,144 will be required to construct and operate the proposed station for three months, itemized as follows:

Equipment.....	\$20,575
Buildings.....	1,000
Loan curtailments.....	3,000
Loan interest.....	1,069
Miscellaneous.....	8,500
Operating costs (3 months).....	12,000
Total.....	46,144

Nevada County plans to finance construction and operation with the following funds: loan from Gold Country Bank, \$30,000, and profits from the operation of station KNCO(AM), \$20,000. However, the balance sheet of Nevada County, as at June 30, 1979 shows that current and liquid assets (\$4,795) are exceeded by current liabilities (\$141,972). Although Nevada County states that net earnings for the six month period ending June 30, 1979 total \$26,309, Nevada's net loss in 1978 and negative net worth as of June 30, 1979 raise a substantial question as to whether funds to cover the costs of construction and operation will be available. Accordingly, a limited financial issue will be specified.

3. Jack J. Lawson, d/b/a Mother Lode Broadcasting Company (Mother Lode) has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears that the applicant failed to provide a

description of the composition of Grass Valley, including such data as are necessary "to indicate the minority, racial or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive." (See Question and Answer 9 of the *Primer*.) It also appears that Mother Lode has failed to survey leaders of significant population groups, as required by Question and Answer 10 of the *Primer*. For example, the applicant has omitted leaders of the following community elements: agriculture; charities; civic, social and fraternal organizations; consumer services; labor; military; minorities and ethnics; women; youth and students; professionals; and recreation. In addition, the application fails to indicate whether other major communities are within the proposed service contours and include interviews with leaders who can be expected to have a broad overview of the problems and needs of these communities. Mother Lode has also failed to show that members of the general public were contacted by principals, employees or prospective employees of the applicant, or by a professional research or survey service, as required by Question and Answer 11(b) of the *Primer*. The statement of the methodology employed in the general public survey is insufficient to allow us to determine whether the required random sample was, in fact, achieved in compliance with Question and Answer 13(b) of the *Primer*. Moreover, Mother Lode has failed to state the dates on which the community leader and general public surveys were held, as required to assure compliance with Questions and Answers 2 and 15 of the *Primer*. Lastly, Mother Lode has omitted the anticipated time segment (e.g., 9:30 a.m.), duration (e.g., one hour) and frequency (e.g., daily) of the programs it proposes to broadcast to meet the needs of the community. (See Question and Answer 29 of the *Primer*.) Due to the extensive nature of these deficiencies in Mother Lode's ascertainment effort, a general ascertainment issue will be specified.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are

designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Nevada County:

a. The source and availability of additional funds above the \$30,000 indicated; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine the efforts made by Mother Lode to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to meet those needs and problems.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which application, if either, should be granted.

6. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's Rules, and in person or by attorney, within 20 days of the mailing of this Order, shall file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, that the applicants herein, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, shall give notice of the hearing (either individually or, if feasible, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 79-36338 Filed 11-23-79; 8:45 am]

BILLING CODE 6712-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on November 19, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the *Federal Register* is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before December 14, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Civil Aeronautics Board

The CAB requests clearance of the Tariff filing requirements contained in Part 221 of the Board's Economic Regulations, Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers. The CAB states that adherence to these requirements is mandatory under the Federal Aviation Act of 1958, as amended. The tariff reporting requirements are contained in §§ 221.160, 221.163, 221.164, 221.165, 221.166, 221.191, 221.211, 221.212, 221.220, 221.221, 221.222, 221.223, 221.224, 221.230, 221.231, 221.235 and 221.238. Most sections require an average reporting time of one hour, except § 221.163 which requires approximately 3 hours; § 221.165 which requires approximately 16 hours; and § 221.223 which requires approximately 2 hours.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 79-36296 Filed 11-23-79; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Institute of Museum Services

National Museum Services Board; Meeting

The National Museum Services Board (NMSB) will hold an open meeting November 30-December 1 in Washington, D.C. to discuss future policy directions of the Institute of Museum Services (IMS), including the Institute's Cornerstone Grants Program, reauthorization, budget request, and regulations pertaining to the FY 1980 grants program. The NMBS will also

consider IMS' placement within the newly created Department of Education.

The Board will meet from 8:30 a.m. to 4:45 p.m. November 30 in the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Room 303A; and from 9:00 a.m. to 1:00 p.m., December 1 in the Founder's Room of the Folger Shakespeare Library, 200 East Capital Street.

For further information, contact Sam Eskenazi or Loretta Ingraham, 202/472-3325.

Dated: November 20, 1979.

Lee Kimche,

Director.

[FR Doc. 79-36375 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-24-M

Office of the Assistant Secretary for Health

National Council on Health Care Technology; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463) notice is hereby given that the third meeting of the National Council on Health Care Technology, established pursuant to the Health Services Research, Health Statistics, and Health Care Technology Act of 1978 (Pub. L. 95-623) which advises the Secretary and the Director of the National Center for Health Care Technology on the activities of the Center will convene on Wednesday, December 12, 1979, at 9:30 a.m. and Thursday, December 13, 1979, at 8:30 a.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. Principal consideration and discussion will be devoted to a report from the Subcommittee on Criteria and Research Agenda; a report from the Subcommittee on Legal Issues; and a discussion of Medicare Coverage issues.

These meetings are open for public observation and participation.

Further information regarding the Council may be obtained by contacting Sharon Paino, Acting Executive Secretary, National Council on Health Care Technology, Room 17A-19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, telephone (301) 443-4990.

Dated: November 19, 1979.

Marilyn McCarroll,

Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 79-36357 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-85-M

[Contract No. HEW-100-79-0130]

Office of the Assistant Secretary for Planning Evaluation**Contract Award**

Pursuant to Section 606 of the Community Services Act of 1974, (PL 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-79-0130 to Survey Research Lab, University of Illinois for a research project entitled, Survey Development Research Center: Net Worth.

The purpose of this project is to establish a research center, staffed with experts in relevant fields. They will conduct studies on a task order basis for the Income Survey Development Program. This research will increase the usefulness of the data already being collected and provide the ISDP with a greater capacity to respond rapidly to issues which emerge through time with empirical analysis of the results from ISDP survey and research efforts.

The estimated cost of this contract is \$78,566 and the intended completion date is September 30, 1980 with option to renew.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36367 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0129]

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (PL 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-79-0129 to Mathematica Policy Research for a research project entitled, Survey Development Research Center: Income.

The purpose of this project is to establish a research center, staffed with experts in relevant fields. They will conduct studies on a task order basis for the Income Survey Development Program. This research will increase the usefulness of the data already being collected and provide the ISDP with a greater capacity to respond rapidly to issues which emerge through time with empirical analysis of the results from ISDP survey and research efforts.

The estimated cost of this contract is \$83,271 and the intended completion date is September 30, 1980 with option to renew.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36368 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0128]

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (PL 93-644) 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-79-0128 to Urban Institute for a research project entitled, Survey Development Research Center: Microsimulation.

The purpose of this project is to establish a research center, staffed with experts in relevant fields. They will conduct studies on a task order basis for the Income Survey Development Program. This research will increase the usefulness of the data already being collected and provide the ISDP with a greater capacity to respond rapidly to issues which emerge through time with empirical analysis of the results from ISDP survey and research efforts.

The estimated cost of this contract is \$80,420 and the intended completion date is September 30, 1980 with option to renew.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36369 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0127]

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (PL 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-79-0127 to Survey Research Center University of Michigan for a research project entitled, Survey Development Research Center: Nonresponse.

The purpose of this project is to establish a research center, staffed with experts in relevant fields. They will conduct studies on a task order basis for the Income Survey Development Program. This research will increase the usefulness of the data already being collected and provide the ISDP with a greater capacity to respond rapidly to issues which emerge through time with empirical analysis of the results from ISDP survey and research efforts.

The estimated cost of this contract is \$145,713 and the intended completion

date is September 30, 1980 with option to renew.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36370 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 USC 2946, this agency announces the award of a contract to Telex Computer Products, Inc. for the procurement of Coax Cable Assemblies.

The purpose of this procurement is to provide reliable equipment used in supporting policy research projects.

The estimated cost of this contract is \$264.00 and the intended completion date was December 30, 1978

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36371 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0110]

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (PL 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-79-0110 to the Blue Cross and Blue Shield Associations, Chicago, Illinois for a research project entitled, Study of Health Services Used and Costs Incurred During the Last 6 Months of a Terminal Illness. The purpose of this project is to collect claims information from Blue Cross and Blue Shield Plans that agree to participate in the study, and to analyze the resulting information to determine (1) what health services are used by persons in the last six months of a terminal illness and to identify the costs associated with those services; (2) how the services used by persons matched by age and disease vary; and, to the extent possible, (3) what the reasons are for those variations, and what the variations imply for health resources utilization and future costs.

The estimated cost of this contract is \$45,000 and the intended completion date for Phase I of the contract is February 15, 1980.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36372 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0180]

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (PL 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-79-0180 to Berkeley Planning Associates for a research project entitled, Analysis of Policies of Private Employers Toward the Disabled. The purpose of this project is to design a national study of private employers to: (1) identify their practices with respect to hiring the handicapped, and to determine the reasons why these employers may be reluctant to hire the handicapped; (2) measure the extent of fringe benefits paid to handicapped workers, and the extent to which handicapped workers may be denied medical and income protection benefits because of their handicaps; and (3) compare the work performance of a sample of severely handicapped workers with a sample of non-handicapped workers.

This project will develop the methodology and test its feasibility. An advisory group composed of representatives of industry, the disabled, and Federal agencies will be involved throughout the study.

We anticipate that the full study will be funded with 1981 funds and initiated early in fiscal 1981.

The estimated cost of this contract is \$99,897.00 and the intended completion date is 9/27/1980.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36373 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0173]

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (Public Law 93-644) USC 2946, this agency announces the award of Contract No. HEW-100-79-0173 to the Education Policy Research Institute, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036, for a research project entitled, "Postsecondary Education Experiment: Study Design."

The purpose of this project is to assess the feasibility of conducting an

experimental test of policy alternatives for the Student Loan Program.

The estimated cost of this contract is \$70,518 and the intended completion date is June 1, 1980.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36374 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0098]

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-79-0098 to the University of California Institute for Social Science Research for a research project entitled, "Socio-Demographic, Geographic and Research Considerations Related to the Provision of Social Services to Disabled Populations".

The purpose of the project is to perform a number of secondary analyses of the data generated by the 1977-78 California Survey of the Work Disabled (CSWD) including:

Comparison of the incidence/types/severity of disabling conditions across ethnic groups to determine what ethnicity related differences exist in participation in the labor force and utilization of disability services;

Comparison of disability, program participation and family characteristics in rural and urban areas;

Comparison of CSWD data with previous national studies;

Examination of characteristics to isolate differences in labor force participation and determine the extent to which disability interferes with normal household activity; and

Exploration of the advantages/disadvantages of telephone vs. face-to-face interviewing techniques.

The estimated cost of this contract is \$74,998 and the intended completion date is September 27, 1980.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36359 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 USC 2946, this agency announces the award of a contract to

Paul Howerton for a research project entitled, ASPE Risk Analysis Study.

The purpose of this project is to perform a risk analysis study for ASPE's mini computer which will categorize threats and counter measures to these threats. The project will result in a document cost effectiveness plan of action.

The estimated cost of this contract is \$4,568.00 and the intended completion date is March 31, 1980.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36363 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0197]

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974 (P.L. 93-644), 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-79-0197 to the University of Illinois Survey Research Lab for a research project entitled Net Worth Validation: Insurance.

The purpose of this project is to provide the Income Survey Development Program (ISDP) with comprehensive information on response error and accuracy of reporting by respondents of their equity in insurance, as well as their ability and willingness to provide information about disability and survivorship characteristics of their insurance coverage. The new field techniques developed under this contract will be incorporated into the Survey of Income & Program Participation (SIPP). In addition, techniques will be developed for collecting and valuing data on respondent's holdings in consumer durables and household furnishings. These variables are to be measured in the new SIPP to improve the DHEW's ability to determine eligibility and participation levels for various programs which have asset tests for determining program participation.

The estimated cost of this contract is \$198,235 and the intended completion date is September 30, 1980.

Dated: November 19, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36366 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0175]**Contract Award**

Pursuant to Section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-79-0175 to ISC Incorporated for a research project entitled, Inventory of ASPE's ADP Files.

The purpose of this project is to inventory and document various research data files.

The estimated cost of this contract is \$31,000.00 and the intended completion date is September 27, 1980.

Dated: November 19, 1979.

John L. Palmer,
Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36365 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

[Contract No. HEW-100-79-0165]**Contract Award**

Pursuant to Section 606 of the Community Services Act award of Contract No. HEW-100-79-0165 to A. L. Nelligan and Associates for a research project entitled, "Symposium on Policy and Program Issues Related to Child and Family Services to Black Americans". The purposes of this symposium are (1) to discuss key program issues related to child and family services to Black Americans, and (2) to identify variables, characteristics, factors and other criteria against which to judge future program policies and delivery of such services to children and their families. A report of the symposium outcomes will be developed that will be used by policy decisionmakers and/or program managers in the development of future program policies, modifications to existing program policies and in the conduct of research and program evaluation. The estimated cost of this Contract is \$104,256 and the intended completion is June 1980.

Dated: November 19, 1979.

John L. Palmer,
Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36361 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 USC 2946, this agency announces the award of a contract to Management Systems Applications, Inc. for a research project entitled, ASPE Office System Documentation.

The purpose of this project is to perform an office management review to document a manual, to improve office efficiency, and to assist in the word processing conversion effort.

The estimated cost of this contract is \$9,976.50 and the intended completion date is March 31, 1980.

Dated: November 19, 1979.

John L. Palmer,
Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36362 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 USC 2946, this agency announces the award of a Contract to Tektronix Inc. for the procurement of ASPE's Computer Graphics System.

The purpose of this project is to better support Policy Research decisions through the application of graphics Technology.

The estimated cost of this contract is \$28,186.00 and the intended completion date is December 30, 1979.

Dated: November 19, 1979.

John L. Palmer,
Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-36364 Filed 11-23-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[AA-6717-A through AA-6717-H]****Alaska Native Claims Selections**

On March 5 and October 29, 1974, Ohgseanakale Corporation, for the Native village of Portage Creek, filed selection applications AA-6717-A through AA-6717-H under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the Portage Creek area.

On November 14, 1978, the State filed general purposes grant selection applications AA-21776, AA-21777, AA-21785, AA-21786, AA-21787, AA-21797 and AA-21798, all as amended, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)) for certain lands in the Portage Creek area.

The following described lands have been properly selected by Ohgseanakale Corporation. Section 6(b) of the Alaska Statehood Act of July 7, 1958, provides that the State may select vacant,

unappropriated and unreserved public lands in Alaska. Therefore, the following State selection applications are hereby rejected as to the following described lands:

Seward Meridian, Alaska (Unsurveyed)**State Selection AA-21776**

T. 13 S., R. 50 W.

Secs. 6 and 7, excluding the Keefer Cutoff;
Secs. 18 and 19, excluding the Keefer Cutoff;

Secs. 30 and 31, excluding the Keefer Cutoff.

Containing approximately 2,739 acres.

State Selection AA-21777

T. 13 S., R. 51 W.

Sec. 1, excluding Keefer Cutoff;
Sec. 2, excluding the Nushagak River;
Sec. 3, excluding Native allotment AA-7593 Parcel A and the Nushagak River;
Secs. 10 and 11, excluding the Nushagak River;

Secs. 12 and 13, excluding Keefer Cutoff;
Secs. 14, 15 and 22, excluding the Nushagak River;

Sec. 23, excluding Native allotment AA-7685 Parcel B and the Nushagak River;
Sec. 24, excluding Native allotments AA-7710, AA-7685 Parcel B and the Keefer Cutoff;

Sec. 25, excluding the Keefer Cutoff;
Secs. 26 and 27, excluding the Nushagak River;

Sec. 35, excluding the Nushagak River;
Sec. 36, excluding the Keefer Cutoff.
Containing approximately 8,925 acres.

State Selection AA-21785

T. 14 S., R. 50 W.

Sec. 5, excluding Native allotment AA-7181 and the Keefer Cutoff;
Secs. 6 and 7, excluding the Keefer Cutoff;
Sec. 18, excluding Native allotment AA-7187 and the Keefer Cutoff;

Sec. 19, excluding Native allotments AA-7794 Parcel A, AA-7187 and the Keefer Cutoff;

Sec. 30, excluding Native allotment AA-7186 and the Keefer Cutoff;
Sec. 31, excluding Native allotment AA-7186.

Containing approximately 3,106 acres.

State Selection AA-21786

T. 14 S., R. 51 W.

Sec. 1, excluding the Keefer Cutoff and the Nushagak River;
Secs. 2, 11 and 12, excluding the Nushagak River;

Sec. 13, excluding the Keefer Cutoff and the Nushagak River;
Secs. 14 and 23, excluding the Nushagak River;

Secs. 24 and 25, excluding the Keefer Cutoff;

Sec. 26, excluding the Nushagak River;
Sec. 27, all;

Sec. 31, excluding Scandinavian Slough;
Secs. 32 and 33, excluding the Scandinavian and Unnamed Sloughs;

Sec. 34, excluding the Scandinavian and Unnamed Sloughs and the Nushagak River;

Sec. 35, excluding the Nushagak River;
Sec. 36, excluding the Keefer Cutoff.
Containing approximately 9,545 acres.

State Selection AA-21787

T. 14 S., R. 52 W.

- Secs. 26 and 27, excluding the Nushagak River and the Scandinavian Slough;
 Sec. 28, excluding Native allotments AA-7182 Parcel B, AA-7183 and the Nushagak River;
 Sec. 29, excluding the Nushagak River;
 Secs. 31 to 35, inclusive, excluding the Nushagak River;
 Sec. 36, excluding the Nushagak River and the Scandinavian Slough.
 Containing approximately 5,135 acres.

State Selection AA-21797

T. 15 S., R. 50 W.

- Sec. 6, all.
 Containing approximately 622 acres.

State Selection AA-21798

T. 15 S., R. 52 W.

- Sec. 1, excluding the Nushagak River;
 Secs. 2 and 3, excluding Native allotment AA-7704 and the Nushagak River;
 Secs. 4 to 9, inclusive, excluding the Nushagak River;
 Secs. 10 and 11, excluding Native allotment AA-7704;
 Sec. 12, excluding Native allotment AA-7184 and the Nushagak River;
 Secs. 13, 14 and 15, all;
 Sec. 16, excluding Native allotments AA-7703, AA-7982 and the Nushagak River;
 Secs. 17, 18 and 19, excluding the Nushagak River;
 Sec. 20, excluding Native allotment AA-8042 and the Nushagak River;
 Sec. 21, excluding Native allotments AA-7968, AA-7982, AA-8042 and the Nushagak River;
 Secs. 22 and 27, all;
 Sec. 28, excluding Native allotments AA-7968 and AA-8042;
 Sec. 29, excluding Native allotment AA-8042;
 Sec. 30, all.
 Containing approximately 13,384 acres.
 Aggregating approximately 43,456 acres.

Further action on the above State selection applications as to those lands not rejected herein will be taken at a later date. The State selected lands rejected above were not valid selections and will not be charged against the village corporation as State selected lands.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 64,515 acres, is considered proper for acquisition by Ohgsenakale Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

Seward Meridian, Alaska (Unsurveyed)

T. 13 S., R. 50 W.,

- Secs. 6 and 7, excluding the Keefer Cutoff;
 Secs. 18 and 19, excluding the Keefer Cutoff;
 Secs. 30 and 31, excluding the Keefer Cutoff.
 Containing approximately 2,739 acres.

T. 14 S., R. 50 W.,

- Sec. 5, excluding Native allotment AA-7181 and the Keefer Cutoff;
 Secs. 6 and 7, excluding the Keefer Cutoff;
 Sec. 18, excluding Native allotment AA-7187 and the Keefer Cutoff;
 Sec. 19, excluding Native allotments AA-7794 Parcel A, AA-7187 and the Keefer Cutoff;
 Sec. 30, excluding Native allotment AA-7186 and the Keefer Cutoff;
 Sec. 31, excluding Native allotment AA-7186.
 Containing approximately 3,106 acres.

T. 15 S., R. 50 W.,

- Sec. 6, all.
 Containing approximately 622 acres.

T. 13 S., R. 51 W.,

- Sec. 1, excluding Keefer Cutoff;
 Sec. 2, excluding the Nushagak River;
 Sec. 3, excluding Native allotment AA-7593 Parcel A and the Nushagak River;
 Secs. 10 and 11, excluding the Nushagak River;
 Secs. 12 and 13, excluding Keefer Cutoff;
 Secs. 14, 15 and 22, excluding the Nushagak River;
 Sec. 23, excluding Native allotment AA-7685 Parcel B and the Nushagak River;
 Sec. 24, excluding Native allotments AA-7710, AA-7685 Parcel B and the Keefer Cutoff;
 Sec. 25, excluding the Keefer Cutoff;
 Secs. 26 and 27, excluding the Nushagak River;
 Sec. 35, excluding the Nushagak River;
 Sec. 36, excluding the Keefer Cutoff.
 Containing approximately 8,925 acres.

T. 14 S., R. 51 W.,

- Sec. 1, excluding the Keefer Cutoff and the Nushagak River;
 Secs. 2, 11 and 12, excluding the Nushagak River;
 Sec. 13, excluding the Keefer Cutoff and the Nushagak River;
 Secs. 14 and 23, excluding the Nushagak River;
 Secs. 24 and 25, excluding the Keefer Cutoff;
 Sec. 26, excluding the Nushagak River;
 Sec. 27, all;
 Sec. 31, excluding Scandinavian Slough;
 Secs. 32 and 33, excluding the Scandinavian and Unnamed Sloughs;
 Sec. 34, excluding the Scandinavian and Unnamed Sloughs and the Nushagak River;
 Sec. 35, excluding the Nushagak River;
 Sec. 36, excluding the Keefer Cutoff.
 Containing approximately 9,545 acres.

T. 15 S., R. 51 W.,

- Sec. 1, excluding Native allotments A-054453 Parcel C, AA-6076 and the Keefer Cutoff;
 Secs. 2 and 3, excluding the Nushagak River;
 Sec. 4, excluding Native allotment AA-7179 Parcel B, Unnamed Slough and the Nushagak River;
 Secs. 5 and 6, excluding Unnamed Slough and the Nushagak River;

- Sec. 7, excluding Native allotment AA-7184 and the Nushagak River;
 Sec. 8, excluding Unnamed Slough and the Nushagak River;
 Secs. 9 and 10, excluding Native allotment AA-7185 and the Nushagak River;
 Secs. 11 to 15, inclusive, all;
 Sec. 16, excluding the Nushagak River;
 Sec. 17, excluding Native allotment AA-7180 and the Nushagak River;
 Sec. 18, excluding the Nushagak River;
 Secs. 19 to 36, inclusive, all.
 Containing approximately 21,059 acres.

T. 14 S., R. 52 W.,

- Secs. 26 and 27, excluding the Nushagak River and the Scandinavian Slough;
 Sec. 28, excluding Native Allotments AA-7182 Parcel B, AA-7183 and the Nushagak River;
 Sec. 29, excluding the Nushagak River;
 Secs. 31 to 35, inclusive, excluding the Nushagak River;
 Sec. 36, excluding the Nushagak River and the Scandinavian Slough.
 Containing approximately 5,135 acres.

T. 15 S., R. 52 W.,

- Sec. 1, excluding the Nushagak River;
 Secs. 2 and 3, excluding Native allotment AA-7704 and the Nushagak River;
 Secs. 4 to 9, inclusive, excluding the Nushagak River;
 Secs. 10 and 11, excluding Native allotment AA-7704;
 Sec. 12, excluding Native allotment AA-7184 and the Nushagak River;
 Secs. 13, 14 and 15, all;
 Sec. 16, excluding Native allotments AA-7703, AA-7982 and the Nushagak River;
 Secs. 17, 18 and 19, excluding the Nushagak River;
 Sec. 20, excluding Native allotment AA-8042 and the Nushagak River;
 Sec. 21, excluding Native allotments AA-7968, AA-7982, AA-8042 and the Nushagak River;
 Secs. 22 and 27, all;
 Sec. 28, excluding Native allotments AA-7968 and AA-8042;
 Sec. 29, excluding Native allotment AA-8042;
 Sec. 30, all.
 Containing approximately 13,384 acres.
 Aggregating approximately 64,515 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f)); and
2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file AA-6717-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or

Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicles Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: Travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, and four-wheel drive vehicles.

One Acre Site—The uses allowed for a site easement are: Vehicle parking (e.g., aircraft, boats, ATVs, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 2 D9) An easement for an existing access trail fifty (50) feet in width from the Nushagak River in Sec. 2, and the airport in Sec. 1, T. 15 S., R. 51 W., Seward Meridian, easterly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

b. (EIN 2a C5, E) An easement for a proposed winter access trail twenty-five (25) feet in width from Portage Creek in Sec. 2, T. 15 S., R. 51 S., Seward Meridian, paralleling the right bank of the Nushagak River, westerly to trail EIN 20 C5, D9 from Dillingham in Sec. 25, T. 14 S., R. 53 W., Seward Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 8a C5) A one (1) acre site easement upland of the ordinary high water mark in Sec. 14, T. 14 S., R. 51 W., Seward Meridian, on the right bank of the navigable Nushagak River. The uses allowed are those listed above for a one (1) acre site easement.

d. (EIN 8bC5) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 8a C5 in Sec. 14, T. 14 S., R. 51 W., Seward Meridian, on the Nushagak River westerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease

issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Airport lease AA-8396, containing approximately 62 acres, located within the W½, Sec. 1, T. 15 S., R. 51 W., Seward Meridian, issued to the State of Alaska, Department of Transportation and Public Facilities, under the provisions of the act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214); and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Ohgsenakale Corporation is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 64,515 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 4,605 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above shall be granted to Bristol Bay Native Corporation when conveyance is granted to Ohgsenakale Corporation for the surface estate and shall be subject to the same conditions as the surface conveyance.

Only the following inland water bodies within the described lands are considered to be navigable: Nushagak River; Keefer Cutoff; Scandinavian Slough; and Unnamed Slough.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the *Federal Register* and once a week, for four (4) consecutive weeks, in the *Anchorage Times*. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the

Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until December 28, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the adverse parties to be served are:

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501

Ohgsenakale Corporation, Portage Creek, Alaska 99576.

Bristol Bay Native Corporation, P.O. Box 198, Dillingham, Alaska 99576.

Sue A. Wolf,

Chief, Branch of Adjudication

[FR Doc. 79-38233 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-84-M

[AA-6648-A Through AA-6648-J and AA-6648-L Through AA-6648-O]

Alaska Native Claims Selections

On May 2 and 19, 1961, the State of Alaska filed general purposes grant selection applications A-054314, A-054315, A-054323, A-054325, A-054332, A-054609, A-054613, AA-054615 and A-054617, all as amended, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)). These applications selected lands near the Native village of Aleknagik. Decisions granting tentative approval were issued on September 3 and 6, 1963, for applications A-054314 and A-054315 covering Tps. 8 S., Rs. 55 and 56 W., Seward Meridian.

On December 18, 1971, Sec. 11 of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601, 1610 (1976)) (ANCSA), withdrew the lands surrounding the Native village of Aleknagik, including lands in the subject State selection applications for Native

selection. On June 17 and October 15, 1974, Aleknagik Natives Limited filed village selection applications AA-6648-A through J, and AA-6648-L through O, as amended, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a) (1976)) (ANCSA), for the surface estate of lands located near the village of Aleknagik, including lands within the subject State selections.

Section 12(a)(1) of the Alaska Native Claims Settlement Act provides that village selections shall be made from lands withdrawn by Sec. 11(a). Section 11(a)(2) withdrew for possible selection by the Native Corporation those lands that have been selected by, or tentatively approved to, but not yet patented to, the State under the Alaska Statehood Act. Section 12(a)(1) further provided that no village corporation may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

The following described lands, which are State selected, portions of which were tentatively approved, have been properly selected by Aleknagik Natives Limited under selection applications AA-6648-A through AA-6648-J.

Accordingly, the following State selection applications are hereby rejected in part and the tentative approvals given in the aforementioned decisions are hereby rescinded in part as to the following described lands:

Seward Meridian, Alaska (Surveyed)

State Selection A-054314

T. 8 S., R. 56 W.,

That portion of Tract A more particularly described as (protracted):

Sec. 36, excluding Lake Nerka.

Containing approximately 140 acres.

State Selection A-054315

T. 8 S., R. 55 W.,

Those portions of Tract A more particularly described as (protracted):

Sec. 26, all;

Secs. 27 and 28, excluding Lake Nerka;

Secs. 31, 32, 33 and 34, excluding Lake Nerka;

Sec. 35, excluding Native allotments AA-7270 Parcel C, AA-7278 Parcel A and Lake Nerka.

Containing approximately 2,015 acres.

State Selection A-054323

T. 9 S., R. 55 W.,

That portion of Tract A more particularly described as (protracted):

Secs. 4, 5, 7, and 8, excluding Lake Nerka;

Secs. 9 and 16, excluding Native allotment AA-7433 Parcel A and Lake Nerka;

Sec. 17, excluding Native allotment AA-7301 Parcel B and Lake Nerka;

Sec. 18, excluding Lake Nerka;

Secs. 21, 28 and 33, all.

Containing approximately 5,046 acres.

State Selection A-054325

T. 9 S., R. 56 W.,

Those portions of Tract A more particularly described as (protracted):

Secs. 1 and 2, excluding Lake Nerka;

Sec. 3, all;

Secs. 4, 5 and 6, excluding Lake Nerka;

Sec. 7, all;

Sec. 12, excluding Lake Nerka;

Sec. 30, excluding Native allotment AA-7288 Parcel B;

Sec. 31, excluding U.S. Survey 4930, Native allotments AA-7270 Parcel A, AA-7288 Parcel B, AA-7299 and Lake Aleknagik;

Sec. 32, excluding U.S. Survey 4930 and Lake Aleknagik.

Containing approximately 5,136 acres.

State Selection A-054332

T. 11 S., R. 56 W.,

Those portions of Tract A more particularly described as (protracted):

Sec. 1, excluding U.S. Survey 4923, Native allotments AA-7277 Parcel B, AA-7307 Parcel A and AA-7760 Parcel B;

Sec. 2, excluding U.S. Survey 4923 and Native allotment AA-7760 Parcel B;

Sec. 11, excluding U.S. Survey 4923;

Sec. 12, excluding U.S. Survey 4923 and Native allotment AA-7657 Parcel B.

Containing approximately 1,838 acres.

State Selection A-054609

U.S. Survey No. 4705, situated on the south short of Lake Aleknagik, Aleknagik, Alaska.

Containing 5.00 acres.

T. 8 S., R. 57 W.,

Those portions of Tract A more particularly described as (protracted):

Sec. 26, all;

Sec. 27, excluding Native allotments AA-7285 Parcel B, AA-7301 Parcel A and Lake Aleknagik;

Sec. 34, excluding U.S. Survey 4706, Native allotment AA-7285 Parcel B and Lake Aleknagik;

Sec. 35, excluding U.S. Survey 4705, U.S. Survey 4706, Native allotments AA-7674 Parcels A and B and Lake Aleknagik.

Containing approximately 2,020 acres.

State Selection A-054613

T. 9 S., R. 57 W.,

Those portions of Tract A more particularly described as (protracted):

Sec. 1, excluding Lake Nerka;

Sec. 2, excluding U.S. Survey 4796, Native allotments AA-7289 Parcel C, AA-7759 Parcel A, Lake Nerka and the Agulowak River;

Sec. 3, excluding the Agulowak River;

Sec. 4, all;

Sec. 5, excluding Native allotment AA-7674 Parcel B and Lake Aleknagik;

Sec. 6, excluding Lake Aleknagik;

Sec. 8, excluding U.S. Survey 4932, Native allotment AA-7284, the Agulowak River and Lake Aleknagik;

Secs. 9 and 10, excluding the Agulowak River;

Secs. 11 and 12, all;

Sec. 25, excluding Native allotments AA-7275 Parcel A, AA-7288 Parcel B and Lake Aleknagik;

Sec. 26, excluding U.S. Survey 4931, Native allotment AA-7275 Parcel A and Lake Aleknagik;

Sec. 27, excluding Native allotment AA-7709 Parcel B and Lake Aleknagik;

Sec. 32, excluding Native allotment AA-6124 Parcel A and Lake Aleknagik;

Secs. 33 and 34, excluding Lake Aleknagik; Sec. 35, excluding Native allotments AA-7275 Parcel A, AA-7279 Parcel A and Lake Aleknagik.

Sec. 36, excluding Native allotments AA-7275 Parcel A, AA-7279 Parcel A, AA-7288 Parcel B and Lake Aleknagik.

Containing approximately 6,867 acres.

State Selection A-054615

T. 9 S., R. 58 W.,

That portion of Tract A more particularly described as (protracted):

Sec. 1, excluding Lake Aleknagik.

Containing approximately 100 acres.

State Selection A-054617

T. 10 S., R. 57 W.,

Those portions of Tract A more particularly described as (protracted):

Sec. 2, excluding Native allotments A-056177 Parcel B, AA-7682 and Lake Aleknagik;

Sec. 3, excluding Lake Aleknagik;

Sec. 4, all;

Sec. 11, excluding Native allotments A-056177 Parcel B and AA-7682;

Sec. 12, excluding Native allotments AA-056177 Parcel B, AA-7288 Parcel A, AA-7682, AA-7668 Parcel B, AA-7672 Parcel B and Lake Aleknagik;

Sec. 13, excluding Native allotment AA-7672 Parcel B and Lake Aleknagik.

Containing approximately 2,767 acres.

Aggregating approximately 25,934 acres.

By virtue of a properly filed selection under Sec. 12(a) of the Alaska Native Claims Settlement Act, by Aleknagik Natives Limited, State selection application A-054326, as to lands in Tps. 10 S., Rs. 55 and 56 W., Seward Meridian, were rejected by decision dated September 25, 1974.

The total amount of State selected lands, including lands previously rejected to permit the conveyance hereafter given, totals 58,946 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of the Alaska Native Claims Settlement Act. Further action on the subject State selection applications, as to the lands not rejected herein, will be taken at a later date.

On November 14, 1978, the State of Alaska filed general purposes grant selection applications pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)), for certain lands in the Aleknagik area. Applications AA-21718, AA-21732, AA-21733 and AA-21751, all as amended, selected all available lands in Tps. 8 and 9 S., Rs. 53 W., and Tps. 9 and 10 S., Rs. 54 W., Seward Meridian, respectively. Aleknagik Natives Limited properly selected lands located within the above townships in village selection applications AA-6648-L through AA-6648-O on October 15, 1974. Section 6(b) of the Alaska Statehood Act of July 7, 1958, provides that the State may select vacant, unappropriated and unreserved public lands in Alaska.

Therefore, in view of the above the following State selection applications are hereby rejected as to the following described lands:

Seward Meridian, Alaska (Unsurveyed)

State Selection AA-21718

T. 8 S., R. 53 W.,
Sec. 1, all;
Sec. 2, excluding Native allotment AA-7067 Parcel C;
Secs. 3 to 12, inclusive, all;
Secs. 14 to 23, inclusive, all;
Secs. 26 to 35, inclusive, all.
Containing approximately 20,411 acres.

State Selection AA-21732

T. 9 S., R. 53 W.,
Secs. 5 to 8, inclusive, all.
Containing approximately 2,486 acres.

State Selection AA-21733

T. 9 S., R. 54 W.,
Secs. 1 to 12, inclusive, all;
Secs. 17 to 20, inclusive, all;
Secs. 29 to 32, inclusive, all.
Containing approximately 12,596 acres.

State Selection AA-21751

T. 10 S., R. 54 W.,
Secs. 5 to 8, inclusive, all;
Secs. 17 to 20, inclusive, all;
Sec. 29, excluding Muklung River;
Sec. 30, all;
Secs. 31 and 32, excluding Muklung River.
Containing approximately 7,535 acres.
Aggregating approximately 43,028 acres.

Further action on the above State selection applications as to those lands not rejected herein, will be taken at a later date.

The State selected lands rejected above were not valid selections and will not be charged against the village corporation as State selected lands.

As to the lands described below, the applications submitted by Aleknagik Natives Limited, as amended, are properly filed, and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 102,161 acres, is considered proper for acquisition by the Aleknagik Natives Limited and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

U.S. Survey No. 3734, lots 1 and 4, situated on the south shore of Lake Aleknagik, near Aleknagik, Alaska.
Containing 2.39 acres.

U.S. Survey No. 4705, situated on the north-easterly shore of Lake Aleknagik, near Aleknagik, Alaska.

Containing 5.00 acres.
U.S. Survey No. 4925, lot 1, situated approximately seventeen miles north of Dillingham, Alaska.

Containing 239.85 acres.

Seward Meridian, Alaska (Surveyed)

T. 8 S., R. 55 W.,
Those portions of Tract A more particularly described as (protracted):
Sec. 26, all;
Secs. 27 and 28, excluding Lake Nerka;
Secs. 31, 32, 33, and 34, excluding Lake Nerka;
Sec. 35, excluding Native allotments AA-7270 Parcel C, AA-7278 Parcel A and Lake Nerka.
Containing approximately 2,015 acres.

T. 9 S., R. 55 W.,
Those portions of Tract A more particularly described as (protracted):
Secs. 4, 5, 7, and 8, excluding Lake Nerka;
Secs. 9 and 16, excluding Native allotment AA-7433 Parcel A and Lake Nerka;
Sec. 17, excluding Native Allotment AA-7301 Parcel B and Lake Nerka;
Secs. 18, excluding Lake Nerka;
Secs. 21, 28 and 33, all.
Containing approximately 5,046 acres.

T. 10 S., R. 55 W.,
Those portions of Tract A more particularly described as (protracted):
Secs. 1 to 19, inclusive, all;
Sec. 20, excluding Native allotment AA-7276 Parcel A;
Secs. 21 to 25, inclusive, all;
Secs. 26 and 27, excluding Mineral Survey Application AA-12608;
Sec. 28, excluding Native allotment AA-7298;
Sec. 29, excluding U.S. Survey 4925 lot 1, Native allotment AA-2958, Lake Aleknagik and the Wood River;
Sec. 30, excluding U.S. Survey 3091, U.S. Survey 4873, U.S. Survey 4925 and Lake Aleknagik;
Sec. 31, excluding U.S. Survey 3734, Native allotments AA-7238, AA-7280 Parcel A and Lake Aleknagik;
Sec. 32, excluding U.S. Survey 4925 lot 2, Native allotments AA-2958, AA-7282, Mineral Survey Application AA-12608 and the Wood River;
Sec. 33, excluding Native allotments AA-7282, AA-7291, AA-7293 and AA-7305 Parcel B;
Secs. 34 and 35, excluding Mineral Survey Application AA-12608;
Sec. 36, all.
Containing approximately 20,837 acres.

T. 8 S., R. 56 W.,
That portion of Tract A more particularly described as (protracted):
Sec. 36, excluding Lake Nerka.
Containing approximately 140 acres.

T. 9 S., R. 56 W.,
Those portions of Tract A more particularly described as (protracted):
Secs. 1 and 2, excluding Lake Nerka;
Sec. 3, all;
Secs. 4, 5 and 6, excluding Lake Nerka;
Sec. 7, all;
Sec. 12, excluding Lake Nerka;
Sec. 30, excluding Native allotment AA-7288 Parcel B;
Sec. 31, excluding U.S. Survey 4930, Native allotments AA-7270 Parcel A, AA-7288 Parcel B, AA-7299 and Lake Aleknagik;

Sec. 32, excluding U.S. Survey 4930 and Lake Aleknagik.

Containing approximately 5,136 acres.

T. 10 S., R. 56 W.,
Those portions of Tract A more particularly described as (protracted):

Secs. 1, 2 and 3, all;
Sec. 4, excluding Lake Aleknagik;
Sec. 5, excluding U.S. Survey 4930, Native allotments AA-7285 Parcel D, AA-7286 Parcel B, AA-7303 and Lake Aleknagik;
Sec. 8, excluding Native allotments AA-7285 Parcel D, AA-7297 Parcel A and Lake Aleknagik;
Sec. 9, excluding Lake Aleknagik;
Sec. 10, excluding Native allotments A-054527 Parcel C, AA-7286 Parcel A and Lake Aleknagik;
Secs. 11, 12 and 13, all;
Sec. 14, excluding Native allotment AA-7289 Parcel B and Lake Aleknagik;
Sec. 15, excluding Native allotments AA-7286 Parcel A, AA-7294 Parcel A and Lake Aleknagik;
Sec. 17, excluding Lake Aleknagik;
Sec. 18, excluding Native allotments AA-7278 Parcel B, AA-7305 Parcel A and Lake Aleknagik;
Sec. 19, excluding Native allotments A-054494 Parcel C, AA-7285 Parcel C and Lake Aleknagik;
Sec. 20, excluding Native allotments AA-7281 Parcel A, AA-7285 Parcel C, AA-7297 Parcel B, AA-7363 Parcel B, AA-7902 and Lake Aleknagik;
Sec. 22, excluding U.S. Survey 4928, Native allotment AA-7294 Parcel A and Lake Aleknagik;
Sec. 23, excluding Native allotment AA-7281 Parcels C and D and Lake Aleknagik;
Sec. 24, excluding Native allotment AA-7289 Parcel A and Lake Aleknagik;
Sec. 25, excluding U.S. Survey 3091, U.S. Survey 4873, U.S. Survey 4927, Native allotment AA-7288 Parcel C and Lake Aleknagik;
Sec. 26, excluding U.S. Survey 4927, Native allotments AA-7281 Parcel D, AA-7288 Parcel C and Lake Aleknagik;
Sec. 28, excluding U.S. Survey 4929, Native allotments AA-5930, AA-7707 and Lake Aleknagik;
Sec. 29, excluding U.S. Survey 4929, Native allotment AA-7363 Parcel B and Lake Aleknagik;
Secs. 30, 31 and 32, all;
Sec. 33, excluding U.S. Survey 4929, Native allotments AA-5930 and AA-7707;
Sec. 34, excluding Native allotments AA-5930, AA-7276 Parcel B, AA-7281 Parcel B, AA-7707 and Lake Aleknagik;
Sec. 35, excluding Native allotments AA-7279 Parcel B, AA-7281 Parcel B and Lake Aleknagik;
Sec. 36, excluding U.S. Survey 3734, U.S. Survey 4922, Native allotments AA-6079, AA-6125 Parcel A, AA-6626, AA-7277 Parcel B, AA-7279 Parcel B, AA-7307 Parcel A and Lake Aleknagik.
Containing approximately 12,120 acres.

T. 11 S., R. 56 W.,
Those portions of Tract A more particularly described as (protracted):
Sec. 1, excluding U.S. Survey 4923, Native allotments AA-7277 Parcel B, AA-7307 Parcel A and AA-7760 Parcel B;
Sec. 2, excluding U.S. Survey 4923 and Native allotment AA-7760 Parcel B;

- Sec. 11, excluding U.S. Survey 4923;
 Sec. 12, excluding U.S. Survey 4923 and
 Native allotment AA-7657 Parcel B.
 Containing approximately 1,836 acres.
- T. 8 S., R. 57 W.,
 Those portions of Tract A more particularly
 described as (protracted):
 Sec. 26, all;
 Sec. 27, excluding Native allotments AA-
 7285 Parcel B and AA-7301 Parcel A and
 Lake Aleknagik;
 Sec. 34, excluding U.S. Survey 4706, Native
 allotment AA-7285 Parcel B and Lake
 Aleknagik;
 Sec. 35, excluding U.S. Survey 4705, U.S.
 Survey 4706, Native allotments AA-7674
 Parcels A and B and Lake Aleknagik.
 Containing approximately 2,020 acres.
- T. 9 S., R. 57 W.,
 Those portions of Tract A more particularly
 described as (protracted):
 Sec. 1, excluding Lake Nerka;
 Sec. 2, excluding U.S. Survey 4796, Native
 allotments AA-7289 Parcel C, AA-7759
 Parcel A, Lake Nerka and the Agulowak
 River;
 Sec. 3, excluding the Agulowak River;
 Sec. 4, all;
 Sec. 5, excluding Native allotment AA-7674
 Parcel B and Lake Aleknagik;
 Sec. 6, excluding Lake Aleknagik;
 Sec. 8, excluding U.S. Survey 4932, Native
 allotment AA-7284, the Agulowak River
 and Lake Aleknagik;
 Secs. 9 and 10, excluding the Agulowak
 River;
 Secs. 11 and 12, all;
 Sec. 25, excluding Native allotments AA-
 7275 Parcel A, AA-7288 Parcel B and
 Lake Aleknagik;
 Sec. 26, excluding U.S. Survey 4931, Native
 allotment AA-7275 Parcel A and Lake
 Aleknagik;
 Sec. 27, excluding Native allotment AA-
 7709 Parcel B and Lake Aleknagik;
 Sec. 32, excluding Native allotment AA-
 6124 Parcel A and Lake Aleknagik;
 Secs. 33 and 34, excluding Lake Aleknagik;
 Sec. 35, excluding Native allotments AA-
 7275 Parcel A, AA-7279 Parcel A and
 Lake Aleknagik;
 Sec. 36, excluding Native allotments AA-
 7275 Parcel A, AA-7279 Parcel A, AA-
 7288 Parcel B and Lake Aleknagik.
 Containing approximately 6,867 acres.
- T. 10 S., R. 57 W.,
 Those portions of Tract A more particularly
 described as (protracted):
 Sec. 2, excluding Native allotments A-
 056177 Parcel B, AA-7682 and Lake
 Aleknagik;
 Sec. 3, excluding Lake Aleknagik;
 Sec. 4, all;
 Sec. 11, excluding Native allotments A-
 056177 Parcel B and AA-7682;
 Sec. 12, excluding Native allotments A-
 056177 Parcel B, AA-7288 Parcel A, AA-
 7682, AA-7668 Parcel B, AA-7672 Parcel
 B and Lake Aleknagik;
 Sec. 13, excluding Native allotment AA-
 7672 Parcel B and Lake Aleknagik.
 Containing approximately 2,767 acres.
- T. 9 S., R. 58 W.,
 That portion of Tract A more particularly
 described as (protracted):
 Sec. 1, excluding Lake Aleknagik.
 Containing approximately 100 acres.

Seward Meridian, Alaska (Unsurveyed)

- T. 8 S., R. 53 W.,
 Sec. 1, all;
 Sec. 2, excluding Native allotment AA-7687
 Parcel C;
 Secs. 3 to 12, inclusive, all;
 Secs. 14 to 23, inclusive, all;
 Secs. 26 to 35, inclusive, all.
 Containing approximately 20,411 acres.
- T. 9 S., R. 53 W.,
 Secs. 5 to 8, inclusive, all.
 Containing approximately 2,486 acres.
- T. 9 S., R. 54 W.,
 Secs. 1 to 12, inclusive, all;
 Secs. 17 to 20, inclusive, all;
 Secs. 29 to 32, inclusive, all.
 Containing approximately 12,596 acres.
- T. 10 S., R. 54 W.,
 Secs. 5 to 8, inclusive, all;
 Secs. 17 to 20, inclusive, all;
 Sec. 29, excluding Muklung River;
 Sec. 30, all;
 Secs. 31 and 32, excluding Muklung River.
 Containing approximately 7,535 acres.
 Total aggregated acreage, approximately
 102,161 acres.
- The conveyance issued for the surface
 estate of the lands described above
 shall contain the following reservations
 to the United States:
1. The subsurface estate therein, and
 all rights, privileges, immunities and
 appurtenances, of whatsoever nature,
 accruing unto said estate pursuant to the
 Alaska Native Claims Settlement Act of
 December 18, 1971 (85 Stat. 688, 704; 43
 U.S.C. 1601, 1613(f) (1976)); and
 2. Pursuant to Sec. 17(b) of the Alaska
 Native Claims Settlement Act of
 December 18, 1971 (85 Stat. 688, 708; 43
 U.S.C. 1601, 1616(b) (1976)), the
 following public easements, referenced
 by easement identification number (EIN)
 on the easement maps attached to this
 document, copies of which will be found
 in case file AA-6648-EE, are reserved to
 the United States. All easements are
 subject to applicable Federal, State, or
 Municipal corporation regulation. The
 following is a listing of uses allowed for
 each type of easement. Any uses which
 are not specifically listed are prohibited.
- 25 Foot Trail**—The uses allowed on a
 twenty-five (25) foot wide trail easement
 are: Travel by foot, dogsled, animals,
 snowmobiles, two and three-wheel
 vehicles, and small all-terrain vehicles
 (less than 3,000 lbs. Gross Vehicle
 Weight (GVW)).
- 60 Foot Road**—The uses allowed on a
 sixty (60) foot wide road easement are:
 Travel by foot, dogsled, animals,
 snowmobiles, two and three-wheel
 vehicles, small and large all-terrain
 vehicles, track vehicles, four-wheel
 drive vehicles, automobiles, and trucks.
- 100 Foot Road**—The uses allowed on
 a one hundred (100) foot wide road
 easement are: Travel by foot, dogsled,
 animals, snowmobiles, two and three-
 wheel vehicles, small and large all-

terrain vehicles, track vehicles, four-
 wheel drive vehicles, automobiles, and
 trucks.

One Acre Site—The uses allowed for
 a site easement are: Vehicle parking
 (e.g., aircraft, boats, ATV's,
 snowmobiles, cars, trucks), temporary
 camping, and loading or unloading.
 Temporary camping, loading or
 unloading shall be limited to 24 hours.

a. (EIN 5 C5) An easement for an
 existing access trail twenty-five (25) feet
 in width from Lake Aleknagik in Sec.
 35., T. 8 S., R. 57 W., Seward Meridian,
 northerly to public lands and waters.
 The uses allowed are those listed above
 for a twenty-five (25) foot wide trail
 easement. The season of use will be
 limited to winter use only.

b. (EIN 8 D9) An easement for a
 proposed access trail twenty-five (25)
 feet in width from site EIN 8a D9 in Sec.
 1, T. 9 S., R. 57 W., Seward Meridian,
 southerly to public lands. The uses
 allowed are those above for a twenty-
 five (25) foot wide trail easement.

c. (EIN 8a D9) A one (1) acre site
 easement upland of the ordinary high
 water mark in Sec. 1, T. 9 S., R. 57 W.,
 Seward Meridian, on the south shore of
 River Bay on Lake Nerka and east of the
 mouth of Fenno Creek. The uses allowed
 are those listed above for a one (1) acre
 site.

d. (EIN 11 D9) An easement for a
 proposed access trail twenty-five (25)
 feet in width from site EIN 11a D9 on the
 north shore of Lake Aleknagik in Sec. 5,
 T. 10 S., R. 56 W., Seward Meridian,
 northeasterly to public lands. The uses
 allowed are those listed above for
 twenty-five (25) foot wide trail
 easement.

e. (EIN 11a D9) A one (1) acre site
 easement upland of the ordinary high
 water mark in Sec. 5, T. 10 S., R. 56 W.,
 Seward Meridian, on the north shore of
 Lake Aleknagik. The uses allowed are
 those listed above for a one (1) acre site.

f. (EIN 12e D9) An easement for a
 proposed access trail twenty-five (25)
 feet in width from site EIN 12h D9
 located on the south shore of Lake
 Aleknagik in Secs. 20 and 29, T. 10 S.,
 R. 56 W., Seward Meridian, westerly to
 public lands. The uses allowed are those
 listed above for a twenty-five (25) foot
 wide trail easement.

g. (EIN 12h D9) A one (1) acre site
 easement upland of the ordinary high
 water mark in Secs. 20 and 29, T. 10 S.,
 R. 56 W., Seward Meridian, on the south
 shore of Lake Aleknagik. The uses
 allowed are those listed above for a one
 (1) acre site.

h. (EIN 13 C5 D9) An easement for an
 existing access trail twenty-five (25) feet
 in width from the vicinity of the village
 of Aleknagik in Sec. 30, T. 10 S., R. 55

W., Seward Meridian, northerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter use.

i. (EIN 13a C5, D9) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 42 E in Sec. 17, T. 9 S., R. 55 W., Seward Meridian, southerly to Sec. 20, T. 9 S., R. 55 W., Seward Meridian thence easterly to trail EIN 13 C5, D9 in Sec. 23, T. 9 S., R. 55 W., Seward Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter use.

j. (EIN 14a D9) An easement for a proposed access trail twenty-five (25) feet in width from the left bank of the Muklung River, in Sec. 29, T. 10 S., R. 54 W., Seward Meridian, easterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

k. (EIN 20a C5) An easement for an existing access trail twenty-five (25) feet in width from site EIN 21 D9 on the left bank of the Wood River in Sec. 32, T. 10 S., R. 55 W., Seward Meridian, southeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use is limited to winter use.

l. (EIN 21 D9) A one (1) acre site easement upland of the mean high tide line in Sec. 32, T. 10 S., R. 55 W., Seward Meridian, on the left bank of Wood River at an old mill site. The uses allowed are those listed above for a one (1) acre site.

m. (EIN 24 C5) An easement one hundred (100) feet in width for an existing road from the selection boundary in Sec. 11, T. 11 S., R. 56 W., Seward Meridian, northerly to its terminus south of the village of Aleknagik in Sec. 31, T. 10 S., R. 55 W., Seward Meridian. The uses allowed are those listed above for a one hundred (100) foot wide road easement.

n. (EIN 40 M) An easement sixty (60) feet in width for an existing road from road EIN 24 C5 in Sec. 31, T. 10 S., R. 55 W., Seward Meridian, westerly to Sec. 36, T. 10 S., R. 56 W., Seward Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

o. (EIN 42 E) A one (1) acre site easement upland of the ordinary high water mark in Sec. 17, T. 9 S., R. 55 W., Seward Meridian, on the south shore of Lake Nerka. The uses allowed are those listed above for a one (1) acre site.

p. (EIN 43 E) An easement for a proposed access trail twenty-five (25) feet in width from navigable waters on Lake Aleknagik in Sec. 32, T. 9 S., R. 57

W., Seward Meridian, southerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

q. (EIN 45 E) An easement for a proposed access trail twenty-five (25) feet in width from trail EIN 13 C5, D9 in Sec. 23, T. 9 S., R. 55 W., Seward Meridian, easterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter use.

r. (EIN 48 C4) An easement fifty (50) feet in width, twenty-five (25) feet on each side of the centerline, for an existing 7.2 KV power transmission line from the Aleknagik selection boundary in Sec. 11, T. 11 S., R. 56 W., Seward Meridian, northerly to an island in Sec. 25, T. 10 S., R. 56 W., Seward Meridian. The uses allowed are those activities associated with the construction, operation, and maintenance of the powerline facility.

s. (EIN 49 L) An easement twenty-five (25) feet in width, twelve and one-half (12½) feet on each side of the centerline, for an existing telephone line from the Aleknagik selection boundary in Sec. 11, T. 11 S., R. 56 W., Seward Meridian, northerly to Lake Aleknagik. The uses allowed are those activities associated with the construction, operation, and maintenance of the telephone line facility.

t. (EIN 49a L) An easement twenty-five (25) feet in width, twelve and one-half (12½) feet on each side of the centerline, for an existing telephone line from road EIN 24 C5 in Sec. 36, T. 10 S., R. 56 W., Seward Meridian, westerly to a group of private inholdings located on the south shore of Lake Aleknagik. The uses allowed are those activities associated with the construction, operation, and maintenance of the telephone line facility.

u. (EIN 49b L) An easement twenty-five (25) feet in width for an existing telephone line located in Sec. 25, T. 10 S., R. 56 W., Seward Meridian. The uses allowed are those activities associated with the construction, operation, and maintenance of the telephone line facility.

The grant of lands shall be subject to:
1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights, therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g)

(1976))), contract, permit, right-of-way or easement and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b) (2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of excess as is now provided for under existing law;

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Aleknagik Natives Limited is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 102,161 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 13,039 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance to the subsurface estate of the lands described above shall be granted to Bristol Bay Native Corporation when conveyance is granted to Aleknagik Natives Limited, for the surface estate and shall be subject to the same conditions as the surface conveyance.

Only the following inland water bodies, within the described lands, are considered to be navigable: Wood River; Agulowak River; Lake Aleknagik; Lake Nerka.

The Muklung River is considered to be tidally influenced to the northern boundary of Sec. 29, T. 10 S., R. 54 W., Seward Meridian.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Anchorage Times. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to

sign the return receipt shall have until December 26, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the adverse parties to be served with a copy of the notice of appeal are: State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501. Aleknagik Natives Limited, Aleknagik, Alaska 99555. Bristol Bay Native Corporation, P.O. Box 237, Dillingham, Alaska 99576.

Sue A. Wolf,
Chief, Branch of Adjudication.

[FR Doc. 79-36234 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-84-M

[F-14943-A]

Alaska Native Claims Selection

This decision rejects the State selection of lands near Tanacross and approves the land for conveyance to Tanacross, Incorporated.

On May 25, 1961, the State of Alaska filed general purposes grant selection applications F-027784 and F-027785, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)). These applications, which selected lands near the Native village of Tanacross, were later combined, retaining F-027784 as the application covering T. 19 N., R. 11 E., Copper River Meridian.

On December 18, 1971, Sec. 11 of the Alaska Native Claims Settlement Act (85 Stat. 688, 696; 43 U.S.C. 1601, 1610 (1976)) (ANCSA), withdrew the lands surrounding the village of Tanacross, including the lands in the subject State selection, for possible Native selection. On September 5, 1974, Tanacross, Incorporated filed village selection application F-14943-A under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a)), for lands located near the village, including lands within the subject State selection.

Section 12(a)(1) of the Alaska Native Claims Settlement Act provides that village selections shall be made from

lands withdrawn by Sec. 11(a). Section 11(a)(2) withdrew for possible selection by the Native corporation those lands that have been selected by, or tentatively approved to, but not yet patented to, the State under the Alaska Statehood Act. Section 12(a)(1) further provides that no village may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

The following described lands, which are State selected, have been properly selected under village selection application F-14943-A. Accordingly, the State selection application is rejected as to the following described lands:

State Selection F-027784

Lot 6, Block 5, U.S. Survey 3726, Alaska, Townsite of Tanacross, situated on the right bank of the Tanana River approximately 10 miles northeast of Tok Junction, Alaska.

Containing 1.30 acres.

T. 19 N., R. 11 E., Copper River Meridian, Alaska (Surveyed);

Those portions of Tract A more particularly described as (protracted):

- Sec. 1, excluding U.S. Survey 4378;
- Secs. 2 and 3, excluding Fish Lake;
- Sec. 4 excluding U.S. Survey 4087, U.S. Survey 4087B, Native allotments F-14422 Parcel B and F-12549 Parcel A and Fish Lake;
- Secs. 5 excluding U.S. Survey 4087B;
- Secs. 6, excluding Native allotments F-12548 Parcel A and F-15029 Parcel B;
- Secs. 7 and 8, all;
- Sec. 9 excluding U.S. Survey 4087B;
- Secs. 10 to 14, inclusive, all;
- Secs. 15, 16 and 17, excluding the Little Tanana Slough;
- Sec. 18, excluding Native allotment F-14422 Parcel A and the Little Tanana Slough;
- Sec. 19, excluding Native allotment F-14445 Parcel B and the Little Tanana Slough;
- Sec. 20, excluding the Little Tanana Slough;
- Secs. 21 and 22, excluding the Tanana River and the Little Tanana Slough;
- Sec. 23, excluding the Tanana River;
- Sec. 24, all;
- Secs. 25 to 28, inclusive, excluding the Tanana River;
- Sec. 29, excluding the Little Tanana Slough, the Tanana River and its interconnecting sloughs;
- Sec. 30, excluding Native allotment F-14445 Parcel B, the Little Tanana Slough, the Tanana River and its interconnecting slough;
- Sec. 31, excluding U.S. Survey 5620 and the Tanana River;
- Sec. 32, excluding U.S. Survey 2631, U.S. Survey 2659, U.S. Survey 3726, U.S. Survey 4088, U.S. Survey 5620, Native allotments F-14439 Parcel C and F-16422 Parcel A and the Tanana River and its interconnecting slough;
- Sec. 33, excluding U.S. Survey 2631 and U.S. Survey 4088;
- Sec. 34, 35 and 36, all.

Containing approximately 19,671 acres.

Aggregating approximately 19,672 acres.

Further action on the subject State selection application as to those lands not rejected herein will be taken at a later date.

The total amount of lands which have been properly selected by the State, including any selection applications previously rejected to permit conveyances to Tanacross, Incorporated is approximately 19,672 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA.

As to the lands described above, the application submitted by Tanacross, Incorporated is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with the laws leading to the acquisition of title.

In view of the foregoing, the surface estate of the above described lands, selected pursuant to Sec. 12(a), aggregating approximately 19,672 acres, is considered proper for acquisition by Tanacross, Incorporated, and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f)); and
2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14943-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail.—The uses allowed on a twenty-five (25) foot wide trail easement are: Travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

One Acre Site.—The uses allowed for a site easement are: Vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 14 C1, D1, D9) An easement for an existing access trail twenty-five (25) feet in width from the road on the left

bank of the Tanana River in Sec. 32, T. 19 N., R. 11 E., Copper River Meridian, northwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use is limited to winter.

b. (EIN 18a D9) A one (1) acre site easement upland of the ordinary high-water mark in Sec. 4, T. 19 N., R. 11 E., Copper River Meridian, on the northwest shore of Fish Lake. The uses allowed are those listed above for a one (1) acre site.

c. (EIN 21 C1, D1) An easement for an existing access trail twenty-five (25) feet in width from trail EIN 14 C1, D1, D9 in Sec. 13, T. 19 N., R. 10 E., Copper River Meridian, northerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use is limited to winter.

d. (EIN 28 C5) A proposed easement varying from two hundred fifty (250) feet to one thousand two hundred fifty (1,250) feet in width and extending out one thousand (1,000) feet from the end of Runway 30 at Tanacross Airport in Sec. 32, T. 19 N., R. 11 E., Copper River Meridian. The allowed use of this airspace easement is for unobstructed air space and there will be no use allowed which might interfere with approaching or departing aircraft or might otherwise constitute a safety hazard because of its location or construction. No permanent fixture will be allowed in the safety area and no obstructions will be allowed to extend into the airspace. Uses which do not interfere with aircraft safety will be permitted. The uses of this airspace easement will be controlled by applicable Federal, State or municipal Corporation regulation.

The grant of the above described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid

existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

4. An easement and right-of-way to operate, maintain, repair and patrol an overhead open wire and underground communication line or lines, and appurtenances thereto, in, on, over and across a strip of land fifty (50) feet in width, lying twenty-five (25) feet on each side of the centerline of the Alaska Communication System's open wire or pole line and/or buried communication cableline, conveyed to RCA Alaska Communications, Inc. by Easement Deed dated January 10, 1971, (F-13508), pursuant to the Alaska Communications Disposal Act (81 Stat. 441; 40 U.S.C. 771, et seq.) located in: the east half of protracted section 32 of Tract A, T. 19 N., R. 11 E., Copper River Meridian, and that portion within U.S. Survey 3726.

The lands conveyed will include the Eagle to Valdez Telegraph Line which is located in Secs. 6, 18, 19, 29, 30 and 32, T. 19 N., R. 11 E., Copper River Meridian. This historic structure is identified on Bureau of Land Management plats as serial No. F-21631 and has been nominated to the National Register of Historic Places.

Tanacross, Incorporated is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 19,672 acres of this entitlement have been approved for conveyance; the remaining entitlement of 72,488 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above shall be granted to Doyon, Limited when conveyance is granted to Tanacross, Incorporated for the surface estate, and shall be subject to the same conditions as the surface conveyance.

Only the following inland water bodies within the described lands are considered to be navigable:

The Tanana River and its interconnecting sloughs;
The Little Tanana Slough;
Fish Lake.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the

TUNDRA TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until December 26, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the adverse parties to be served with a copy of the notice of appeal are:

Tanacross, Incorporated, Tanacross, Alaska 99776.

Doyon, Limited, First and Hall Streets, Fairbanks, Alaska 99701.

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 79-36235 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-84-M

Bakersfield District, Calif; Alteration of Existing Jawbone Canyon Management Agreement Boundary

A management agreement has existed between the U.S. Bureau of Land Management and the Rudnick Estate Trust since 1976. This agreement applies to the management of motorized vehicles on lands in the Jawbone Canyon Special Design Area.

The original boundary follows a ridge line which cannot be seen by the average user of the area. The original boundary was signed on the ridge line, but due to difficulty in reaching the ridge line, signs could not be maintained on a

regular schedule. The visitors using the area would then trespass across the boundary. Patrolling this area by 4-wheel drive vehicles is limited due to the steep terrain involved. The Jawbone well is located in Section 28 of T. 30S., R. 36E. The well is used by livestock and wildlife within the area, and is a valuable water source. However, due to the visitation near the well, the water tank has been vandalized and contaminated by swimmers, thus keeping the livestock and wildlife from using their water source.

The altered management agreement boundary will enable the use of Jawbone Canyon Road as a boundary line. The road can be easily patrolled and visitors to the area would have a definite visible boundary to follow. This will enable the local law enforcement agencies and Bureau of Land Management Rangers to enforce trespassing laws and regulations on lands west of the boundary. It will also prevent visitors from vandalizing the water tank and disturbing livestock and wildlife that utilize the water source.

The altered boundary line is as follows:

Beginning at the point where the Harris Grade County Road intersects the U.S. Forest Service boundary in T. 28S., R. 35S., Section 30, east along Harris Grade Road to the intersection of Harris Grade Road and Kelso Valley County Road in T. 28S., R. 35E., Section 21. From that point north on Kelso Valley Road to the intersection of Kelso Valley Road and Dove Spring Canyon Road in T. 28S., R. 35E., Section 15. Thence southeast on Dove Spring Canyon Road to the intersection of Dove Spring Canyon Road and Gold Peak Road in T. 28S., R. 36E., Section 32. Thence west-southwest along Gold Peak Road, to the intersection of Gold Peak Road and Butterbread Canyon County Road in T. 29S., R. 35E., Section 2. Thence southeast along Butterbread Canyon Road to the intersection of Butterbread Canyon Road and Jawbone Canyon Road in T. 29S., R. 36E., Section 33. Thence south along Jawbone Canyon Road to where Jawbone Canyon Road turns northeast in T. 30S., R. 36E., Section 22. Thence due south to the southern boundary of T. 30S. Thence due east along the southern boundary of T. 30S., to the common southern corner of T. 30S., R. 34E., Section 35 and 36. Thence due north along the boundary between Section 36 and 36 to the common corner of T. 29S., R. 34E., Sections 25, 26, 36 and 36. Thence north

along U.S. Forest Service boundary to the point where Harris Grade County Road intersects the U.S. Forest Service boundary in T. 28S., R. 35E., Section 30.

Within the confines of the described boundary, vehicle use will be restricted to designated roads and trails by permit issued by the Bureau of Land Management. Jawbone Canyon Road, Butterbread Canyon Road, Kelso Valley Road, and Harris Grade Road will remain open to operators with valid State operator's licenses or learner's permits, and licensed motorized vehicles. The area to the east of this line the Trust agrees to allow vehicle use of its private lands on all designated roads and trails. Additional areas now exhibiting use as hill climb areas will be designated as open to this off road vehicle activity.

This notice is given under the authority for the Federal Land Policy and Management Act of 1976 (PL 94-579), Executive Order 11644 as amended by Executive Order 11989, and Bureau of Land Management Code and Regulations 43 CFR 8340.

Dated: November 15, 1979.

Kris Conquergood,
Acting District Manager.

[FR Doc. 79-36306 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38770]

New Mexico; Application

November 14, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), David Fasken has filed a right-of-way application for one 4-inch and three 3-inch pipelines across the following land:

New Mexico Principal Meridian, New Mexico

T. 21 S., R. 24 E.,

Sec. 4, lots 5 and 13;

Sec. 5, lots 7, 8, 9, 10, 14, 15, 16 and

NE $\frac{1}{4}$ SW $\frac{1}{4}$.

These pipelines will convey natural gas across 1.883 miles of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Stella V. Gonzales,
Chief, Lands Section.

[FR Doc. 79-36306 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Cape Cod National Seashore, South Wellfleet, Mass.; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with Pub. L. 92-464 that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, December 14, 1979, at 10 am at the Headquarters Building, Cape Cod National Seashore, Marconi Station Area, South Wellfleet, Massachusetts.

The Commission was established pursuant to Pub. L. 91-383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The Commission will consider the following matter: Recommendations of the Oversand Vehicle Study Committee.

The meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663, Telephone 617-349-3785. Minutes of the meeting will be available for public information and copying four weeks after the meeting at the Office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Dated: November 13, 1979.

Herbert Olsen,
Superintendent, Cape Cod National Seashore.

[FR Doc. 79-36257 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

[INT FEIS 79-61]

Grazing Management Program for the Bennett Hills, Timmerman Hills and Magic Planning Units in Gooding, Lincoln, Elmore, Blaine and Camas Counties, Idaho; Availability of the Shoshone Grazing Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for a proposed grazing management program for the Bennett Hills, Timmerman Hills and Magic Planning Units of the Shoshone District located in southcentral Idaho.

The proposal involves changes in initial stocking rates, implementing improved grazing systems and installation of certain range improvements. Five alternatives were also analyzed. Approximately 574,000 acres of public lands are involved.

No final decisions regarding this matter will be made for 30 days from the date of this notice.

Copies of the final environmental statement are available for inspection at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, NW, Washington, D.C. 20240, Telephone: (202) 343-5717.

Shoshone District Office, Bureau of Land Management, 400 West F Street, Shoshone, Idaho 83352, Telephone: (208) 886-2207.

Idaho State Office, Bureau of Land Management, Federal Building, 500 West Fort Street, Boise, Idaho 83724, Telephone: (208) 384-1770.

A limited number of single copies may be obtained from the Idaho State Director, the Shoshone District Manager and the Office of Public Affairs, Bureau of Land Management at the above addresses.

Dated: October 29, 1979.

James W. Curlin,

Deputy Assistant Secretary of the Interior.

[FR Doc. 79-36303 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-84-M

Water and Power Resources Service**Municipal Water Service Contract Negotiations, Shoshone Project, Wyoming; Availability of the Proposed Contract**

The Department of the Interior, through the Water and Power Resources Service, has completed the negotiation

for the form of a contract with the city of Cody and town of Lovell, Wyoming, for long-term municipal water service from Buffalo Bill Reservoir, the principal storage feature of the Shoshone Project. The proposed contract form was prepared pursuant to section 9(c)(2) of the Reclamation Project Act of August 4, 1939 (53 Stat. 1186).

Both municipalities have requested water service arrangements be consummated to provide supplemental water requirements for domestic, residential, light industrial, and commercial purposes. Both expect substantial population increases by year 2020. The United States would release up to 5,000 acre-feet of water annually for Cody and 1,000 acre-feet of water annually for Lovell.

The proposed contract form provides that delivery would be made at the outlet works of Buffalo Bill Dam, and all costs associated with delivering the water from the Shoshone River to the municipal system would be the responsibility of the individual municipality. The initial water service charge would be \$10 per acre-foot for water used plus \$1 per acre-foot for standby water service. The operation and maintenance charge would be \$0.10 per acre-foot, and contract administration costs would be \$100 annually. These charges are subject to adjustment at 5-year intervals throughout the 40-year contract term.

For further information and copies of the proposed contract form, please contact Mrs. Elaine Ellingson, Repayment Technician, Division of Water and Land, Water and Power Resources Service, P.O. Box 2553, Billings, Montana 59103, telephone (406) 657-6455.

The proposed contract will be available for public review and written comments for 30 days following the date of this notice. All written correspondence concerning the proposed contract will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

Dated: November 19, 1979.

Clifford L. Barrett,

Assistant Commissioner of Water and Power Resources Service.

[FR Doc. 79-36229 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**Agency for International Development****Final Program Criteria for Screening of Applications for Grants Made by American Schools and Hospitals Abroad (ASHA) Program**

AGENCY: Agency for International Development.

ACTION: Final Program Criteria.

SUMMARY: The Agency for International Development is issuing final program criteria for the screening of applications for grants made by the American Schools and Hospitals Abroad (ASHA) program, pursuant to section 214 of the Foreign Assistance Act of 1961, as amended. The program criteria serve as administrative guidance for considering the acceptability and relative merits of applicants.

DATE: Effective date November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Santos (703) 235-9190, ASHA, Agency for International Development, Washington, D.C. 20523.

SUPPLEMENTARY INFORMATION:**Background**

On April 18, 1979, the Agency for International Development published for comment its Proposed Program Criteria for the American Schools and Hospitals Abroad program. A written comment was received from one individual.

That comment was directed at criteria 2 and 4 which require that educational and medical programs reflect American ideas and practices. It was suggested by the respondent that these criteria emphasized too heavily U.S. educational and medical practices and that the criteria should be modified to reflect that ASHA projects reflect conditions in the overseas countries. Since these criteria reiterate the statutory language of Section 214 of the Foreign Assistance Act, as amended, their inclusion is mandatory. Furthermore, since the educational and medical programs of institutions receiving ASHA assistance are adapted to local needs; U.S. ideas and practices are applied in a manner which takes these local needs and concerns into account.

Accordingly, the Agency for International Development issues the following Criteria for the American Schools and Hospitals Abroad Program.

Preamble

Pursuant to section 214 of the Foreign Assistance Act of 1961, as amended, grant assistance is made available to selected schools, libraries, and hospitals

overseas founded or sponsored by United States citizens and serving as study and demonstration centers for ideas and practices of the United States and as centers for medical education and research. Grants made under this program help such institutions demonstrate to people overseas the achievements of the United States in education and medicine.

In evaluating requests for assistance AID will apply the following criteria:

Criterion 1. The applicant should be a nonprofit U.S. organization which either founded or sponsors the institution for which assistance is sought. Preferably, the applicant should be tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1954.

The applicant must demonstrate a continuing supportive relationship with the institution. Evidence of this would be the provision of financial and management support for the institution.

Criterion 2. An instruction program must serve the secondary or higher level and must reflect American educational ideas and practice (education at the elementary school level will not be supported).

A school offering a broad-based academic program must include instruction on the history, geography, political science, cultural institutions or economics of the United States. English should be used in instruction or taught as a second language. However, the foregoing subject matter and language requirements need not apply to a school offering a specialized course of study.

Criterion 3. Institutions are expected to reflect favorably upon and to increase understanding of the United States.

Criterion 4. A hospital center, in addition to being a treatment facility, must be involved in medical education and research.

Programs for post graduate training of staff in the United States and programs for the exchange of personnel with American institutions will be regarded as evidence of ability to demonstrate American ideas and practices in medicine.

Criterion 5. The faculty and staff of a school or a hospital center should include a significant number of U.S. citizens or other persons trained in U.S. institutions who are in residence and teaching at the school or hospital center on either a full time or part-time basis.

Criterion 6. The majority of the users of any institution, e.g., students or patients, must be citizens of countries other than the U.S.

Criterion 7. An existing institution must demonstrate competence in professional skills and must exhibit sound management and financial

practices. An applicant for a new institution must demonstrate the ability to achieve professional competence and to operate in accordance with sound management and financial practices.

Criterion 8. The institution must be open to all persons regardless of race, religion, sex, color or national origin. (The above shall not be construed to require enrollment of students of both sexes at an educational institution enrolling boys or girls only.) Assistance may not be used to train persons for religious pursuits or to construct building or other facilities intended for worship or religious instruction.

Criterion 9. The institution must be located outside the U.S. and should not be under the control or management of a government or any of its agencies. The receipt of financial or other assistance from a government or government agency or the observance of national educational or medical standards required by the country where the institution is located does not in itself mean that the institution is "under the control or management" of such government.

Criterion 10. An applicant requesting capital construction assistance must provide information sufficient to permit a firm estimate of the total cost to the U.S. Government of the construction for which assistance is requested. Such an applicant must also provide information and assurances with respect to rights to the land on which construction is planned.

Criterion 11. To help achieve the objectives of the Foreign Assistance Act and ensure that the American Schools and Hospitals Abroad program is as geographically balanced as possible, special consideration will be given to applications for institutions which increase the geographic distribution of the program and contribute to the economic and social progress of areas that are the focus of AID's development efforts.

Calvin H. Raullerson,
Assistant Administrator for Private and Development Cooperation.

[FR Doc. 79-36221 Filed 11-23-79; 8:45 am]
BILLING CODE 4710-02-M

Joint Research Committee of the Board for International Food and Agricultural Development; Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a), (2), P.L. 92-463, Federal Advisory Committee Act, notice is hereby given of the twenty-ninth meeting of the Joint Research Committee (JRC) of the Board for International Food and Agricultural

Development (BIFAD) on December 11 and 12, 1979.

The purpose of the meeting is to review and discuss progress of Collaborative Research Support Programs (CRSPs) being planned and implemented, and to further consider changes in composition and roles of JRC to relate to the Institute for Scientific and Technological Cooperation upon its establishment. Planning CRSPs which will be discussed include Human Nutrition, Integrated Crop Protection, Peanuts, Soil Management, Fisheries and Aquaculture. Ongoing CRSPs which will be discussed include Small ruminants and Sorghum and Millet. Also, JRC will consider the possibility of exploratory studies on the role of Forestry in agriculture in the tropics and sub-tropics.

The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m. on December 11 and 12, 1979. The meeting will be held at the Holiday Inn, Dynasty Room, 1850 N. Ft. Myer Drive, Arlington, Virginia 22209. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Office of Title XII Coordination and University Relations, Development Support Bureau, is designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, State Department, Washington, D.C. 20523, or telephone him at (703)-235-8929.

Erven J. Long,
A.I.D. Advisory Committee Representative,
Joint Research Committee Board for
International Food and Agricultural
Development.

November 20, 1979.
[FR Doc. 79-36336 Filed 11-23-79; 8:45 am]
BILLING CODE 4710-02-M

INTERNATIONAL TRADE COMMISSION

[AA1921 Inq. 29]

Coke From West Germany; Commission Determines "No Reasonable Indication of Injury"

On the basis of information developed during the course of inquiry No. AA1921-Inq.-29 undertaken by the United States International Trade Commission under section 201 of the Antidumping Act, 1921, as amended, the

Commission unanimously determines that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of coke, provided for in item 521.31 of the Tariff Schedules of the United States (TSUS), from West Germany allegedly sold at less than fair value as indicated by the Department of the Treasury.

On October 17, 1979, the Commission received advice from the Department of the Treasury that, in accordance with section 201(c)(1) of the Antidumping Act, 1921, as amended, an antidumping investigation was being initiated with respect to coke from West Germany and that, pursuant to section 201(c)(2) of the act, information developed during Treasury's preliminary investigation led to the conclusion that there is substantial doubt that an industry in the United States is being or is likely to be injured by reason of the importation of coke from West Germany into the United States. Accordingly, the Commission, on October 22, 1979, instituted inquiry No. AA1921-Inq.-29, under section 201(c)(2) of the act to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on October 30, 1979, in Washington, D.C. Notice of the institution of the inquiry and the public hearing was duly given by posting copies of the notice at the Secretary's office in the Commission in Washington, D.C., and at the Commission's office in New York City, and by publishing the original notice in the Federal Register of October 25, 1979 (44 FR 61466).

The Treasury Department instituted its investigation after receiving a properly filed complaint on September 7, 1979, from counsel representing three U.S. producers of coking coal, one of which also produces coke. Treasury's notice of its antidumping proceeding was published in the Federal Register of October 22, 1979 (44 FR 60838).

Statement of Reasons for the Determination of Chairman Joseph O. Parker and Commissioners Bill Alberger, George M. Moore, Catherine Bedell, and Paula Stern

Determination

On the basis of the information developed during this inquiry, we determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured,

or is prevented from being established,¹ by reason of the importation of coke from West Germany allegedly sold at less than fair value as indicated by the Department of the Treasury.

Discussion

In this inquiry, counsel for the petitioners has claimed that the industry injured by LTFV imports of coke from West Germany is "the U.S. merchant coke industry (consisting of) all U.S. commercial producers of coke and coking coal that sell their products exclusively on the open market." The industry described by the petitioners does not include steel firms, which account for an estimated 93 percent of total U.S. coke production and which produce coke primarily for their own captive consumption. In addition, the industry described by the petitioners excludes the steel firms' captive production of coking coal, which supplies over half of the coking coal consumed by such firms in the manufacture of coke. It is our view that neither the industry described by the petitioner,² nor the entire U.S. coke and coking coal industries, which include all facilities in the United States used in the production of coke and coking coal, whether for captive or noncaptive use, is being or is likely to be injured by reason of the alleged LTFV imports of coke from West Germany.

In recent years, U.S. coke producers witnessed a steady decline in capacity, which affected both coke and coking coal production. During the period January 1973 through July 1979, a period in which U.S. demand for coke increased as a result of an overall increase in domestic steel production, U.S. coke capacity declined by approximately 16 percent, while capacity utilization increased from an estimated 93 percent in 1976 to about 97 percent in January-June 1979. The decline in capacity is primarily attributable to stringent Federal pollution control standards and the advanced age of most domestic coke ovens. Steel firms, which own and operate the vast majority of coke ovens, have not undertaken the massive replacement and reconditioning programs needed to prevent further erosions in capacity.

Largely as a result of declining capacity, U.S. coke production fell from

58.3 million short tons in 1976 to 48.6 million short tons in 1978. Production in 1978 was also suppressed—by over 3 million short tons—by the United Mine Workers strike during December 1977–March 1978, which prevented many producers from obtaining needed quantities of coking coal. Coke production during the first half of 1979 increased by 22 percent over its level during the corresponding period in 1978. Production losses during the period 1976–78 were shared relatively evenly by both captive and merchant plants, as were production gains during the first half of 1979.

Despite the steady decline in coke production, domestic shipments of coke were at approximately the same level in 1978 as they were in 1976, reflecting a rapid depletion of inventories. However, shipments and inventories of coke increased slightly during the first half of 1979.

As a result of declining coke capacity and the strike referred to above, domestic shipments of coking coal fell by 22 percent during 1976–78. The decline in domestic shipments was more than offset by increased exports of coking coal, however. During January–June 1979, U.S. coking coal producers' domestic and foreign shipments increased markedly.

While coke production dropped by 17 percent during 1976–78, the average number of production and related workers engaged in the production of coke declined by only 2 percent. Reflecting the sharp rise in production during the first half of 1979, the average number of such workers in that period increased by 13 percent over the average for January–June 1978. Employment data for the U.S. coking coal industry are unavailable; it is assumed, however, that industry employment remained relatively stable since total shipments of coking coal did not decline during the period January 1976 through June 1979, except for a brief lapse in early 1978 resulting from the United Mine Workers strike.

As U.S. demand for raw steel increased, particularly in 1978, and as domestic coke capacity and production declined, steel firms sought increased volumes of coke from foreign suppliers to fill the gap. During the period 1976–78, U.S. imports of coke from West Germany more than quadrupled, as did total imports from countries other than West Germany. During January–June 1979, however, imports from West Germany were 33 percent below their level during the corresponding period in 1978.

There is considerable information that domestic steel firms sought coke from West Germany primarily because of

¹ Prevention of establishment of an industry is not in question in this inquiry and will not be discussed further in these views.

² Commissioners Alberger and Stern do not believe that the industry described by the petitioner constitutes and "industry" within the meaning of the Antidumping Act. They would define the industry as comprising total U.S. coke production, both captive and noncaptive.

insufficient domestic supplies and not because of price considerations. Of the seven firms known to have imported coke from West Germany during the period January 1976 through June 1979, four purchased the imported product at prices substantially higher than those paid for noncaptive domestic coke, two paid lower prices for the imported product, and one paid substantially similar prices for both. An analysis of average delivered prices paid by steel firms accounting for over 80 percent of domestic coke consumption reveals that while West German coke was slightly lower in price than domestic noncaptive coke in 1977, it was higher than such coke in 1978, the year in which imports surged, and in the first half of 1979.

Merchant coke producers have reported isolated instances where they were unable to sell coke at reasonable prices. It should be noted, however, that 10 steel firms reported that frequently during the period January 1977 through June 1979, there were insufficient quantities of blast furnace coke available from U.S. merchant producers. These firms indicated that in many instances merchant coke producers had abundant stocks of foundry coke, which is considered unsuitable for blast furnace use.

Conclusion

On the basis of the above, we conclude that there is no reasonable indication of injury or likelihood of injury to a domestic industry by reason of the alleged LTFV imports of coke from West Germany.

By the order of the Commission.

Issued: November 19, 1979.

Kenneth R. Mason,
Secretary.

[FR Doc. 79-36385 Filed 11-23-79; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Office of Criminal Justice Education and Training; Internship Program

The Law Enforcement Assistance Administration fiscal year 1980 budget contains no provision for continuing the Internship Program, authorized by Section 406(f) of the Crime Control Act of 1976, as amended. All institutions of higher education should be advised that there will be no internship program operating for Academic Year 1980-81.

The LEAA Internship Program provided internships of not less than eight weeks, for those persons enrolled

on a full-time basis in undergraduate or graduate degree programs who would work full-time in law enforcement agencies. Interns earned a stipend of \$65.00 per week, which amount is intended to supplement a salary which the employing criminal justice agency pays the intern.

For further information call the Academic Assistance Division of the Office of Criminal Justice Education and Training at 301/492-9040.

Dated: November 9, 1979.

J. Price Foster,

Director, Office of Criminal Justice Education and Training.

[FR Doc. 79-36307 Filed 11-23-79; 8:45 am]

BILLING CODE 4410-18-M

METRIC BOARD

Public Forum

Notice is hereby given that the United States Metric Board will hold a Public Forum on Thursday, December 13, 1979, from 9 a.m. to 3 p.m. The Forum will be held in conjunction with the Metric Board's regular December meeting. Notice of the regular meeting appears in the Sunshine Meeting section of this issue. The Forum will be held at the Harley Hotel of Orlando, 151 East Washington Street, Orlando, Florida 32801 in the Eola Ballroom.

The purpose of the forum will be to allow Board Members to receive comments about increased metric usage and voluntary metric conversion from individuals and from representatives of groups or organizations. The public is invited and encouraged to provide oral or written comments and ask questions of the Board from 11 a.m. to 12:30 p.m. Those who wish to participate may also submit comments or questions in advance to Ms. Joanne Wills, Office Public Awareness and Education, United States Metric Board, The Magazine Building, 1815 North Lynn Street, Suite 600, Arlington, Virginia 22209.

Louis F. Polk,

Chairman, U.S. Metric Board.

[FR Doc. 79-36342 Filed 11-23-79; 8:45 am]

BILLING CODE 6820-94-M

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD, 1979

Meeting

AGENCY: National Commission on the International Year of the Child, 1979.

ACTION: Notice of meeting.

SUMMARY: This notice announces the forthcoming meeting of the National Commission on the International Year of the Child, 1979. The meeting is being held to discuss issues, leading to the development of recommendations to be included in the report to the President. This document is intended to notify the general public of its opportunity to attend.

DATES: December 5-6, 1979.

ADDRESSES: Department of State, Loy Henderson Room, 2201 C Street, N.W., Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT:

James B. Roberts, Executive Officer, 600 "E" Street, N.W., Suite 505, Washington, D.C. 20471, (202) 376-2435.

Since conference facilities are in great demand, we must know the number of general public who plan to attend in order to allocate adequate space for the meeting. Notice of persons from the general public who plan to attend must be in writing and received by the Executive Officer of the National Commission (at the above address). 5 p.m. (E.S.T.) November 30, 1979. Such notice of intent should include the address and telephone number of the person.

James B. Roberts,

Executive Officer.

[FR Doc. 79-36304 Filed 11-23-79; 8:45 am]

BILLING CODE 6820-49-M

Meeting

AGENCY: National Commission on the International Year of the Child, 1979.

ACTION: Notice of Meeting.

SUMMARY: This notice announces the forthcoming meeting of the National Commission on the International Year of the Child, 1979, Children's Advisory Panel. The meeting is being held to discuss substantive issues, leading to the development of recommendations to be included in the report to the President. This document is intended to notify the general public of its opportunity to attend.

DATES: December 2-4, 1979.

ADDRESS: National 4H Council, 7100 Connecticut Avenue, Washington, D.C. 20015.

FOR FURTHER INFORMATION CONTACT:

James B. Roberts, Executive Officer, 600 "E" Street, N.W., Suite 505, Washington, D.C. 20471, (202) 376-2435.

Since conference facilities are in great demand, we must know the number of general public who plan to attend in order to allocate adequate space for the meeting. Notice of persons from the general public who plan to attend must

be in writing and be received by the Executive Officer of the National Commission (at the above address) by 5 p.m. (E.S.T.) November 28, 1979. Such notice of intent to attend should include the address and telephone number of the person.

James B. Roberts,
Executive Officer.

[FR Doc. 79-36305 Filed 11-23-79; 8:45 am]

BILLING CODE 6820-49-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Artists-in-Schools Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a meeting of the Artists-in-Schools Panel to the National Council on the Arts will be held December 12, 1979, from 9:00 a.m.-7:00 p.m.; December 13, 1979, from 9:00 a.m.-6:00 p.m.; and December 14, 1979, from 9:00 a.m.-6:00 p.m. in Room 1426, Columbia Plaza Office Building, 2401 E St., N.W., Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be Policy, present and future directions.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts, November 6, 1979.

[FR Doc. 79-36310 Filed 11-23-79; 8:45 am]

BILLING CODE 7537-01-M

Dance Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Dance Panel to the National Council on the Arts will be held December 13, 1979, from 11:00 a.m.-5:30 p.m.; December 14, 1979, from 9:00 a.m.-5:30 p.m.; December 15, 1979, from 9:00 a.m.-5:30 p.m.; and December 16, 1979, from 9:00 a.m.-4:00 p.m., in Room 1422, Columbia Plaza Office Building, 2401 E St., N.W., Washington, D.C.

A portion of this meeting will be open to the public on Dec. 13, 1979, from 11:00 a.m.-5:30 p.m.; Dec. 14, 1979, from 9:45 a.m.-5:30 p.m.; Dec. 15, 1979, from 9:00 a.m.-5:30 p.m.; and Dec. 16, 1979, from 9:00 a.m.-4:00 p.m. Topics for discussion will include policy, guidelines, long

range planning, and an overview of presentation and touring.

The remaining sessions of this meeting on December 14, 1979, from 9:00 a.m.-9:45 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts, November 16, 1979.

[FR Doc. 79-36309 Filed 11-23-79; 8:45 am]

BILLING CODE 7537-01-M

Theatre Panel; Cancelled Meetings

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Theatre Panel to the National Council on the Arts that was to be held on November 27, 1979 and November 28, 1979, in Los Angeles, California, (as announced in the Federal Register, Vol. 44, No. 215, Monday, November 5, 1979) has been cancelled.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 79-36386 Filed 11-23-79; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Minority Programs in Science Education; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Minority Programs in Science Education.

Date and time: December 13, 1979—9 a.m. to 5 p.m. December 14, 1979—9 a.m. to Noon.
Place: Atlanta University, Atlanta, Georgia 30314.

Type of meeting: Open.

Contact person: Dr. Alphonse Buccino, Office of Program Integration, Directorate for Science Education, National Science Foundation, Washington, D.C. 20550, (202) 282-7947.

Summary minutes: May be obtained from the Contact Person, Dr. Alphonse Buccino, at the above stated address.

Purpose of Committee: To provide advice regarding NSF's minority programs in science education.

Agenda: Assessment of Resource Centers in Science and Engineering.

M. Rebecca Winkler,

Committee Management Coordinator.

November 20, 1979.

[FR Doc. 79-36344 Filed 11-23-79; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physiology, Cellular, and Molecular Biology, Subcommittee on Human Cell Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Human Cell Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: December 10, 1979 9:00 a.m. til 5:00 p.m.

Place: Cell Culture Center, Massachusetts Institute of Technology, Cambridge, MA 02139.

Type of meeting: Closed.

Contact person: Dr. Herman W. Lewis, Program Director, Human Cell Biology Program, Room 326, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4200.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Human Cell Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b)(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,
Committee Management Coordinator.

November 20, 1979.

[FR Doc. 79-36345 Filed 11-23-79; 8:45 am]

BILLING CODE 7555-01-M

Executive Committee of the Advisory Committee for Ocean Sciences; Amended Meeting Notice

The meeting notice for the Executive Committee is being amended to include a closed portion for the review of specific proposals. For the convenience of the reader, we are republishing the meeting notice.

Name: Executive Committee of the Advisory Committee for Ocean Sciences.

Date and Time: November 28 and 29, 1979—9 a.m. to 5 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Part Open—Open 11/28—9 a.m. to 11 p.m. Closed 11/28—11 a.m. to 12 p.m. Open 11/28—1:30 p.m. to 5 p.m. Open 11/29—9 a.m. to 5 p.m.

Contact Person: Dr. Dirk Frankenberg, Director, Division of Ocean Sciences, Room 609, National Science Foundation, Washington, D.C. 20550. Telephone (202) 632-5913.

Summary Minutes: May be obtained from the Contact Person, Dr. Dirk Frankenberg, at the above address.

Purpose of Committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF's Division of Ocean Sciences.

Agenda:

Open—Nov. 28—9 a.m.

Review of Division Budget—D. Frankenberg.

Report on Post-IDOE program and project reviews—G. Gross.

National Climate Program Development: Oceanographic Input—C. Collins.

Other NSF programs: Integrated Basic Research; and Division of Applied Research. International Stance of OCE—D. Frankenberg.

Facilities Operation and Construction—M. Johrde.

Closed—Nov. 28—11 a.m. to 12 p.m.

Reassignment of RV *Alpha Helix*—M. Johrde.

Open—Nov. 28—1:30 p.m. to 5 p.m.

Oceanography Section Oversight Review—J. Byrne.

Open—Nov. 29.

Plans for Oceanographic Facilities Section Oversight Review—R. Dugdale.

Hydraulic Piston Coring Research Opportunities—J. Imbrie.

Role of Executive Committee in Long Range Planning—D. Frankenberg.

Recruitment of rotators to NSF positions: 1. Division Director; and 2. Program Manager for Facilities Operations.

Advisory Committee Rotation—R. Dugdale.
Reason for Closing: The presentations will include discussion of specific proposals reviewed and include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NFS, on July 6, 1979.

This notice appeared in the *Federal Register* on November 9, 1979, Volume 44, Page 65225.

M. Rebecca Winkler,
Committee Management Coordinator.
November 20, 1979.

[FR Doc. 79-36343 Filed 11-23-79; 8:45 am]

BILLING CODE 7555-01-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 Federal 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 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.

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, extensions, or reinstatements. 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 COMMERCE

Agency Clearance Officer—Edward Michals—377-3627

New Forms

Bureau of the Census
1979 Farm Energy Survey
79-A35

Single Time

Sample of Farms From 1978 Census of Agriculture 30,000 Responses 30,000 Hours

Off. of Federal Statistical Policy & Standard 673-7974

Bureau of the Census

Census of Agriculture Questionnaire for Commonwealth of the Northern Marianas 1980

80-A1(NM)

Single Time

Farm Operators 500 Responses 250 Hours

Off. of Federal Statistical Policy & Standard 673-7974
Bureau of the Census
Survey of Builder Production Plans
SCC-900B¹
Single Time
Builders of Residential Construction 600 responses 150 hours
Off. of Federal Statistical Policy & Standard 673-7974
Bureau of the Census
Census of Agricultural Questionnaire for American Samoa 1980
80-A1(AS)
Single Time
Farm Operators 2,000 Responses 1,000 Hours
Off. of Federal Statistical Policy & Standard 673-7974

Revisions

Bureau of the Census
*Steel Mill Shapes and Forms
(Producers' Net Shipments and Inventories)
M-33J
Monthly
Manufacturers of Steel Mill Shapes and Forms 228 Responses 76 Hours
Off. of Federal Statistical Policy & Standard 673-7974
Industry and Trade Administration
Titanium Metal
ITA 991
Monthly
Titanium Melting and Processing
Facilities 420 Responses 420 Hours
Richard Sheppard 395-3211

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

Extensions

Department and Other
Application Form, FOTC 4 Year
Scholarship
DD-1893
On Occasion
Individuals Students 40,000 Responses
30,000 Hours
Richard Sheppard 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—William Riley—245-7488

New Forms

Alcohol, Drug Abuse and Mental Health Administration
Linkage Grant Questionnaires
Single Time

Health Centers and Mental Health Centers 171 Responses 85 Hours
Richard Eisinger 395-3214

Reinstatements

Health Care Financing Administration
*Request for Additional Medical Information
HCFA-2081, HCFA-I-2081
On Occasion
Direct Dealing Hosp., Skilled Nurs. Fac., Home Hea. Agen. 43,052 Responses
10,763 Hours
Richard Eisinger 395-3214
Health Care Financing Administration
*Request for Additional Medical Information
HCFA-2081, HCFA-I-2081
On Occasion
Direct Dealing Hosp., Skilled Nurs. Fac., Home Hea. Agen. 43,052 Responses
10,763 Hours
Richard Eisinger 395-3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755-5184

New Forms

Community Planning and Development
CDBG Accomplishment Survey
Single Time
Local CDBG Administrators 769
Responses 10,980 Hours
Arnold Strasser 395-5080
Policy Development and Research
Condominium/Cooperative Conversion
Questionnaire
Single Time
Households in 12 SMSA'S 1,500
Responses 1,500 Hours
Arnold Strasser 395-5080
Policy Development and Research
Condominium/Cooperative Conversion:
Chief Executive
Questionnaire
Single Time
Local Officials in 300 Communities 600
Responses 170 Hours
Arnold Strasser 395-5080
Policy Development and Research
Condominium/Cooperative Conversion:
Chief Executive
Questionnaire
Single Time
Local Officials in 300 Communities 600
Responses 170 Hours
Arnold Strasser 395-5080

Revisions

Administration (Office of Ass't Sec'y)
Multifamily Insurance Benefits, Claims
Forms
FHA 2744A thru F
On Occasion
FHA Approved Mortgagees 300
Responses 900 Hours
Arnold Strasser 395-5080

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523-6341

Revisions

Bureau of Labor Statistics
*Retail Prices—Food Stores—Guam and Virgin Islands
Food Pricing
BLS 2911.05 & .06/2911.01/2911.10
Quarterly
Retail Grocery Stores, 440 responses, 73 hours
Off. of Federal Statistical Policy and Standard, 673-7974
Bureau of Labor Statistics
Report on Occupational Employment
BLS 2877, 100.0, 100.2
Other (See SF-83)
Non-agricultural Estab. plus State and local governments, 191,475 responses, 95,737 hours
Off. of Federal Statistical Policy and Standard, 673-7974
Bureau of Labor Statistics
Report on Occupational Employment
BLS 2877, 100.0, 100.2
Other (See SF-83)
Non-agricultural Estab. plus State and local governments, 191,475 responses, 95,737 hours
Off. of Federal Statistical Policy and Standard, 673-7974

GENERAL SERVICES ADMINISTRATION

Agency Clearance Officer—John F. Gilmore—566-1164

New Forms

Uniform Tender of Rates and/or changes for transportation
Services
On occasion
Transportation company 6,000 responses, 6,000 hours
Laverne V. Collins, 395-3214

TENNESSEE VALLEY AUTHORITY

Agency Clearance Officer—Eugene E. Mynatt—615-755-2915

New Forms

Questionnaire to identify women-owned businesses
Single time
Vendor recorded on TVA master file, 5,000 responses, 833 hours
Charles A. Filett, 395-5080

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—389-2282

New Forms

Assessment of Health Care Needs of Veterans in the Commonwealth of Puerto Rico and in the Virgin Islands
10-2068 (NR)

¹ Use of this form has already been approved until December 1979 because of the need to obtain timely information on the impact of current economic conditions on the housing industry. Delay would impede the Government's ability to assess this impact and would not be in the public interest.

Single time

Veterans in Puerto Rico and Virgin

Islands, 50 responses, 25 hours

Richard Eisinger, 395-3214

Stanley E. Morris,

Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-36202 Filed 11-23-79; 8:45 am]

BILLING CODE 3110-01-M

Agency Forms Under Review

November 21, 1979

Background

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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

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DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

Extensions

Department of the Air Force Statellite Control Orbital Support Plan Documentation

On occasion

Aerospace Contracting

10 responses; 4,220 hours

Richard Sheppard, 395-3211

Departmental and Other Standard Integrated Support Management System—Reporting Requirements

On occasion

DOD contractors

2,000 responses; 80,000 hours

Richard Sheppard, 395-3211

DEPARTMENT OF ENERGY

Agency Clearance Officer—John Gross—633-8558

New Forms

*National Survey of Fuel Purchases for Vehicles—Background Questionnaire EIA-429 (Formerly part of EIA-141)

On occasion

Sample of households, 3,000 responses, 500 hours

Jefferson B. Hill, 395-5867

Survey of the Consumption of Selected Hydrocarbon, Coal, and Coke Materials by Manufacturers—Blast Furnace Form

MA-452

Annually

Blast-furnaces, 300 responses, 750 hours

Jefferson B. Hill, 395-5867

Survey of the Consumption of Selected Hydrocarbon, Coal, and Coke Materials by Manufacturers—Petroleum, Refinery and Chemical Plant Form

MA-451

Annually

Petroleum refineries and chemical plants, 1,200 responses, 3,000 hours

Jefferson B. Hill, 395-5867

Revisions

*National Survey of Fuel Purchases for Vehicles—Purchase Log and Supplementary Questionnaire

EIA-141

Monthly

Sample of households, 52,200 responses, 14,400 hours

Jefferson B. Hill, 395-5867

Monthly Statement of Electric Operating Revenue and Income

FPC 5

Monthly

Public Utilities (hydro-electric class A and B), 2,880 responses, 11,808 hours

Jefferson B. Hill, 395-5867

Extensions

Supplemental Power Statement

FPC 12-E-2

Monthly

Electric utilities, 3,850 responses, 8,801 hours

Jefferson B. Hill, 395-5867

Natural Gas Pipeline Company Monthly Statement

FPC-11

Monthly

Major Interstate Natural Gas

Companies, 408 responses, 9,833 hours

Jefferson B. Hill, 395-5867

Emergency Sales Deliveries of Natural Gas for Resale IC by Persons With

Exemptions Under Natural Gas Act

FPC-R0326

On occasion

Companies exempt under the Natural

Gas Act, 60 responses, 300 hours

Jefferson B. Hill, 395-5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—William Riley—245-7488

Revisions

Social Security Administration

Application for Mother's or Father's Insurance Benefits

SSA-5-F6

On occasion

Spouse of deceased workers with children in their care, 180,000

responses, 45,000 hours

Barbara F. Young, 395-6132

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masafsky—755-5184

New Forms

Community Planning and Development
*Report on Program Utilization, Section 8 Housing

Assistant Payments

HUD 52685

Quarterly

PHA's That Administer the MOD REHAB Program, 2,400 responses; 1,200 hours

Arnold Strasser, 395-5080

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Floyd I. Sandlin—376-0436

Revisions

Bureau of Customs

*Bond Transcript

CF 53

On occasion

Importers/Beckers, 31,000 responses; 3,100 hours

Marsha D. Traynham, 395-6140

Bureau of Customs

*Invoice Details for Cotton Fabrics and Linens

CF 5519

on occasion

Importers/Beckers; 55,000 Responses; 4,582 hours

Marsha D. Traynham, 395-6140

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Clearance Officer—Linwood A. Rhodes—632-0084

New Forms

*[J-1] Status Certificate of Eligibility for Exchange

Visitors

IAP-66A

Other (see SF-83)

Students Applying for Visas; 7,000 responses; 1,190 hours

Laveene V. Collins, 395-3214

NATIONAL ENDOWMENT FOR THE ARTS

Agency Clearance Officer—Paul G. Zarbock—634-6160

New Forms

Challenge Grant Development Survey
Single time

Description Not Furnished by Agency, 161 responses; 161 hours

Laverne V. Collins, 395-3214

UNITED STATES INTERNATIONAL TRADE COMMISSION

Agency Clearance Officer—Charles Ervin—523-0267

New Forms

Purchasers' Questionnaire for Investigation No. AA1921-212

Single time

Purchasers of Spun Acrylic Piled Yarns, 35 responses; 560 hours
Office of Federal Statistical Policy and Standard, 673-7974

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—389-2282

Revisions

*Statement of Purchaser or Owner
Assuming Seller's Loan

26-6382

On occasion

Purchaser, 18,000 responses; 3,000 hours
Richard Eisinger, 395-3214

Stanley E. Morris,

Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-36506 Filed 11-23-79; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Flight Standards Function Transfer for Air Carrier Functions for State of Wisconsin**

Notice is hereby given that on or about January 1, 1980, the air carrier functions for the State of Wisconsin (except the Counties of Douglas, Washburn, Burnett, Polk, Barron, St. Croix, Dunn, Pierce, Pepin, and Buffalo) will be transferred from the Minneapolis, Minnesota Air Carrier District Office (ACDO) to the Milwaukee, Wisconsin General Aviation District Office (GADO). The Milwaukee GADO will be redesignated as a Flight Standards District Office (FSDO) and will provide all services to general aviation and the air carrier industry in the Milwaukee district. Communications to the FSDO should be addressed as follows: Milwaukee Flight Standards District Office No. 61, Department of Transportation, Federal Aviation Administration, Weather Bureau Building, Milwaukee, Wisconsin 53207.

(Sec. 313(a) of the Federal Aviation Act of 1958, 72 Stat. 752, (49 U.S.C. 1354)).

Issued in Des Plaines, Ill., on November 8, 1979.

William S. Dalton,

Acting Director, Great Lakes Region.

[FR Doc. 79-36237 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-79-29]**Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of petitions issued.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 17, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. —, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 16, 1979.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
19710	Puerto Rico International Airlines, Inc.	14 CFR 135.175	To permit the petitioner to operate its 26 large transport category De Havilland Heron aircraft without approved airborne weather radar installed in the aircraft. The petitioner currently operates those same aircraft as "small aircraft" of 12,500 pounds or less maximum takeoff weight but intends to increase the maximum takeoff weight to more than 12,500 pounds. (Comment period on this petition extended from Nov. 19, 1979 to Dec. 18, 1979.)
19278	Moody Aviation	14 CFR 135.115	The petitioner requests reconsideration of the denial of a petition for exemption to allow the operation of aircraft with a second in command who does not meet Section 135.115 qualification requirements.
19748	Ryan Aviation Corp.	14 CFR 135.261(d)	To permit the reduction of 16 hours of required crew rest to eight hours with adequate facilities to rest while flight crewmembers are on duty.
19750	Columbia Helicopters, Inc.	14 CFR 127.127	To allow the operation of a large helicopter without a cockpit voice recorder.
19755	C & M Airlines	14 CFR 135.243	To allow a pilot to serve as a Pilot in Command without having the prerequisite Airline Transport Pilot Certificate (ATPC). The pilot, although qualified in every other respect, is not 23 years of age.
19756	Britt Airways, Inc.	14 CFR 135.261(b)	To allow a minimum rest period of no less than 8 consecutive hours in the 24-hour period preceding the planned completion of the assignment.
19780	Trans World Airlines, Inc.	14 CFR 121.309(B)(4)	To allow the petitioner to omit the adding of the date of last inspection to first aid kits.
19781	Presidential Airways	14 CFR 135.261	To allow the petitioner to operate in accordance with FAR 121 Subpart S flight and duty time limitations, Air Carriers and Commercial Operators, until such time as FAR 135.261 is reviewed and amended.
19783	Terrell K. Moose	14 CFR 121.383(c)	To permit the petitioner to continue to serve as a pilot in air carrier operations after having reached his 60th birthday.
19784	Henry E. Pratt, Jr.	14 CFR 121.383(c)	To permit the petitioner to continue to serve as a pilot in air carrier operations after having reached his 60th birthday.
19785	H. E. Sargent	14 CFR 121.383(c)	To permit the petitioner to continue to serve as a pilot in air carrier operations after having reached his 60th birthday.
19786	John F. Scott	14 CFR 121.383(c)	To permit the petitioner to continue to serve as a pilot in air carrier operations after having reached his 60th birthday.
19787	Fred McLaughlin	14 CFR 121.383(c)	To permit the petitioner to continue to serve as a pilot in air carrier operations after having reached his 60th birthday.

Dispositions of Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
16379	American Telephone and Telegraph Company	14 CFR 77.17(b)	Petitioner requests an extension of an exemption granted March 2, 1977, to the extent necessary to permit construction of temporary microwave towers, in the southeastern United States, without giving notice at least 30 days before the date the proposed construction is to begin or the date an application for a construction permit is to be filed. <i>GRANTED 11/1/79.</i>
19277	Jet-Air Commuter Express Airlines, Inc.	14 CFR 135.99(b)	To exempt the petitioner from the requirement to have a second in command on aircraft configured with 10 or more passenger seats. <i>DENIED 11/1/79.</i>
19296	Wheeler Flying Service	14 CFR 121 & 135	To allow the operation of an F-27, an aircraft capable of carrying more than 30 passengers or more than 7,500 pounds maximum payload capacity, under the rules of Part 135 instead of Part 121. <i>DENIED 11/8/79.</i>
19426	Robert Kevin Flom	14 CFR 135.243(a)	To permit petitioner to serve as pilot-in-command for Commuter Airlines without holding an airline transport pilot certificate (ATPC). <i>DENIED 11/2/79.</i>
19475	Flight Safety International	14 CFR 61.63 and 61.157	To permit petitioner's trainees to accomplish the maneuvers required by FAR Part 61, Appendix A for an airline transport certificate or an associated class or type rating in a simulator. <i>GRANTED 11/2/79.</i>
19485	Utility Helicopters, Inc.	14 CFR 135.297(d)	To allow Mr. Dave Sanders to complete his instrument proficiency check in an aircraft other than the IFR S58T model used by his company. <i>GRANTED 11/5/79.</i>
19484	American Airlines	14 CFR 135.293, 135.297, and 135.299	To allow American Airlines Training Corp. to conduct required flight checks in their Cessna 500/501 aircraft simulator. <i>DENIED 11/7/79.</i>
19504	Lineas Aereas Costarricenses, S.A.	14 CFR Parts 61, 63, and 91	To permit petitioner to operate and maintain two U.S.-registered B-727-2J7 leased aircraft. <i>GRANTED 11/8/79.</i>
19470	Airwest Helicopters, Inc.	14 CFR 135.136(b)	To permit the petitioner to provide standby pilots with a seven consecutive hour rest period while on duty in lieu of the required 10 consecutive hours during the twenty-four hour period preceding assignment. <i>GRANTED 11/13/79.</i>
19601	Aero America, Inc.	14 CFR 121.45(b)(6), 121.360, and 121.521	To permit petitioner to operate B-707 aircraft N705PA and N714FC on refugee flights from Kuala Lumpur, Malaysia, Bangkok, Thailand, and Hong Kong to U.S.A. West Coast airports. <i>WITHDRAWN 10/31/79.</i>
19596	Stanley D. Lindholm and Air Nebraska	14 CFR 135.243(a)	To allow Mr. Lindholm to serve as Captain for Air Nebraska until he reaches his 23rd birthday, without holding an Airline Transport Pilot Certificate (ATPC). <i>DENIED 11/8/79.</i>

Dispositions of Petitions for Exemptions—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
19644	Transair Ltd.	14 CFR 91.169	To allow petitioner to inspect and maintain Douglas DC 4, N88857 under Section 91.217(b)(5) rather than Section 91.169 of the Federal Aviation Regulations. <i>GRANTED 10/26/79.</i>
18446	Air Cargo America, Inc.	14 CFR 121.357(a)	To extend Exemption No. 2642A from Section 121.357(a), to allow petitioner to continue operation of its DHC-4A Caribou aircraft N554Y without airborne weather radar installed. <i>PARTIAL GRANT 11/13/79.</i>

[FR Doc. 79-36238 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Separation Study Review Group, 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 Separation Study Review Group to be held on December 11-12, 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) Approval of Minutes of Fifth Meeting held May 15-16, 1979; (3) Review and Discussion of the FAA Preliminary Report on the Results of the Data Collection to Determine Lateral Pathkeeping of Aircraft Flying CONUS VOR-Defined Jet Routes; (4) Review and Discussion of the FAA Preliminary Recommendations Concerning Improvements to the Current Methodology for Spacing Parallel Jet Routes in a Strictly Strategic Air Traffic Control Environment; (5) Review and Discussion of the FAA Interim Report on the Conflict Monitoring Model for Parallel Route Spacing in the High Altitude CONUS Airspace; (6) Discussion and Recommendation on the Continuation of SSRG Participation in the FAA Horizontal Study Program; and (7) 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 November 14, 1979.

Karl F. Bierach,
Designated Officer.

[FR Doc. 79-36239 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

Washington National Airport; Proposed Draft Environmental Impact Statement for Enlarging a Runway Safety Overrun Area

AGENCY: Federal Aviation Administration.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement for Enlarging a Runway Safety Overrun Area at Washington National Airport.

SUMMARY: The purpose of this project is to enhance the safety of aircraft operations by enlarging the existing safety overrun area at the north end of Runway 18-36 at Washington National Airport. In order to do this; it is proposed to construct approximately eight (8) acres of turfed landfill adjoining existing airport land and within the confines of the airport boundaries. The landfill would occupy a portion of a tributary to the Potomac River known as Roaches Run. The safety overrun distance thus provided at the end of the runway would be 750 feet in contrast to the present 200 feet and would be more in line with recommended Federal Aviation Administration guidelines. Planes landing or taking off to the north would have an additional length of turfed land if needed in the event of a mishap. This proposed project would also include improvements, but not enlargement, to the existing 1,000 feet of safety overrun at the south end of this runway. Possible alternatives are listed below:

1. Move the runway thresholds to the south at each end of the runway in order to provide sufficient space to construct a safety overrun area at the north end without encroaching on Roaches Run. This would require constructing a landfill south into the Potomac River, relocating approach lights, relocating some taxiways, and relocating a portion of the runway.

2. Use only existing land area and divide the total 1,200 feet of existing safety overrun (200 feet on the north and 1,000 feet on the south) in half, by sliding the existing runway 400 feet to the south. This would then provide 600 feet of safety overrun on both the north and

south ends of the runway.

3. Reduce the length of Runway 18-36 approximately 800 feet to provide 1,000 feet of safety overrun area on the north end without extending construction in either direction. This would reduce the total runway length from its present length of 6,870 feet to 6,070 feet.

4. Leave conditions as they are.

SCOPING PROCESS: Organizations or persons interested in contributing information for consideration in the development of the Draft Environmental Impact Statement are invited to submit this information by letter to the Contact Person by January 15, 1980.

Pertinent issues identified to date include:

1. The design of the overrun area to accomplish its safety enhancement mission.

2. The effects on park and recreation areas, historic and archeological resources, water quality, biotic communities, dredging and spoil disposal, and the hydraulics of Roaches Run.

3. The assessment of community and agency response to the proposed project and its possible alternatives.

SUPPLEMENTARY INFORMATION: 1. The Draft Environmental Impact Statement will be issued and available to the public on or about March 15, 1980.

2. A public hearing on the Draft Environmental Impact Statement will be held on or about April 15, 1980. Public notices will be issued at a later date stating the date, time, and place.

3. Technical services for this project are being provided to the Federal Aviation Administration, Metropolitan Washington Airports by the Baltimore District, U.S. Army Corps of Engineers under an interdepartmental Memorandum of Agreement. These services include a concept study, the Environmental Impact Statement and construction plans, specifications, and cost estimates.

CONTACT PERSON: Questions and comments regarding the proposed action can be addressed to: Mr. Francis J. Conlon, Chief, Engineering Staff, Metropolitan Washington Airports, Hangar #9, Washington National

Airport, Washington, D.C. 20001,
Telephone (703) 557-1136.

Dated: November 2, 1979.

James A. Wilding,

Acting Director, Metropolitan Washington
Airports.

[FR Doc. 79-36240 Filed 11-23-79; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

Pig Iron From Brazil; Final Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury
Department.

ACTION: Final Countervailing Duty
Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Government of Brazil has provided benefits which constitute bounties or grants on the manufacture, production or exportation of pig iron. Because this merchandise enters the United States free of duty, this case is being referred to the U.S. International Trade Commission for a determination whether an industry in the United States is being, or is likely to be, injured by reason of the imports of such merchandise. Liquidation of entries of this merchandise will be suspended pending the Commission's injury determination.

EFFECTIVE DATE: NOVEMBER 26, 1979.

FOR FURTHER INFORMATION CONTACT:
Michael Ready, Operations Officer,
Technical Branch, Duty Assessment
Division, Office of Operations, United
States Customs Service, 1301
Constitution Avenue, NW., Washington,
D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: On June 4, 1979, a "Preliminary Countervailing Duty Determination" was published in the Federal Register 44 FR 32062. The notice stated that it had been preliminarily determined that benefits conferred by the Government of Brazil upon the manufacture, production, or exportation of pig iron constitute the payment or bestowal of bounties or grants, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as the "Act").

For purposes of this notice, "pig iron" includes merchant pig iron of basic, foundry, malleable, and low phosphorous grades, and is classified under item number 607.1500 of the Tariff Schedules of the United States Annotated (TSUSA).

The preliminary determination identified several programs administered by the Government of Brazil which it had been determined constitute a bounty or grant. Additional information has been received and analyzed concerning those programs, on which this final determination is based.

(1) *Excessive remission upon export of the Industrial Products Tax (IPI).* Under this program, an exporter receives on export not only the remission of the IPI tax a value-added tax, which would otherwise be paid on the product and its components, but also an additional credit which can be used to pay other taxes due or, subject to certain conditions, traded in for cash or transferred to other companies.

The remission of the IPI tax, as such, is not regarded as a bounty or grant. The extra credit, to the extent it exceeds indirect taxes borne by the product or its components is so regarded. The availability of IPI credits for all Brazilian exports is currently being phased out; the present rate applicable to benefits for pig iron is 15 percent of the value of the product involved. However, to the extent the credit includes a rebate for indirect taxes borne by components, in the exported product, the benefit of the subsidy is reduced by an equivalent amount. In this case, the benefit is reduced by the amount of indirect *ad valorem* taxes borne by wood used to make charcoal and on the charcoal itself, which is, in turn, used to supply the carbon component of the finished product. Most of the charcoal used in the production of pig iron is as an energy component or as a reducing agent. For neither of these functions would it be regarded as "physically incorporated" in the final product for purposes of the law. But for the portion used to supply carbon, calculated to be 5.8% of the total charcoal used, a reduction of 0.5% *ad valorem* of the subsidy is proper.

Moreover, the actual value of the IPI credit varies depending on whether it is based on the c.i.f. or f.o.b. value of the exported product. The *ad valorem* benefit is either 13.8 percent of the c.i.f. value or 15.8 percent of the f.o.b. value of the exported pig iron, with a weighted-average benefit of 15.2 percent.

In addition, the exporters claimed an offset for the depreciation of the value of the IPI credits received due to the delay in receiving their value in cash after the export of the goods on which the credits are based. Such an offset would be permissible only if the Government of Brazil mandated a specific waiting period for the receipt of the credits, which is not the case. Furthermore, no

offset was given for the portion of the IPI credit which may be lost by a company since IPI credits are treated as income for tax purposes. It is not appropriate, in the context of a countervailing duty investigation, to evaluate the tax status of a government subsidy.

(2) *Working capital financing available under Resolution 515 at rates lower than those commercially available (previously identified in the preliminary determination as benefits under Resolution 398).* Companies are declared eligible to receive loans under this program by CACEX (the Department of Foreign Commerce of the Banco de Brazil) and may then obtain low-interest loans from commercial banks at 8.7 percent yielding an effective rate of 13 percent. Companies using this program can obtain financing of up to 30 percent of the value of the firm's previous year's exports. The counter-vailable benefit is associated with the difference between the effective interest rate paid and that commercially available in Brazil, which is estimated at 26 percent which, with adjustments, is determined to be 41 percent.

In view of the inflation rate in Brazil that presently exceeds 50 percent and the fact that short-term Brazilian government securities bear interest rates of more than 40 percent, consideration was given to the propriety of continuing to use the 26.4 percent rate, applied in a number of other cases affecting Brazilian imports, as reflective of a "commercial" rate of interest. Based upon the investigation in this proceeding, it appears that this rate is generally available to industrial enterprises in Brazil who borrow funds from the Banco de Brazil. The latter bank is a hybrid private, commercial bank and an arm of the Central Bank of Brazil. One of its functions in its later role is to serve as the repository for the funds that the Central Bank's reserve requirements mandate. These reserves must be deposited by commercial banks on an interestfree basis. Therefore, they form a significant pool of money from which the Banco de Brazil can profitably lend funds at a rate of 26.4 percent. Since such loans are not restricted to export sales and are generally available to a broad spectrum of Brazilian industry, the rate does serve as a proper benchmark for the "commercially available" interest rate to industrial borrowers in Brazil. However, in addition to the interest rate of 26.4 percent, borrowers are required to maintain compensating balances with the Banco de Brazil and to pay a tax on

domestic banking transactions that increase the effective rate of interest to 41 percent. It is, therefore, the latter rate that has been used in calculating the amount of preferential interest rate received by pig iron producers receiving benefits under Resolution 515.

Benefits for individual companies investigated range from 1.0 percent to 14.7 percent, with a weighted-average benefit of 6.5 percent *ad valorem*.

(3) *Preferential export financing under Resolution 331.* This involves advances of Brazilian cruzeiros for up to 180 days against foreign exchange contracts and receivables, at varying interest rates all of which are less than those commercially available. As with the Resolution 515 financing program, the difference between the commercial rate and the one paid under the Resolution 331 program is regarded as a countervailable benefit. The benefits under this program for the companies investigated ranged from zero to 11.7 percent, with a weighted-average benefit of 2.5 percent *ad valorem*.

(4) *Reduction in taxable income by the percentage of total sales accounted for by export sales.* No countervailable benefit has been granted to producers of pig iron in view of the fact that the IPI credits, which, as noted above are treated as income, in the case of the pig iron producers account for their entire profits. Since the entire credit constituting an excessive rebate of taxes is regarded as countervailable, it would not be appropriate to add the same benefit under this program in calculating the total subsidy.

(5) *Benefits under the "Entrepoto Aduaneiro" system, which permits small producers of pig iron to receive a remission of both the IPI tax and tax credits.* Treasury has concluded that while one trading company is eligible for such benefits, the program has not been used. Therefore, no countervailable benefit is determined to exist.

It was also preliminarily determined that certain additional programs have not been utilized by Brazilian manufacturers of pig iron and therefore, did not constitute a countervailable benefit. Further information has corroborated this conclusion, and it is, therefore, finally determined that the following programs do not constitute bounties or grants:

(1) Excessive remission on export of indirect taxes other than IPI, including a transportation tax.

(2) Preferential export financing provided under Resolution 68.

(3) Preferential financing provided for the storage of goods under Resolution 330.

(4) Special tax credits available to firms located in Brazil's less developed regions.

(5) Accelerated depreciation for plant and equipment manufactured in Brazil.

(6) Exemption from payment of Customs duties and value-added taxes on plant and equipment imported for the production of pig iron for export.

As a result of the conclusions described above, it is hereby determined that the Government of Brazil has paid bounties or grants to producers and exporters of pig iron. In accordance with section 303 of the Act and until further notice, the net amount of such bounties or grants has been estimated to range from 18.1 percent to 37.5 percent *ad valorem* for the various companies investigated, with a weighted average benefit of 24.3 percent *ad valorem*. Should countervailing duties be assessed in this case, the amounts due are indicated on an individual company basis in the Appendix to this notice. Those firms not listed in the Appendix and exporting the subject merchandise would be assessed a countervailing duty equal to the overall weighted-average benefit of 24.3 percent *ad valorem*, until evidence is received in satisfactory form indicating some other rate is more appropriately applied.

The merchandise found to benefit from the bounty or grant enters the United States under item number 607.1500 of the Tariff Schedules of the United States Annotated. This merchandise is duty free. In accordance with section 303(a)(2) of the Act (19 U.S.C. 1303(a)(2)), countervailing duties may not be imposed upon any article or merchandise which is free of duty in the absence of a determination by the U.S. International Trade Commission that an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States. Accordingly, the International Trade Commission is being advised of this determination, and the liquidation of entries, or of withdrawals from warehouse, for consumption of the duty-free pig iron in question will be suspended pending the determination of the Commission. Accordingly, effective on or after November 26, 1979, and until further notice, upon the entry, or withdrawal from warehouse, liquidation will be suspended pending the determination of the U.S. International Trade Commission. Security in the amounts indicated in the Appendix and in this Notice will be required of all further imports.

This determination is published pursuant to section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 101-5, May 1979, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing determination by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,
General Counsel of the Treasury.
November 19, 1979.

Appendix

Company and total

Sicafé—Productos siderurgicos; 24.4.
Siderurgica Sao Paulo Ltda.; 18.1.
Siderurgica Bandeirante Ltda.; 23.1.
Siderurgica Bondespachense; 25.3.
Siderurgica Itatiaia S.A.; 27.7.
Siderurgica Alterosa Ltda.; 24.3.
Cia Satelagoana De Siderurgia; 24.9.
Siderurgica Valinho S.A.; 22.0.
Siderurgica Sao Sebastiao De Itatiaiuca S.A.; 30.3.
Usina-Siderurgica Paraense S.A.; 21.6.
Siderurgica Camargos S.A.; 19.0.
Cimetal Siderurgica S.A.; 24.3.
Metalurgica N.S. Pemha S.A.; 26.2.
Cia Brasileira de Ferro; 29.5.
Siderurgica Santa Maria Ltda.; 21.3.
Cia Siderurgica Pitanguy; 37.5.

[FR Doc. 79-36328 Filed 11-23-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 60 (Rev. 5); Chief Counsel's Order No. 1031.1C]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: In the matter of cases docketed in the United States Tax Court for which the Assistant Commissioner (Technical) and the Deputy Chief Counsel (Litigation) will have joint settlement jurisdiction, it is necessary to add Code section 7478 which was newly enacted by the Revenue Act of 1978. The text of the Delegation Order appears below.

EFFECTIVE DATE: November 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Philip E. Bennet, Office of the Assistant Commissioner (Technical), 1111 Constitution Ave. NW, Room 3510, Washington, D.C. 20224, (202) 566-4066 (not toll free).

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.

Philip E. Bennet,

Technical Advisor to Assistant Commissioner (Technical).

[Delegation Order No. 60 (Rev. 5) Chief Counsel's Order No. 1031.1C]

Date of issue: November 16, 1979.

Effective Date: November 26, 1979.

26 CFR 601.106: Appeals Functions. Settlement of Cases Docketed in the U.S. Tax Court

With respect to cases docketed in United States Tax Court, the authority vested in the Commissioner of Internal Revenue by 26 CFR 301.6020-1, 26 CFR 301.6201-1, 26 CFR 301.7701-9, and Treasury Department Order No. 150-37 is hereby delegated and pursuant to the authority vested in Chief Counsel for the Internal Revenue Service by General Counsel Legal Division Order No. 4 it is hereby delegated:

1. Chief Counsel's delegate (hereinafter Counsel) will have exclusive jurisdiction over any case docketed in the Tax Court if the notice of deficiency, liability or other determination was issued by Appeals officials; if the notice of deficiency, liability or other determination was issued after appeals consideration of all petitioned issues by the Employee Plans and Exempt Organizations function; if the notice of deficiency, liability or final adverse determination letter was issued by a district director and is based upon a National Office ruling or National Office Technical Advice in that case involving a qualification of an employee plan or tax exemption and/or foundation status of an organization (but only to the extent the case involves such issue); or, except as provided in paragraph 3, if the case was docketed under Code sections 6110, 7477, or 7478. Jurisdiction will vest with Counsel at the time such cases are docketed with the Court.

2. Regional Commissioners will have exclusive jurisdiction to settle in whole or part, for a period of four months (but no later than the receipt of the trial calendar in regular cases and no later than 15 days before the calendar call in S cases), cases docketed in the Tax Court, except cases described in above paragraph 1. The four-month period will commence at the time the Appeals officials (or the Examination officials under prior authority) receive the case from Counsel, which will be after the case is at issue. Counsel may extend the four-month period for an additional 60-day period. Any further extension (or retention during the trial calendar period) will be granted only by the Regional Counsel personally. At the conclusion of the four-month period or the period as extended, or at such earlier time as the Regional Commissioner concludes that the case is not susceptible of settlement, Counsel will have jurisdiction over the case.

3. Assistant Commissioner (Technical) and Deputy Chief Counsel (Litigation) will have joint settlement jurisdiction over any case docketed in the Tax Court under Code

sections 6110, 7477 or 7478 until the first day of the calendar on which the case is called for trial, or if earlier, the day on which the Court serves on Counsel an order setting brief due dates; thereafter, Counsel will have settlement jurisdiction.

4. The authority delegated herein to Regional Commissioners may be redelegated only by specific Commissioner's Delegation Orders. The authority of Chief Counsel's delegate to redelegate is contained in Chief Counsel's Order No. 1030.1B, issued July 2, 1978.

5. This Order supersedes Commissioner's Delegation Order No. 60 (Rev. 4), Chief Counsel's Order No. 1031.1B issued October 1, 1978.

Lester Stein,

Acting Chief Counsel.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-36362 Filed 11-23-79; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

[Public Debt Series—No. 29-79]

Treasury Notes of May 15, 1985; Series C-1985

November 21, 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 \$2,500,000,000 of United States securities, designated Treasury Notes of May 15, 1985, Series C-1985 (CUSIP No. 912827 KE 1). 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 at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated December 4, 1979, and will bear interest from that date, payable on a semiannual basis on May 15, 1980, and each subsequent 6 months on November 15 and May 15, until the principal becomes payable. They will mature May 15, 1985, 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 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 Standard time, Tuesday, November 27, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 26, 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 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% 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 $\frac{1}{8}$ 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 98.750. 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 Tuesday, December 4, 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) Friday, November 30, 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) Friday, November 30, 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.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 79-36461 Filed 11-21-79; 8:45 am]

BILLING CODE 4810-40-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 147]

Assignment of Hearings

November 19, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 124606 (Sub-6F), Ford Truck Line, Inc., now assigned for hearing on November 27, 1979 (9 days) at Jackson, MS is canceled and reassigned to November 27, 1979 (9 days) at Memphis, TN, will be held at the Admiral Bendow Airport Motel, 2201 Winchester Road.

MC 105120 (Sub-17F), Freightways Express, Inc., MC-C-10162, Dodds Truck Line, Inc. and Dodds Truck Line, Inc., Operator and Lessee of Bennett Truck Line, Inc., V. Freightways Express, Inc., now assigned for hearing on November 27, 1979 (9 days) at St. Louis, MO is postponed to January 24, 1980 (3 days) at Memphis, TN, in a hearing room to be later designated.

MC-C-10327, CRST, Inc. and the Kinnibon Trucking Company—Investigation and Revocation of Certificates and Certificate of Registration, now assigned for hearing on December 11, 1979 at Washington, DC, is postponed indefinitely.

MC 44735 (Sub-40F), Kissick Truck Lines, Inc., now assigned for hearing on December 11, 1979 at Dallas, TX, will be held in Room No. 5A15-17, Federal Building, 1100 Commerce Street, Dallas, TX.

MC 140033 (Sub-63F), Cox Refrigerated Express, Inc., now assigned for hearing on December 13, 1979 at Dallas, TX, will be held in Room No. 5A15-17, Federal Building, 1100 Commerce Street, Dallas, TX.

MC 134405 (Sub-58F), Bacon Transport Company, now assigned for hearing on December 17, 1979 at Dallas, TX, will be held in Room No. 5A15-17, Federal Building, 1100 Commerce Street, Dallas, TX.

MC 133918, O'Nan Transportation Company, Inc., Carrolton, Kentucky, now assigned for hearing on November 28, 1979 at Louisville, KY will be held in Room South B, Stouffer's Louisville Inn, 120 West Broadway, Louisville, KY.

MC 133932 (Sub-2F), Catawba Valley Motor Line, Inc., now assigned for hearing on November 28, 1979 at Charlotte, NC, will be held in Room CC-516, Mart Office Building, 800 Briar Creek Road, Charlotte, NC.

MC 136511 (Sub-28F), Virginia Appalachian Lumber Corp., now assigned for hearing on December 3, 1979 at Charlotte, NC will be held in Room CC-516, Mart Office Building, 800 Briar Creek Road, Charlotte, NC.

MC 14246 (Sub-1F), Royal Coach Tours, now assigned for hearing on December 4, 1979 at San Francisco, CA, will be held in Room No. 510, 5th Floor, 211 Main Street, San Francisco, CA.

MC 111545 (Sub-263F), Home Transportation Company, Inc., now assigned for hearing on December 10, 1979 at San Francisco, CA, will be held in Room No. 510, 5th Floor, 211 Main Street, San Francisco, CA.

MC 109533 (Sub-105F), Overnite Transportation Company, now assigned for continued hearing on February 11, 1980 (10 days) will be held at the Barclay Inn, 5303 W. Kennedy Blvd., Tampa, FL.

FD 29099, Petition of City of St. Louis, MO, for Order Requiring Grant of Trackage Rights and Authorizing Related Changes in Terminal Operations, now assigned for hearing on November 27, 1979 at St. Louis, MO, is postponed and reassigned December 17, 1979 for Prehearing Conference at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 56679 (Sub-109F), Brown Transport Corporation, now assigned for hearing on December 11, 1979 at Atlanta, GA, is postponed to January 22, 1980 (9 days), at Atlanta, GA in a hearing room to be designated later. The Rules in the order of October 2, 1979 shall remain in effect.

MC 115357 (Sub-10F), TAT, Inc., now assigned for hearing on December 12, 1979 at Kansas City, MO, will be held at the Crown Center Hotel, One Pershing Road, Kansas City, MO.

AB-111 (Sub-1F), Detroit, Toledo and Ironton Railroad Company Abandonment Near Napoleon And Wauseon In Henry And Fulton Counties, OH, now assigned for hearing on December 17, 1979 (5 Days) at Wauseon, OH, will be held at the

Community Room of Wauseon, Municipal Building, 230 Clinton Street.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-36254 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

Corpus Christi Cases; Port Equalization Orders

AGENCY: Interstate Commerce Commission.

ACTION: The Commission is reopening No. 31098, *Nueces County Nav. District No. 1 v. Abilene & S. Ry. Co.*, 291 I.C.C. 459 (1954), and No. 33447, *Nueces County Nav. District No. 1 v. Atchison, T. & S. F. Ry. Co.*, 315 I.C.C. 155 (1961).

CONTACT: Richard Felder, (202) 275-7693.

DATES: Briefs due 45 days from date of this publication. [January 5, 1980].

SUMMARY: The above-captioned cases (the Corpus Christi cases) are being reopened to determine if the port equalization orders entered in these proceedings should be modified. As the orders presently exist, the carriers are required to maintain equivalent rates to both the Houston area ports and Corpus Christi. The orders were entered partly on the basis of the railroads' ability to control the rates to the Gulf ports. Our reexamination of these cases will be limited to the issue of actual control of rates to the Gulf ports and how control of those rates influences the Commission's authority to order relief in cases arising under 49 U.S.C. 10741. We will focus on situations where carriers cannot agree on rate policies and, as a result, concurrences to joint rate changes cannot be secured. We will also explore the circumstances, if any, in which a violation of 49 U.S.C. 10741 might exist if common control of rates is not found when unequal rates are proposed to the Gulf ports. We believe this action is necessary to appropriate regulation in this area.

SUPPLEMENTAL INFORMATION: Our purpose in reopening the *Corpus Christi* cases is to determine whether these outstanding port equalization orders require modification to recognize current rate-making situations not contemplated when the outstanding orders were issued. Our prior decisions in the *Corpus Christi* cases found that reduced rail carload commodity export rates for various agricultural products to various Texas gulf ports but not to Corpus Christi, TX, were unduly preferential to the various Texas gulf ports and prejudicial in violation of section 3(1) of the Interstate Commerce

Act (now codified at 49 U.S.C. 10741). We issued alternative orders to correct the unlawfulness. Under an alternative order, the carriers may raise one rate, lower the other, or adjust both to remove the unlawfulness.

Alternative orders can be issued only when the carrier or carriers have common control of the rates to both the preferred and prejudiced ports. In the *Corpus Christi* cases, this Commission presumed common control because the carriers acted as a network, as indicated by both the carriers' joint participation in the rates and their points of track intersection.

We are considering moving from a conclusive presumption of network common control to an analysis of actual control over the joint rates. The principal test of actual control which we are considering is discussed in *Wheat, Oklahoma and Kansas to Texas Gulf Ports*, 357 ICC 382 (1977), 359 ICC 592 (1979), which is presently pending on court appeal.

An extended analysis of actual common control is a departure from past Commission decisions and directly affects the operation of the *Corpus Christi* orders. Accordingly, it is necessary to reopen these proceedings and receive comments. Participants should comment on the appropriate legal analysis of the issue of rate control in cases arising under 49 U.S.C. § 10741. Commentors should also address the question of, under what circumstances, if any, unequalized rate proposals should be found to violate § 10741 when there is no common control.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis. Vice Chairman Stafford absent and not participating. Commissioner Gresham concurred with a separate expression.

Agatha L. Mergenovich,
Secretary.

Commissioner Gresham, concurring:

I recognize the necessity of reopening the *Corpus Christi* cases. My preference, however, is that our reexamination of port equalization not be confined to the common control issue. Port equalization has always generated controversy, and a more fundamental and general look at the concept is long overdue.

[FR Doc. 79-36258 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

Fourth Section Application for Relief

November 19, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. by December 11, 1979.

FSA No. 43770, Southern Freight Association, Agent's No. A-6355, rates on industrial sand in bags or bulk, in carloads, between points in Southern Territory, in Supp. 133 to its tariff ICC SFA 2011-P, to become effective December 22, 1979. Grounds for relief—short-line distance formula and grouping.

By the Commission.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-36261 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket AB-7 (Sub-85F)]

Intent To Discontinue Environmental Analysis of Pending Abandonment Applications; Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

In the matter of Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Abandonment—Green Bay, Wisconsin to Ontonagon, Michigan, In Brown, Oconto and Marinette Counties, Wisconsin and Dickinson, Iron, Baraga, Houghton and Ontonagon Counties, Michigan.

In the matter of Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Abandonment—Portions of Pacific Coast Extension in Montana, Idaho, Washington, and Oregon, and all other dockets pertaining to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

AGENCY: Interstate Commerce Commission, Office of Policy and Analysis, Energy and Environment Branch.

ACTION: Notice of intent to discontinue environmental analysis of pending abandonment applications filed in the above-entitled proceedings.

SUMMARY: On November 4, 1979 the President signed into law S. 1905, the "Milwaukee Railroad Restructuring Act." Since this bill deprives the Interstate Commerce Commission of jurisdiction over abandonments proposed by rail carriers presently in reorganization (including the abandonments which are the subject of the above-entitled proceedings), the Commission's Energy and Environment Branch (Branch) will discontinue its environmental analysis of the

proceedings noted above. The Branch will however forward to the judge of the bankruptcy court any comments received on the environmental analyses already prepared for Docket No. AB7 (Sub-No. 85F), Docket No. AB7 (Sub-No. 86F), and other Milwaukee Road abandonment proceedings.

FOR FURTHER INFORMATION CONTACT:

Paul Mushovic or David Rector, Energy and Environment Branch, Interstate Commerce Commission, 12th and Constitution Ave., Washington, D.C. 20423, Tel: (202) 275-7916.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-36264 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

[Directed Service Order No. 1398; Authorization Order No. 13]

Kansas City Terminal Railway Co.; Directed To Operate Over Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

November 15, 1979.

On September 26, 1979, the Commission directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. § 11125 over the lines of Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). See Directed Service Order No. 1398, *Kansas City Term. Ry. Co.—Operate—Chicago, R.I. & P.*, 360 I.C.C. 289 (1979), 44 FR 56343 (October 1, 1979).

RI owns two vehicles which are in need of repair. One of the vehicles is a hi-rail truck (No. 73015) which is used for a maintenance of way gang. The repair costs will be \$1,625. The other vehicle is a rewheel truck (No. 78051) which is used to repair freight cars on line, handle minor derailments, and other emergency work. The repair cost will be \$3,042.81 for this vehicle.

Supplemental Order No. 4 to DSO No. 1398 required the DRC to obtain prior Commission approval for all rehabilitation for freight cars and other non-locomotive equipment which exceeds \$1,200 per unit. See Supplemental Order No. 4 (served October 15, 1979). [44 FR 61127, Oct. 23, 1979] Accordingly, the DRC submitted an urgent request for authority to repair these vehicles. See wire to Joel E. Burns, dated November 8, 1979.

The DRC seeks Commission authorization to repair truck No. 73015 on the grounds that this truck is the only hi-rail truck for a maintenance of way gang and is necessary for the efficient conduct of important maintenance of

way work. Authorization for repairs to truck No. 78051 is requested on the grounds that this is the only vehicle on the Illinois Division that is available to repair freight cars on line and in yards, handle minor derailments, and other emergency work.

We find:

1. This action will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108 (1978).

It is ordered:

1. The DRC is authorized to make repairs to RI vehicle No. 73015, at a maximum cost of \$1,625, and to vehicle No. 78051, at a maximum cost of \$3,042.81, as requested in a telegram from DRC to Joel E. Burns dated November 8, 1979.

2. The repairs authorized above shall be completed within the initial 60-day directed-service period.

3. This decision shall be effective on its service date.

By the Commission, Railroad Service Board, Members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Joel E. Burns not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-36259 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

**[Directed Service Order No. 1398;
Authorization Order No. 12]**

**Kansas City Terminal Railway Co.;
Directed To Operate Over Chicago,
Rock Island & Pacific Railroad Co.,
Debtor (William M. Gibbons, Trustee)**

November 14, 1979.

On September 26, 1979, the Commission directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. § 11125 over the lines of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). *See* Directed Service Order No. 1398, *Kansas City Term. Ry. Co.—Operate—Chicago, R.I. & P.*, 360 I.C.C. 289 (1979) and 44 FR 56343 (October 1, 1979).

A question has come before the Commission relating to the compensation which the Fort Worth and Denver Railway Company (FWD) would receive for its service on transited grain shipments where the inbound movement to the transit station was performed by RI prior to KCT takeover, but on which FWD will, under currently applicable transit rules, accept rebilling and perform transportation from the transit station during the period of directed service. For the performance of the

service from the transit station to the destination, the FWD will collect the so-called "balance-out" charges. Such balance-out charges will generally be substantially less than the proportion of total through revenue which would, under existing division agreements, accrue to the FWD, or to the FWD and its connections, from the transit station to destination. The FWD requests the DRC to honor interline transit settlement claims on transit shipments received at transit stations prior to October 5, 1979.

Under DSO No. 1398, 360 I.C.C. at 303 [44 FR 56347, 3rd Column], the Commission said that "to prevent severe transportation and economic dislocations, we have decided to preserve RI transit rates and prepaid charges which were in effect immediately prior to this directed service order, by requiring the DRC to adopt applicable RI tariffs for at least 60 days."

Most of the transit grain coming into transit stations arrived at such stations prior to October 5, 1979. The inbound freight charges were collected by RI. The balance of charges due for movement from transit house to destination would not compensate the carrier for the costs incurred in providing this service. If the shipper were required to pay the local rate for such movement, he would be deprived of the lawful transit rate from origin to destination and be severely burdened economically.

Since severe transportation and economic dislocations and hardships would occur to shippers and the carrier if the transit rate structure and applicable divisions of revenue were disturbed on this traffic received at transit stations prior to October 5, 1979, the Commission authorizes KCT, as directed rail carrier, under normal accounting rules to reimburse the FWD, or any other carrier similarly involved in RI transit rates and traffic, for its rightful and agreed upon division of the earned revenue accruing from RI transit tonnage on revenue collected by RI for the movement to the transit station.

We find:

1. This action will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108 (1978).

It is ordered:

1. KCT is authorized and directed to honor interline transit settlement claims on transit shipments received at transit stations prior to October 5, 1979.

2. KCT will make a claim against the RI trustee for any amounts paid in such interline transit settlement claims.

3. KCT shall offset any amounts paid in such interline transit settlement claims against monies it owes the RI Trustee for rental of any locomotives, freight cars or other equipment.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Commissioner Gresham, whom Commissioner Christian joins, dissenting. Commissioner Clapp dissenting. Vice Chairman Stafford not participating.

Agatha L. Mergenovich,

Secretary.

Commissioner Gresham, whom

Commissioner Christian joins, dissenting:

Assumption of this obligation should not be considered a cost of directed service comprehended by Section 11125.

Commissioner Clapp, dissenting:

In my view, neither the KCT nor the United States Government should be the insurer for FWD's (or any other railroad's) collections of "balance-out" charges. I do not see the majority's actions here as essential to the continuation of service. FWD has a common carrier duty to provide service with or without the governmental guarantee it seeks. I see no reason for the Commission to put FWD in a better position than it would have been in absent the fortuitous circumstances of directed service.

[FR Doc. 79-36263 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

**[Directed Service Order No. 1398;
Authorization Order No. 14]**

**Kansas City Terminal Railway Co.;
Directed To Operate Over Chicago,
Rock Island & Pacific Railroad Co.,
Debtor (William M. Gibbons, Trustee)**

November 15, 1979.

On September 26, 1979, the Commission directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. § 11125 over the lines of Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). *See* Directed Service Order No. 1398, *Kansas City Term. Ry. Co.—Operate—Chicago, R.I. & P.*, 360 I.C.C. 289 (1979), 44 FR 56343 (October 1, 1979).

RI owns numerous locomotives which are in need of repair. DSO No. 1398 required the DRC to obtain prior Commission approval for all rehabilitation of locomotives which exceeds \$3,000 per unit. *See* DSO No. 1398, 360 I.C.C. at 304 [44 FR 56348, 2nd column]. Accordingly, the DRC submitted a list of 14 locomotives requiring repairs costing more than \$3,000 per locomotive. *See* "DRC Report No. 12" (dated November 5, 1979).

The DRC sought Commission authorization to repair these locomotives on the grounds that: (1) The addition of these units will help alleviate the locomotive shortage; and (2) the DRC's operations are expanding each day to additional lines of railroad.

The cost of materials and labor for repairs to these locomotives varies from \$5,510 to \$17,767 per unit.

We find:

1. This action will not significantly affect either the quality of the human environment or the conservation of energy resources. See 49 CFR Parts 1106, 1108 (1978).

It is ordered:

1. The DRC is authorized to make repairs to the following locomotives at the maximum cost listed for each locomotive:

Description	Ri Loco No.	Labor	Material	Esti- mated cost
GP35-EMD-2500 HP	312	\$322	\$8,240	\$8,562
GP35-EMD-2500 HP	318	464	10,565	11,029
GP40-EMD-3000 HP	347	322	8,240	8,562
U28B-GE-2800 HP	245	367	17,380	17,767
GP40-EMD-3000 HP	361	322	8,240	8,562
GP38-2-EMD-2000 HP	4351	322	8,240	8,562
GP9-EMD-1750 HP	4486	322	8,240	8,562
GP7-EMD-1500 HP	4485	322	8,240	8,562
GP40-EMD-3000 HP	4700	322	8,240	8,562
SW1200-EMD-1200 HP	934	322	8,240	8,562
U33B-GE-3300 HP	296	1,610	4,201	5,811
U25B-GE-2500 HP	220	1,288	4,222	5,510
GP7-EMD-1500 HP	4521	927	6,000	6,927
GP38-2EMD-2000 HP	4320	1,546	4,800	6,146
		8,798	112,888	121,686
			19,031	19,031
Total		8,798	121,919	130,717

¹Eight percent store expense.

2. The repairs authorized above must be completed within the initial 60-day directed-service period.

3. This decision shall be effective on its service date.

By the Commission, Railroad Service Board, Members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Joel E. Burns not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-36280 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

North American Van Lines; Released Rate Authority

AGENCY: Interstate Commerce Commission.

ACTION: Notice, Released Rate Application No. MC-1502.

SUMMARY: North American Van Lines wants to expand the geographical scope of the released rate authority granted it in Released Rate Decision MC-958 on

commodities used in the manufacture of computers and computer equipment in mixed loads with third proviso household goods as defined by the Commission in 95 MCC 252 to include new operating authority sought in Docket MC-107012, Sub No. 407TA between points in AZ, CA, CO, CT, IL, IN, ME, MA, MN, NH, NJ, NY, NC, OK, OR, PA, RI, SC, TX, VT and WA.

ADDRESSES: Anyone seeking copies of this application should contact Mr. Gerald Burns, Attorney for North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801, Telephone 219-429-2234.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Unit Supervisor, Bureau of Traffic, Interstate Commerce Commission, Washington, D.C. 20423, Telephone 202-275-7553.

SUPPLEMENTARY INFORMATION: Relief is sought from 49 U.S.C. 10730, Formerly Section 20(11) of the Interstate Commerce Act.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-36255 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Dockets Nos. 29171 and 28640 (Sub-No. 5)]

Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.—
Submissions Under Section 6 of the Milwaukee Railroad Restructuring Act

November 20, 1979.

This notice is to clarify the statement filing requirements in Finance Docket No. 28640 (Sub-No. 5) and Finance Docket No. 29171.

F. D. No. 28640 (Sub-No. 5). Previous notices in Finance Docket No. 28640 (Sub-No. 5) provided that any interested persons may participate in the proceeding by submitting a written statement indicating position (party in support or party in opposition) and including, if desired, a request for oral hearing. 44 FR 60898 (1979) (Trustee's plan), 44 FR 61724 (1979) (Association to Save Our Railroad Employment plan), and 44 FR 61724 (1979) (New Milwaukee Lines plan). Statements submitted with respect to the Trustee's plan were due on or before November 21, 1979. Statements submitted with respect to the Association to Save Our Railroad Employment plan and the New Milwaukee Lines plan were due no later than November 26, 1979.

Section 6 of the recently-enacted Milwaukee Railroad Restructuring Act,

Public Law No. 96-101, provides that no later than December 1, 1979, an association composed of representatives of national railway labor organizations, employee coalitions, and shippers (or any combination of these) may submit to the Commission a single plan to convert all or a substantial part of the Chicago, Milwaukee St. Paul and Pacific Railroad Company into an employee or employee-shipper owned company. The plan must include a comprehensive evaluation of the Milwaukee's prospects for financial self-sustainability. The legislation further provides that within 30 days of submission of such plan the Commission must approve the proposal if it finds the plan feasible.

If a plan contemplated by Public Law No. 96-101 is submitted to the Commission no later than December 1, 1979; is found feasible by the Commission; is found fair and equitable to the Milwaukee estate by the bankruptcy court; and is implemented no later than April 1, 1980, proceedings on the reorganization plans filed in Finance Docket No. 28640 (Sub-No. 5) may be unnecessary. The Commission is, therefore, holding in abeyance any decision regarding proceedings in Finance Docket No. 28640 (Sub-No. 5). If the described events do not occur, the Commission must consider the reorganization plans and other pleadings filed in Finance Docket No. 28640 (Sub-No. 5). Persons who wish to participate in any proceedings which might occur in Finance Docket No. 28640 (Sub-No. 5) should submit a statement as provided in the prior notices. The statement need not detail the reasons for support or opposition, but only indicate the submitting person's intention to participate in any proceedings held in Finance Docket No. 28640 (Sub-No. 5).

F. D. No. 29171. On November 7, 1979, the Commission established a procedure in Finance Docket No. 29171 to govern plans submitted under Public Law No. 96-101. 44 FR 65233 (1979). The procedure provides that initial statements in support of or in opposition to submitted plans shall be filed no later than December 14, 1979. These statements should address in full detail all substantive and procedural matters raised by plans submitted pursuant to Public Law No. 96-101.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-36262 Filed 11-23-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register

Vol. 44, No. 228

Monday, November 26, 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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[M-256, Amdt. 1; Nov. 20, 1979]

CIVIL AERONAUTICS BOARD.

Notice of deletion of closure item from the November 21, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., November 21, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 15. Forthcoming Informal Consultations with Spain Scheduled for Late November. (Memo No. 9289, BIA)

STATUS: Open (Items 1-14), Closed (Item 15).

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The staff believes the presentation of U.S. policy views in this item are non-controversial and do not require a Board meeting. It is recommended that the Board vote on this item by notation. Accordingly, the following Members have voted that Item 15 be deleted from the November 21, 1979 agenda and that no earlier announcement of this deletion was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2286-79 Filed 11-21-79; 2:54 pm]

BILLING CODE 6320-01-M

2

[M-256, Amdt. 2; Nov. 20, 1979]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the November 21, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., November 21, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 3. Dockets 36971 and 36811; Sixty Day Notice of Air New England for suspension of nonstop or single plane service in eight markets; application of Air New England for an exemption from the notice requirement. (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 3 is being deleted because the staff person preparing this item has been called away on emergency leave. Accordingly, the following Members have voted that Item 3 be deleted from the November 21, 1979 agenda and that no earlier announcement of this deletion was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2289-79 Filed 11-21-79; 2:54 pm]

BILLING CODE 6320-01-M

3

COMMODITY CREDIT CORPORATION.

TIME AND DATE: 2 p.m., December 3, 1979.

PLACE: Room 218-A, Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of CCC board meeting on September 13, 1979.
2. Docket VCP 72a (Upland) re: 1980-cotton loan and payment program (upland).
3. Docket VCP 137a re: 1980-crop barley, corn, oats, rye and sorghum loan, purchase and payment programs.
4. Docket VCP 2a re: 1980-crop wheat loan, purchase and payment programs.
5. Docket VCP 105 re: 1980-crops soybean loan and purchase program.
6. Docket UCP 31a, Amendment 1 re: 1979-crop peanut loan and purchase program.
7. Resolution re VCX 310(a) re: Commodities available for sale to foreign

governments or their agents and international organizations during fiscal year 1980.

8. Docket CX 308(a), Amendment 2 re: Assurance arrangements required by CCC under its non-commercial risk assurance program.

9. Resolution No. 17, Amendment 1, CZ 266 re: Commodities available for Public Law 480 during fiscal year 1980.

10. Docket CZ 157, Revision 4 re: Policy and procedure governing the submission of dockets to the Board of Directors, CCC, and the handling of dockets considered by the Board.

CONTACT PERSON FOR MORE

INFORMATION: Bill Cherry, Secretary, Commodity Credit Corporation, Room 202-W, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20013, Telephone (202) 447-7583.

[S-2281-79 Filed 11-21-79; 10:17 am]

BILLING CODE 3410-05-M

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 29, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Closed Commission Meeting following the Special Open Meeting which is scheduled to commence at 9:30 a.m.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Common Carrier—1—Title: Investigation into Utilization of COMSTAR Domestic Satellite System by American Telephone and Telegraph Company and GTE Satellite Corporation. (CC Docket No. 79-87.) Summary: A fact finding investigation has been conducted to determine the reasons for an alleged disparity between satellite use projections put forward in AT&T's application to lease and operate the COMSTAR domestic satellite system and the actual loading presently in existence. Among the issues presented is whether some or all of the lease costs should be disallowed for rate purposes.

Broadcast—1—Title: First Report concerning Preparation for a Region 2 Administrative Radio Conference for AM Broadcasting. (BC Docket 79-166.) Summary: The ITU has scheduled a Region 2 Conference for AM Broadcasting to be held in two sessions. The first session which will establish the technical bases for planning is to be convened on March 10, 1980. The First Report sets forth the initial FCC recommendations for the U.S. proposals to be submitted to the ITU for the first session of the Conference.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: November 21, 1979.

[S-2291-79 Filed 11-21-79; 3:20 pm]

BILLING CODE 6712-01-M

5

FEDERAL COMMUNICATIONS COMMISSION.
PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m., Tuesday, November 20, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Commission Open Meeting.

CHANGES IN THE MEETING: Deletion and addition of items.

The following items have been deleted:

Agenda, Item No., and Subject

General—1—Title: Application for Review of a ruling by the Chief, Broadcast Bureau, denying a Freedom of Information Act request by Alaskans for Better Media for inspection of the 1974-1978 annual financial reports of five broadcast stations licensed to Northern Television, Inc. Summary: At issue is whether the annual financial reports are exempt from mandatory disclosure under the FOIA and if so whether the annual financial reports should nevertheless be released on the basis that the licensee has placed its financial condition in issue in a Commission proceeding. (At the request of Commissioner Washburn.)

Television—2—Subject: Application of Wometco Blonder-Tongue Broadcasting Corp. for a construction permit for changes in the facilities of Station WWHT(TV), channel 68, Newark, N.J. (no file number assigned). Summary: Applicant seeks to locate the WWHT(TV) transmitter atop the World Trade Center Building in N.Y., N.Y. The proposed transmitter location does not comply with Commission mileage separation requirements for television facilities and applicant has, therefore, requested a waiver of these requirements. The issue before the Commission is whether applicant's waiver request is sufficient to justify acceptance of its application for filing. (At the request of Chief, Broadcast Bureau.) In addition, the Commission will consider the following item:

General—4—Title: Order denying motion for Stay filed at Atari. Summary: The Commission considers a Motion for Stay filed on November 8, 1979 by Atari, Inc., requesting the Commission to reconsider the effective date on the ORDER GRANTING WAIVER IN PART, adopted September 18, 1979 to permit Texas Instruments, Inc. to market a stand-alone RF modulator. The Order is scheduled to

become effective November 23, 1979. A vote to by-pass the seven days prior notice was taken so that action can be taken prior to November 23, 1979.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: November 20, 1979.

[S-2283-79 Filed 11-21-79; 10:49 am]

BILLING CODE 6712-01-M

6

FEDERAL COMMUNICATIONS COMMISSION.
TIME AND DATE: 9:30 a.m., Thursday, November 29, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Common Carrier—1—Title: An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems. Summary: The FCC is proposing rules and procedures for the commercial operation of cellular communications systems. Among the issues to be considered are (1) What is the potential role for cellular systems in communications over the foreseeable period? (2) How should the cellular system market, for equipment and service, be structured?

Common Carrier—2—Title: Report and Order in CC Docket 78-219, Revision of the Processing Policies for Waivers of the Telephone Company-Cable Television "Cross Ownership Rules." Section 63.54 and 64.601 of the Commission's Rules and Regulations. Summary: The Commission will consider modifying its procedures for waiver of its telephone company-cable television cross ownership rules.

Common Carrier—3—Title: Application of FTC Communications, Inc. (FTCC) pursuant to Section 214 for consent to transfer control from Compagnie Francaise de Cables Telegraphiques (CFCT) to Societe de Banque et de Participations (SBP). Summary: The proposed change in ownership seeks to transfer control of FTCC from its present owner, CFCT, which is controlled by the French government, to SBP, which is a privately owned French corporation. FTCC's stock will immediately be placed in trust to be controlled by American interests and ultimately sold to American nationals within five years. This proposal seeks to alleviate the Commission's concerns in 71 F.C.C. 2d 393 regarding a lack of reciprocity being extended to U.S. international carriers by the French government.

Common Carrier—4—Title: American Telephone & Telegraph Company and the Hawaiian Telephone Company applications for authority to acquire and activate circuits in the Okinawa-Luzon-

Hong Kong (OLUHO) Cable System. Summary: The Commission will consider the applications of the American Telephone & Telegraph Company and the Hawaiian Telephone Company to acquire and activate circuits in the OLUHO Cable System to be used in conjunction with Hawaii-3/Transpac-2 circuitry for the provision of service to Hong Kong and Philippines. The issues to be considered are: (1) whether the acquisition and activation of circuits in the foreign-built OLUHO Cable System are in public interest; and (2) whether the contractual terms governing the acquisition of OLUHO cable circuits are consistent with Commission policy.

Broadcast—1—Report and Order/BC Doc. 78-101, Top-50 Policy. The Commission will consider a Report and Order in its Top-50 proceeding. The Top-50 Policy requires those seeking to acquire a fourth TV station (either VHF or UHF) or a third VHF station in the top fifty television markets to make a "compelling public interest showing" or face a hearing. The Commission had issued a Notice directed toward reexamining the policy, and it is now ready to consider what final action to take in this matter.

Broadcast—2—Title: Request by ABC for declaratory ruling concerning "Good Morning America" Summary: The Commission has before it a request by the American Broadcasting Companies Inc. (ABC) for a declaratory ruling that appearances by legally qualified candidates on the "Good Morning America" (GMA) program are exempt from the "equal opportunities" provision of Section 315. ABC alleges that the ruling is warranted since GMA is indistinguishable from the "Today" program which has previously been held to be exempt from Section 315 considerations. The Commission must decide whether to grant the requested ruling.

Broadcast—3—Pre-U.S. release of television programs in Canada, Docket No. 20649. The Commission will consider: (1) its jurisdiction, under Section 325(b) of the Communications Act, over the exportation of U.S. network television programs for release by Canadian border stations before they are broadcast within the United States; (2) pending industry proposals that the FCC prohibit program exportation for such "Canadian pre-release" and bar cable carriage of pre-released programs.

Cable Television—1—United Community Antenna Systems d/b/a Master Cable TV Systems (CAC-03722); Community Telecable of Seattle, Inc. (CAC-03723); Tele-Vue Systems, Inc. (CPCLD-164).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: November 21, 1979.

[S-2292-79 Filed 11-21-79; 3:20 pm]

BILLING CODE 6712-01-M

7

FEDERAL HOME LOAN BANK BOARD.**TIME AND DATE:** 9:30 a.m., November 29, 1979.**PLACE:** 1700 G Street, NW., Sixth Floor, Washington, D.C.**STATUS:** Open Meeting.**CONTACT PERSON FOR MORE****INFORMATION:** Franklin O. Bolling (202-377-6677).**MATTERS TO BE CONSIDERED:**

Application for Branch Office—Enterprise Federal Savings and Loan Association of Lockland, Lockland, Ohio

Application for Branch Office—Clearwater Federal Savings and Loan Association, Clearwater Florida

Application for Branch Office—State Fidelity Federal Savings and Loan Association, Dayton, Ohio

Application for Branch Office—First Federal Savings and Loan Association of Brevard County, Milbourne, Florida

Application for Branch Office—Chase Federal Savings and Loan Association, Miami, Florida

Application for Branch Office—First Federal Savings and Loan Association of Dyersburg, Dyersburg, Tennessee

Application for Branch Office—Eureka Federal Savings and Loan Association, San Francisco, California

Application for Branch Office—St. Paul Federal Savings and Loan Association of Chicago, Chicago, Illinois

Application for Branch Office—First City Federal Savings and Loan Association, Bradenton, Florida

Application for Branch Office—Valley Federal Savings and Loan Association, Van Nuys, California

Branch Office Applications to be Considered Concurrently—Central Federal Savings and Loan Association, San Diego, California AND First Federal Savings and Loan Association of South Pasadena, South Pasadena, California

Branch Office Application and Redesignation of Home Office—Suburban Federal Savings and Loan Association of Cincinnati, Cincinnati, Ohio

Application for Satellite Office—Middletown Federal Savings and Loan Association, Middletown, Ohio

Application for Limited Facility—Baltimore Federal Savings and Loan Association, Baltimore, Maryland

Application for Merger and Maintenance of Branch Offices—First Federal Savings and Loan Association, Alexander City, Alabama INTO Phenix Federal Savings and Loan Association, Phenix City, Alabama

Application for Merger—Homestead Savings and Loan Association—South, Sunland, California INTO Homestead Savings and Loan Association, San Francisco, California

Application for Merger and Maintenance of Branch Office—Winthrop Building and Loan Association, Winthrop, Minnesota INTO First State Federal Savings and Loan Association, Hutchinson, Minnesota

Preliminary Application for Conversion

into a Federal Mutual Association—Elysian Savings and Loan Association, Hoboken, New Jersey

Preliminary Application for Conversion into a Federal Mutual Association—Stacy Savings and Loan Association, Trenton, New Jersey

Preliminary Conversion to a Federal Mutual Charter—Home Savings and Loan Association, Salisbury, North Carolina

Preliminary Conversion to a Federal Mutual Charter—Home Savings and Loan Association, Statesville, North Carolina

Preliminary Conversion to a Federal Mutual Charter—Burke County Savings and Loan Association, Morganton, North Carolina

Preliminary Application for Conversion to Federal Mutual Charter—Clyde Savings and Loan Association, Riverside, Illinois

Request for Amendment to Branch Approval—Financial Federal Savings and Loan Association, Miami, Florida

Request for Commitment to Insure Accounts—First State Savings and Loan Association, Orlando, Florida

Bank Membership and Commitment to Insure Accounts—Progressive Savings and Loan Association, Jamestown, Tennessee

Application for Insurance of Accounts—Angelina Savings and Loan Association, Lufkin, Texas

Application for Insurance of Accounts—Uvalde Savings and Loan Association, Uvalde, Texas

Application for Change of Name—American Federal Savings and Loan Association of Pueblo, Pueblo, Colorado

Application for Change of Name—Anniston Federal Savings and Loan Association, Anniston, Alabama

Request for One Year Extension of Time to Acquire—Wabash Building and Loan Association, Louisville, Illinois BY Bass Financial Corporation, Chicago, Illinois

Proposed Acquisition of the—Newark Savings and Loan Company, Newark, Ohio

And Application for Authority to Incur Indebtedness—Transohio Financial Corporation, Cleveland, Ohio

Permission to Organize—Edwin S. Varner, et al., Milledgeville, Georgia

Assessments
Resolution to Amend Office of Neighborhood Reinvestment Financial Accounting and Oversight Requirements
Designation of Supervisory Agent

No. 294, November 21, 1979.

[S-2286-79 Filed 11-21-79; 2:54 pm]

BILLING CODE 6720-01-M

8

November 20, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.**TIME AND DATE:** 10 a.m., Tuesday, November 27, 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:

1. Southern Ohio Coal Company, Docket No. VINC 79-110-P, and VINC 79-114-P (Petition for Discretionary Review)
2. Scotia Coal Company, BARB 78-306, etc. (Petition for Interlocutory Review)

CONTACT PERSON FOR MORE**INFORMATION:** Jean Ellen, 202-653-5632.

[S-2287-79 Filed 11-21-79; 2:54 pm]

BILLING CODE 6820-12-M

9

FEDERAL RESERVE SYSTEM (Board of Governors).**TIME AND DATE:** 10 a.m., Wednesday, November 28, 1979.**PLACE:** 20th Street and Constitution Avenue NW., Washington, D.C. 20661.**STATUS:** Open.**MATTERS TO BE CONSIDERED:****Summary Agenda**

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendments to the Board's Rules Regarding Delegation of Authority to redelegate the authority to release transfer agent, clearing agency, and municipal securities dealers reports of examination to the Securities and Exchange Commission.
2. Proposal to conduct a survey of overseas fiduciary activities of commercial banks and bank holding companies.
3. Clarification and revisions of several interpretations under Regulation K (International Banking Operations).
4. Proposed amendment to Regulation K (International Banking Operations) to simplify procedures for subsidiaries of U.S. banking organizations to establish branches in foreign countries.

Discussion Agenda

1. Request for an interpretation of Regulation T (Credit by Brokers and Dealers) with respect to the arranging of certain private placement.
2. Proposed Survey of Transactions Volume in the U.S. Foreign Exchange Markets.
3. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 20, 1979.

Griffith L. Garwood,
Deputy Secretary of the Board.

[S-2284-79 Filed 11-12-79; 10:49 am]

BILLING CODE 6210-01-M

10

METRIC BOARD.

TIME AND DATE: 3 p.m., December 13, 1979; 8:30 a.m., December 14, 1979.

PLACE: The meeting on December 13 and 14 will be held in the Eola Ballroom of the Harley Hotel of Orlando, 151 E. Washington Street, Orlando, Florida 32801.

STATUS: Open to the public except from 4:15 p.m. to 5:30 p.m. on December 13 during which time the Board will meet to discuss internal budget matters. This portion of the meeting is closed under exemption section (c)(9)(B) of 5 U.S.C. 522b.

MATTERS TO BE CONSIDERED:

Thursday, December 13

Approval of Agenda.
Review/Approval of Minutes—October, 1979.

Approval of Operating Plan. This is approval of the objectives and activity plan that the U.S. Metric Board will undertake during fiscal year 1980.

Friday, December 14

Approval of Rules of Order. This is a set of rules pertaining to parliamentary procedure which will govern the U.S. Metric Board at its meetings in which it disposes of government business.

Discussion of Fair Packaging and Labeling Act Status. This is a status report from the staff advising the Board of what progress has taken place concerning the recommendation by the National Conference on Weights and Measures for amendments to the Federal law dealing with packaging and labeling.

Discussion of retail sale of motor fuel by liter. This is a staff report on the current status and projections and is normal follow-on to the public hearings conducted by the Board in May of this year.

Discussion of Antitrust Guidelines. This is a staff report on the progress being made with regard to the Board's objective to publish a layman's manual regarding the antitrust implications of metrication planning.

Reports. Each of the committee chairpersons and senior staff will give a status report of activities within their jurisdiction.

Agenda items for future Board meetings.

SUPPLEMENTARY INFORMATION: Notice of a public forum to be held by the U.S. Metric Board on December 13, 1979 which will provide individuals and groups the opportunity to comment on metric conversion appears elsewhere in this issue.

CONTACT PERSON FOR MORE

INFORMATION: Jane Conway, 703-235-1933.

Louis F. Polk,
Chairman, U.S. Metric Board.

[S-2280-79 Filed 11-20-79; 3:53 pm]

BILLING CODE 6820-94-M

11

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENTS: S-1548, Filed July 26, 1978; 11:44 a.m.

DATED AND TIME: November 30, 1979, 9:30 a.m., 3:30 p.m.

PLACE: Room 823, National Institute of Education, 1800 19th Street, N.W., Washington, D.C.

STATUS: Certification has been received from the HEW Office of General Counsel, that in the opinion of that office, the NCER "would be authorized to close portions of its meeting on November 30, 1979, under 5 U.S.C. 522b (c)(9)(B) and 45 CFR 1440.2(a) (9) for the purposes of reviewing and discussing with the Acting Director of NIE, the proposed executive branch budget for fiscal 1981, in particular, the sections dealing with the proposed budget and funding priorities of NIE." Agenda item #5 will be closed, the rest of the agenda remains open to the public.

MATTERS TO BE CONSIDERED:

Friday, November 30, 1979

1. Approve September 14, 1979 Minutes (9:30-9:35 a.m.)
2. Director's Report (9:35-10:15)
3. Dissemination (10:15-11:45)
4. Literacy (1:15-2:45 p.m.)
5. Closed: fiscal year 1981 budget (2:45-3:30 p.m.)

CONTACT PERSON FOR MORE

INFORMATION: Ella L. Jones, Administrative Coordinator, Telephone: 202/254-7900.

Peter H. Gerber,
Chief, Policy and Administrative
Coordination, National Council on
Educational Research.

[S-2282-79 Filed 11-21-79; 10:17 am]

BILLING CODE 4110-39-M

12

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., November 29, 1979.

PLACE: 1776 G Street NW., Washington, D.C., 6th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility lending rates.

2. Federal credit unions' use of compensating balances.

3. Applications for charters, amendments to charters, bylaw amendments, mergers, conversions and insurance as may be pending at that time.

RECESS: 10:30 a.m.

TIME AND DATE: 11 a.m., November 29, 1979.

PLACE: 1776 G Street NW., Washington, D.C., 6th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review of Fiscal year 1980 operating plan (including budget and staffing). Closed pursuant to exemption (9)(B).

2. Contract for purchase of computer equipment. Closed pursuant to exemptions (4) and (9)(B).

3. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act in order to prevent their closing. Closed pursuant to exemptions (8) and (9)(A)(ii).

4. Administrative actions. Closed pursuant to exemptions (8), (9)(A)(ii), and (10).

CONTACT PERSON FOR MORE

INFORMATION: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-2290-79 Filed 11-21-79; 3:20 pm]

BILLING CODE 7535-01-M

13

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 26, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Thursday, November 29, 1979, at 10 a.m., immediately followed by a closed meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the open meeting scheduled for Thursday, November 29, 1979, at 10 a.m., will be:

1. Consideration of whether to grant the application of Taylor Realty Enterprises, Inc. for relief pursuant to Rule 252(f) of Regulation A. For further information, please contact Thomas J. Baudhuin at (202) 272-2644.

2. Consideration of whether to affirm action taken by the duty officer, authorizing the transmission of a letter to Chairman John D. Dingell of the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce. For further information, please contact Benjamin Vandegrift at (202) 272-2436.

3. Consideration of whether to approve a proposed rule change submitted by the New York Stock Exchange, Inc. to amend its present rules on arbitration and adopt, in its entirety, a set of arbitration procedures drafted by the Securities Industry Conference on Arbitration. For further information, please contact Thomas C. Etter, Jr. at (202) 272-2398.

4. Consideration of whether to publish notice of a proposed amendment to the plan for allocating regulatory responsibilities filed under Rule 17d-2 by the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange, Inc. For further information, please contact Katherine L. Hufnagel at (202) 272-2368.

The subject matter of the closed meeting scheduled for Thursday, November 29, 1979, following the 10 a.m. open meeting, will be:

Access to investive files by Federal, State, or Self-Regulatory Authorities.

Litigation matters.

Institution of injunctive actions.

Freedom of Information Act appeals.

Chapter XI proceeding.

Chapter X proceedings.

Administrative proceedings of an enforcement nature.

Personnel security matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Mike Rogan at (202) 272-2091.

November 21, 1979.

[S-2285-79 Filed 11-21-79; 2:54 pm]

BILLING CODE 8010-01-M

Federal Register

Monday
November 26, 1979

Part II

Department of Transportation

Federal Highway Administration

Location and Hydraulic Design of
Encroachments on Flood Plains; Final
Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

Location and Hydraulic Design of Encroachments on Flood Plains

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its existing flood plain regulation. The revisions include criteria for flood-plain actions taken under programs administered by the FHWA and implement provisions of Executive Order 11988 of May 24, 1977, and DOT Order 5650.2 of April 26, 1979.

EFFECTIVE DATES: This rule is effective November 15, 1979. However, highway sections may be processed without the formal coordination and studies required by §§ 650.109 through 650.113, where the draft environmental impact statement (EIS) has been filed with the Environmental Protection Agency (EPA) prior to October 26, 1979, and the final EIS for this draft EIS is filed with EPA prior to April 26, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Frank L. Johnson or Mr. Philip L. Thompson, 202-472-7690, Office of Engineering, (HNG-31); Mr. Irwin L. Schroeder, 202-426-0800, Office of the Chief Counsel, (HCC-40), Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA is revising its existing flood plains regulation to include provisions required by Executive Order (E.O.) 11988—Floodplain Management, which are not addressed in other FHWA regulations. The existing regulation (23 CFR Part 650, Subpart A) was originally published at 39 FR 36331 on October 9, 1974. This revision will codify the policies and procedures contained in Volume 6, Chapter 7, Section 3, Subsection 2, of the Federal-Aid Highway Program Manual.¹

Pursuant to Executive Order 11988, the Department of Transportation (DOT) published at 44 FR 24678 on April 26, 1979, its policies and procedures on protection and management of flood plains (DOT Order 5650.2). This revision is consistent with those policies and procedures.

Since provisions of this regulation will be implemented by State highway agencies which receive Federal-aid highway funds, the provisions are in the form of general policy and requirements. Specific procedures to satisfy this regulation will be established by highway agencies within the framework of their environmental action plans (23 CFR Part 795, Process Guidelines for the Development of Environmental Action Plans) and design policy. Review for compliance with this regulation will be accomplished by FHWA division offices located in each State.

In preparing this regulation, the FHWA consulted with the U.S. Water Resources Council (WRC), the U.S. Council on Environmental Quality (CEQ), and the Federal Insurance Administration (FIA), now in the Federal Emergency Management Agency (FEMA).

Advisory material in the WRC Floodplain Management Guidelines for Implementing E.O. 11988 (43 FR 6030) was considered in drafting this regulation. The decisionmaking process set forth in the Guidelines, as an explanation of the Executive Order's provisions, is not the same as procedures normally applicable to programs administered by the FHWA. The Guidelines assume that the decisionmaking process involves a single large flood plain and a proposed action at a location on that large flood plain. With this premise, the following WRC decisionmaking process steps appear workable: (1) Determine if proposed action is in the base flood plain, (2) provide early public review, (3) identify and evaluate alternatives to locating in the base flood plain, (4) identify impacts of proposed action, (5) minimize impacts, restore and preserve flood plain values, (6) reevaluate alternatives, and (7) make findings and provide public explanation.

This WRC decisionmaking process is inappropriate for general application in making highway location and design decisions. Highway actions are processed and reviewed as sections or projects between logical termini and, as such, cross numerous flood plains of varying size and importance. Since flood plains can only be entirely avoided for those rare projects located on a watershed boundary, the "no-build" alternative is the only alternative to an encroachment of even minimal impact. If a specific flood plain or series of flood plains are avoided, encroachment at other locations or other flood plains by necessity become involved. Therefore, the avoidance of all base flood plains is not feasible for most highway actions.

Except for locations on a watershed boundary and the "no-build" solution, alternative locations under consideration will involve flood plains.

For proposed highway actions on flood plains, the decision process involves comparing various highway alternatives and their related significant impacts, choosing an alternative, minimizing the impacts of the chosen alternative, and restoring and preserving the impacted flood-plain values. This process includes the alternative of avoiding any action by withdrawing the proposed project. The decision generally is not whether the highway should be located in or out of the base flood plain, but rather which series of flood plains to impact if the "no-build" alternative is not a viable alternative. To support the resulting decision, § 650.111 of the revised regulation requires that base flood plain impacts be identified for all alternatives. If this identification reveals that an "action on the base flood plain" (encroachment) will cause unusually adverse impacts, the action will be termed a "significant encroachment" and require special attention. This includes a requirement in § 650.113 that such actions will not be approved unless the FHWA finds that the proposed significant encroachment is the "only practicable alternative."

A significant encroachment, as defined in this proposed regulation, contemplates construction- or flood-related impacts which involve significant risk, flood-plain environmental impact, or potential interruption or termination of a vital transportation facility. The application of this definition in highway location and design will avoid the significant adverse effects due to occupancy and alteration of flood plains and will allow for the thorough consideration of all relevant highway actions.

Disposition of Major Comments

A notice of proposed rulemaking for this regulation was published for comment in the *Federal Register* at 43 FR 60298 on December 27, 1978, and a docket was established with a closing date of February 26, 1979. Thirty-six parties submitted comments: 23 from State highway agencies, 4 from county agencies, 3 from State environmental agencies, 2 from other Federal agencies, 2 from consultants, 1 from a Senator, and 1 from the Federal agencies (WRC, CEQ and FIA) which were identified in E.O. 11988 for consultation with other Federal agencies in issuing or amending regulations to implement E.O. 11988.

Numerous commenters expressed concern that the regulation would increase redtape, project costs, and

¹ This document is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

staffing needs. The FHWA recognizes these implications of the regulation and has attempted, in this rulemaking, to be responsive to both E.O. 11988 and the DOT Order and to minimize the increase in redtape and costs by the use of thresholds and by merging requirements for early public involvement and NEPA-like requirements with the existing rules for public involvement and environmental review.

Changes to the regulation, major comments, and pertinent discussion are summarized below.

Policy (§ 650.103)

The statement "to avoid highway encroachments" has been replaced by two statements: § 650.103(b)—"to avoid longitudinal encroachments" and § 650.103(c)—"to avoid significant encroachments." Highway locations, except in rare instances of watershed boundary locations, will cross flood plains. Therefore, the amended statements more accurately reflect the FHWA policy of avoiding, where practicable, longitudinal encroachments and crossings which constitute significant encroachments. This is consistent with E.O. 11988 which requires avoidance of impacts associated with flood plain occupancy wherever there is a practicable alternative.

The limitation of § 650.103(g) to direct Federal highway projects has been removed. This change will provide for highway consistency with locally adopted flood-plain regulations and with the National Flood Insurance Program.

Definitions (§ 650.105)

Numerous commenters objected to the redefinition of "design flood." Therefore, the more traditional definition has been continued. The term "overtopping flood" has been added for referring to the flood used as an index to risk.

"Risk analysis" has been defined so that a clear distinction is made between "risk" as it relates to potential harm and "risk analysis" which is a study performed using the quantifiable costs associated with the encroachment. This change will resolve concern expressed by many commenters that a risk analysis would be required for all encroachments at both location and design stages.

"Significant" has been substituted for the modifiers used to define "significant encroachment," because commenters objected to the undefined modifiers. The term "significant" as used in environmental review procedures and this regulation is the same. No new thresholds are created and existing

environmental review processes are used to assure review of flood plain impacts on the same level as other impacts. In this manner, flood plain impacts will not be considered in isolation and the alternative selected will be the one which has the least overall impact on the area. Selecting an alternative based on flood plain impacts alone could result in an alternative which, while avoiding flood plain impacts, causes some other much more serious impact.

Applicability (§ 650.107)

The effective dates of §§ 650.109 through 113 were made consistent with those of the DOT Order. Since the dates apply only to projects which will complete environmental review processing by April 26, 1980, this provision was deleted from the regulation.

Various thresholds in area, discharge, and category of action were recommended. None were adopted. The FHWA intends that all encroachments and actions be assessed. However, the level of review should be consistent with the risk and impact. Little or no risk or impact would only require discussion and hydraulic design studies which are commensurate with that risk or impact.

Various types of permanent repairs were recommended for addition to the exception allowed for repairs made with emergency funds. The FHWA intends that permanent repairs should be assessed as any other flood plain encroachment.

Various commenters noted that certification acceptance (23 U.S.C. 117) is applicable to the sections of this regulation which pertain to certain requirements of title 23, U.S.C. Therefore, the prohibition in the proposed rule was deleted. However, non-title 23 requirements, such as the additions to environmental processing, cannot be covered by the certification acceptance procedure.

Flood Plain Identification

This proposed section was deleted. The proposed requirement to establish base flood plain limits caused considerable comment. The FHWA has determined that the intent of the Executive Order can be satisfied for most actions without documenting the exact flood plain limits. Detailed studies, such as these, are normally not undertaken during highway location, because the various alternatives only have approximate locations. Encroachments can be determined, however, without detailed study and this is required in § 650.111(a).

Public Involvement (§ 650.109)

The majority of commenters favored either no additional requirements or limiting new provisions to significant encroachments. However, to be consistent with the DOT Order and E.O. 11988 emphasis on early public involvement, two requirements have been added. The intent is to draw attention to significant encroachments by including reference to them in public notices, and to encourage early public review and comment on encroachments by having them identified at public hearings.

Location Hydraulic Studies (§ 650.111)

Most commenters suggested that the requirements to assess the risk and investigate alternatives to encroachments be limited to significant encroachments. Further, these provisions would have required detailed studies early in project development. In view of these comments and for reasons stated previously, these provisions were revised to require an evaluation of the practicability of alternatives to all significant encroachments and longitudinal encroachments. The practicability evaluation is not required for encroachments which are not significant and which cross the flood plain.

Environmental processing requirements have been included in this section rather than as a separate section as in the proposed rules. These provisions require that flood plain impacts be assessed as a part of location studies, § 650.111(c), and be summarized in environmental review documents § 650.111(e).

Only Practicable Alternative Finding (§ 650.113)

Many commenters objected to requiring a finding for encroachments and to the proposed finding procedures. The FHWA has merged these new requirements with the environmental process. Further, a finding is required only for significant encroachments. In this way, the flood plain impacts of encroachments and alternatives to significant encroachment will be discussed in environmental review documents. If the selected alternative contains a significant encroachment, the final EIS or finding of no significant impact must contain the required finding that the alternative with the significant encroachment is the only practicable alternative. This finding must be supported by a discussion of alternatives considered and why they are not practicable.

When the highway project is designed, encroachments with less than significant impacts will receive appropriate attention to mitigate impacts.

Design Standards (§ 650.115)

The requirements of § 650.115(a) have been rewritten to reflect the changed definition of "design flood" and the added definition of "overtopping flood." Also, the concern of commenters that a risk analysis would be required for every encroachment has been resolved by including the option of a risk assessment in § 650.115(a)(1) for those encroachments where the risk or capital cost is insufficient to warrant a risk analysis.

Provision for "freeboard" has been required in § 650.115(a)(3). This requirement was not in the proposed rules, but is in keeping with designing encroachments consistent with the risk. Freeboard is also consistent with the philosophy incorporated in the definition of design flood in the proposed rules.

To clarify FHWA policy regarding the National Flood Insurance Program (NFIP), § 650.115(a)(5) has been added. This section brings together all NFIP consistency requirements.

Many commenters from State highway agencies opposed the portion of § 650.115(e) that would have required debris control structures upstream of safety grates on cross-drainage structures. Therefore, this section was deleted. However, the FHWA will continue to discourage the installation of grates on cross drainage structures as being inconsistent with cost-effective hydraulic design.

Content of Design Studies (§ 650.117)

The discussion required in design studies by § 650.117(b)(3) was a part of the finding in the proposed rules. The FHWA anticipates that the NFIP will be found to be demonstrably inappropriate for most direct Federal highway actions, because these highways are generally in rural locations with little associated risk. Therefore, the required discussion can best be handled by highway section, project or system rather than by a finding.

The proposed requirement to permanently retain design computations has been deleted from § 650.117(d).

This rule is effective upon issuance. A 30-day delay in effective date is not provided, because DOT Order 5650.2 and Executive Order 11988 which are being implemented by this regulation are in effect and are applicable to FHWA actions.

Note: The Federal Highway Administration has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to E.O. 12044. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Messrs. Frank L. Johnson or Philip L. Thompson of the program office at the address specified above.

Issued on: November 15, 1979.

L. P. Lamm,

Acting Federal Highway Administrator.

In consideration of the foregoing, the Federal Highway Administration hereby amends Chapter I, Subchapter G, of Title 23, Code of Federal Regulations, by revising Part 650, Subpart A, to read as follows:

PART 650—BRIDGES, STRUCTURES AND HYDRAULICS

Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains

Sec.	
650.101	Purpose.
650.103	Policy.
650.105	Definitions.
650.107	Applicability.
650.109	Public involvement.
650.111	Location hydraulic studies.
650.113	Only practicable alternative finding.
650.115	Design standards.
650.117	Content of design studies.

Authority: 23 U.S.C. 109(a), 315; 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988—Floodplain Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2, April 26, 1979 (44 FR 24678).

Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains

§ 650.101 Purpose.

To prescribe Federal Highway Administration (FHWA) policies and procedures for the location and hydraulic design of highway encroachments on flood plains, including direct Federal highway projects administered by the FHWA.

§ 650.103 Policy.

It is the policy of the FHWA:

- (a) To encourage a broad and unified effort to prevent uneconomic, hazardous or incompatible use and development of the Nation's flood plains,
- (b) To avoid longitudinal encroachments, where practicable,
- (c) To avoid significant encroachments, where practicable,
- (d) To minimize impacts of highway agency actions which adversely affect base flood plains,
- (e) To restore and preserve the natural and beneficial flood-plain values that

are adversely impacted by highway agency actions,

(f) To avoid support of incompatible flood-plain development,

(g) To be consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where appropriate, and

(h) To incorporate "A Unified National Program for Floodplain Management" of the Water Resources Council into FHWA procedures.

§ 650.105 Definitions.

(a) "Action" shall mean any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken with Federal or Federal-aid highway funds or FHWA approval.

(b) "Base flood" shall mean the flood or tide having a 1-percent chance of being exceeded in any given year.

(c) "Base flood plain" shall mean the area subject to flooding by the base flood.

(d) "Design Flood" shall mean the peak discharge, volume if appropriate, stage or wave crest elevation of the flood associated with the probability of exceedance selected for the design of a highway encroachment. By definition, the highway will not be inundated from the stage of the design flood.

(e) "Encroachment" shall mean an action within the limits of the base flood plain.

(f) "Floodproof" shall mean to design and construct individual buildings, facilities, and their sites to protect against structural failure, to keep water out or to reduce the effects of water entry.

(g) "Freeboard" shall mean the vertical clearance of the lowest structural member of the bridge superstructure above the water surface elevation of the overtopping flood.

(h) "Minimize" shall mean to reduce to the smallest practicable amount or degree.

(i) "Natural and beneficial flood-plain values" shall include but are not limited to fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, forestry, natural moderation of floods, water quality maintenance, and groundwater recharge.

(j) "Overtopping flood" shall mean the flood described by the probability of exceedance and water surface elevation at which flow occurs over the highway, over the watershed divide, or through structure(s) provided for emergency relief.

(k) "Practicable" shall mean capable of being done within reasonable natural, social, or economic constraints.

(l) "Preserve" shall mean to avoid modification to the functions of the natural flood-plain environment or to maintain it as closely as practicable in its natural state.

(m) "Regulatory floodway" shall mean the flood-plain area that is reserved in an open manner by Federal, State or local requirements, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so that the cumulative increase in water surface elevation is no more than a designated amount (not to exceed 1 foot as established by the Federal Emergency Management Agency (FEMA) for administering the National Flood Insurance Program).

(n) "Restore" shall mean to reestablish a setting or environment in which the functions of the natural and beneficial flood-plain values adversely impacted by the highway agency action can again operate.

(o) "Risk" shall mean the consequences associated with the probability of flooding attributable to an encroachment. It shall include the potential for property loss and hazard to life during the service life of the highway.

(p) "Risk analysis" shall mean an economic comparison of design alternatives using expected total costs (construction costs plus risk costs) to determine the alternative with the least total expected cost to the public. It shall include probable flood-related costs during the service life of the facility for highway operation, maintenance, and repair, for highway-aggravated flood damage to other property, and for additional or interrupted highway travel.

(q) "Significant encroachment" shall mean a highway encroachment and any direct support of likely base flood-plain development that would involve one or more of the following construction-or flood-related impacts:

(1) A significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route.

(2) A significant risk, or

(3) A significant adverse impact on natural and beneficial flood-plain values.

(r) "Support base flood-plain development" shall mean to encourage, allow, serve, or otherwise facilitate additional base flood-plain development. Direct support results from an encroachment, while indirect support results from an action out of the base flood plain.

§ 650.107 Applicability.

(a) The provisions of this regulation shall apply to all encroachments and to all actions which affect base flood plains, except for repairs made with emergency funds (23 CFR Part 668) during or immediately following a disaster.

(b) The provisions of this regulation shall not apply to or alter approvals or authorizations which were given by FHWA pursuant to regulations or directives in effect before the effective date of this regulation.

§ 650.109 Public involvement.

Procedures which have been established to meet the public involvement requirements of 23 CFR Parts 771 and 795 or 790 shall be used to provide opportunity for early public review and comment on alternatives which contain encroachments.

(a) Public notices issued in accordance with the above procedures shall make reference to significant encroachments which are contained in alternatives under consideration.

(b) Public hearing presentations shall include identification of encroachments.

§ 650.111 Location hydraulic studies.

(a) National Flood Insurance Program (NFIP) maps or information developed by the highway agency, if NFIP maps are not available, shall be used to determine whether a highway location alternative will include an encroachment.

(b) Location studies shall include evaluation and discussion of the practicability of alternatives to any longitudinal encroachments.

(c) Location studies shall include discussion of the following items, commensurate with the significance of the risk or environmental impact, for all alternatives containing encroachments and for those actions which would support base flood-plain development:

(1) The risks associated with implementation of the action,

(2) The impacts on natural and beneficial flood-plain values,

(3) The support of probable incompatible flood-plain development,

(4) The measures to minimize flood-plain impacts associated with the action, and

(5) The measures to restore and preserve the natural and beneficial flood-plain values impacted by the action.

(d) Location studies shall include evaluation and discussion of the practicability of alternatives to any significant encroachments or any support of incompatible flood-plain development.

(e) The studies required by §§ 650.111 (c) and (d) shall be summarized in environmental review documents prepared pursuant to 23 CFR 771.

(f) Local, State, and Federal water resources and flood-plain management agencies should be consulted to determine if the proposed highway action is consistent with existing watershed and flood-plain management programs and to obtain current information on development and proposed actions in the affected watersheds.

650.113 Only practicable alternative finding.

(a) A proposed action which includes a significant encroachment shall not be approved unless the FHWA finds that the proposed significant encroachment is the only practicable alternative. This finding shall be included in the final environmental document (final environmental impact statement or finding of no significant impact) and shall be supported by the following information:

(1) The reasons why the proposed action must be located in the flood plain,

(2) The alternatives considered and why they were not practicable, and

(3) A statement indicating whether the action conforms to applicable State or local flood-plain protection standards.

(b) A copy of the finding shall be made available to appropriate State and areawide clearinghouses following procedures established in accordance with 23 CFR Part 420, Subpart C.

§ 650.115 Design standards.

(a) The design selected for an encroachment shall be supported by analyses of design alternatives with consideration given to capital costs and risks, and to other economic, engineering, social and environmental concerns.

(1) Consideration of capital costs and risks shall include, as appropriate, a risk analysis or assessment which includes:

(i) The overtopping flood or the base flood, whichever is greater, or

(ii) The greatest flood which must flow through the highway drainage structure(s), where overtopping is not practicable. The greatest flood used in the analysis is subject to state-of-the-art capability to estimate the exceedance probability.

(2) The design flood for encroachments by through lanes of Interstate highways shall not be less than the flood with a 2-percent chance of being exceeded in any given year. No minimum design flood is specified for Interstate highway ramps and frontage roads or for other highways.

(3) Freeboard shall be provided, where practicable, to protect bridge structures from debris- and scour-related failure.

(4) The effect of existing flood control channels, levees, and reservoirs shall be considered in estimating the peak discharge and stage for all floods considered in the design.

(5) The design of encroachments shall be consistent with standards established by the FEMA, State, and local governmental agencies for the administration of the National Flood Insurance Program for:

(i) All direct Federal highway actions, unless the standards are demonstrably inappropriate, and

(ii) Federal-aid highway actions where a regulatory floodway has been designated or where studies are underway to establish a regulatory floodway.

(b) Rest area buildings and related water supply and waste treatment facilities shall be located outside the base flood plain, where practicable. Rest area buildings which are located on the base flood plain shall be floodproofed against damage from the base flood.

(c) Where highway fills are to be used as dams to permanently impound water more than 50 acre-feet (6.17×10^4 cubic metres) in volume or 25 feet (7.6 metres) deep, the hydrologic, hydraulic, and structural design of the fill and appurtenant spillways shall have the approval of the State or Federal agency responsible for the safety of dams or like structures within the State, prior to authorization by the Division Administrator to advertise for bids for construction.

§ 650.117 Content of design studies.

(a) The detail of studies shall be commensurate with the risk associated with the encroachment and with other economic, engineering, social or environmental concerns.

(b) Studies by highway agencies shall contain:

(1) The hydrologic and hydraulic data and design computations,

(2) The analysis required by § 650.115(a), and

(3) For proposed direct Federal highway actions, the reasons, when applicable, why FEMA criteria (44 CFR 60.3, formerly 24 CFR 1910.3) are demonstrably inappropriate.

(c) For encroachment locations, project plans shall show:

(1) The magnitude, approximate probability of exceedance and, at appropriate locations, the water surface elevations associated with the overtopping flood or the flood of § 650.115(a)(1)(ii), and

(2) The magnitude and water surface elevation of the base flood, if larger than the overtopping flood.

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Part III

Department of the Interior

Bureau of Indian Affairs

Guidelines for State Courts; Indian Child Custody Proceedings

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Guidelines for State Courts; Indian Child Custody Proceedings

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

There was published in the *Federal Register*, Vol. 44, No. 79/Monday, April 23, 1979 a notice entitled Recommended Guidelines for State Courts—Indian Child Custody Proceedings. This notice pertained directly to implementation of the Indian Child Welfare Act of 1978, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1901 *et seq.* A subsequent *Federal Register* notice which invited public comment concerning the above was published on June 5, 1979. As a result of comments received, the recommended guidelines were revised and are provided below in final form.

Introduction

Although the rulemaking procedures of the Administrative Procedures Act have been followed in developing these guidelines, they are not published as regulations because they are not intended to have binding legislative effect. Many of these guidelines represent the interpretation of the Interior Department of certain provisions of the Act. Other guidelines provide procedures which, if followed, will help assure that rights guaranteed by the Act are protected when state courts decide Indian child custody matters. To the extent that the Department's interpretations of the Act are correct, contrary interpretations by the courts would be violations of the Act. If procedures different from those recommended in these guidelines are adopted by a state, their adequacy to protect rights guaranteed by the Act will have to be judged on their own merits.

Where Congress expressly delegates to the Secretary the primary responsibility for interpreting a statutory term, regulations interpreting that term have legislative effect. Courts are not free to set aside those regulations simply because they would have interpreted that statute in a different manner. Where, however, primary responsibility for interpreting a statutory term rests with the courts, administrative interpretations of statutory terms are given important but not controlling significance. *Batterton v. Francis*, 432 U.S. 416, 424-425 (1977).

In other words, when the Department writes rules needed to carry out

responsibilities Congress has explicitly imposed on the Department, those rules are binding. A violation of those rules is a violation of the law. When, however, the Department writes rules or guidelines advising some other agency how it should carry out responsibilities explicitly assigned to it by Congress, those rules or guidelines are not, by themselves, binding. Courts will take what this Department has to say into account in such instances, but they are free to act contrary to what the Department has said if they are convinced that the Department's guidelines are not required by the statute itself.

Portions of the Indian Child Welfare Act do expressly delegate to the Secretary of the Interior responsibility for interpreting statutory language. For example, under 25 U.S.C. 1918, the Secretary is directed to determine whether a plan for reassumption of jurisdiction is "feasible" as that term is used in the statute. This and other areas where primary responsibility for implementing portions of the Act rest with this Department, are covered in regulations promulgated on July 31, 1979, at 44 FR 45092.

Primary responsibility for interpreting other language used in the Act, however, rests with the courts that decide Indian child custody cases. For example, the legislative history of the Act states explicitly that the use of the term "good cause" was designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child. S. Rep. No. 95-597, 95th Cong., 1st Sess. 17 (1977). The Department's interpretation of statutory language of this type is published in these guidelines.

Some commenters asserted that Congressional delegation to this Department of authority to promulgate regulations with binding legislative effect with respect to all provisions of the Act is found at 25 U.S.C. 1952, which states, "Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter." Promulgation of regulations with legislative effect with respect to most of the responsibilities of state or tribal courts under the Act, however, is not necessary to carry out the Act. State and tribal courts are fully capable of carrying out the responsibilities imposed on them by Congress without being under the direct supervision of this Department.

Nothing in the legislative history indicates that Congress intended this Department to exercise supervisory

control over state or tribal courts or to legislate for them with respect to Indian child custody matters. For Congress to assign to an administrative agency such supervisory control over courts would be an extraordinary step.

Nothing in the language or legislative history of 25 U.S.C. 1952 compels the conclusion that Congress intended to vest this Department with such extraordinary power. Both the language and the legislative history indicate that the purpose of that section was simply to assure that the Department moved promptly to promulgate regulations to carry out the responsibilities Congress had assigned it under the Act. Assignment of supervisory authority over the courts to an administrative agency is a measure so at odds with concepts of both federalism and separation of powers that it should not be imputed to Congress in the absence of an express declaration of Congressional intent to that effect.

Some commenters also recommended that the guidelines be published as regulations and that the decision of whether the law permits such regulations to be binding be left to the court. That approach has not been adopted because the Department has an obligation not to assert authority that it concludes it does not have.

Each section of the revised guidelines is accompanied by commentary explaining why the Department believes states should adopt that section and to provide some guidance where the guidelines themselves may need to be interpreted in the light of specific circumstances.

The original guidelines used the word "should" instead of "shall" in most provisions. The term "should" was used to communicate the fact that the guidelines were the Department's interpretations of the Act and were not intended to have binding legislative effect. Many commenters, however, interpreted the use of "should" as an attempt by this Department to make statutory requirements themselves optional. That was not the intent. If a state adopts those guidelines, they should be stated in mandatory terms. For that reason the word "shall" has replaced "should" in the revised guidelines. The status of these guidelines as interpretative rather than legislative in nature is adequately set out in the introduction.

In some instances a state may wish to establish rules that provide even greater protection for rights guaranteed by the Act than those suggested by these guidelines. These guidelines are not intended to discourage such action. Care should be taken, however, that the

provision of additional protections to some parties to a child custody proceeding does not deprive other parties of rights guaranteed to them by the Act.

In some instances the guidelines do little more than restate the statutory language. This is done in order to make the guidelines more complete so that they can be followed without the need to refer to the statute in every instance. Omission of any statutory language, of course, does not in any way affect the applicability of the statute.

A number of commenters recommended that special definitions of residence and domicile be included in the guidelines. Such definitions were not included because these terms are well defined under existing state law. There is no indication that these state law definitions tend to undermine in any way the purposes of the Act. Recommending special definitions for the purpose of this Act alone would simply provide unnecessary complications in the law.

A number of commenters recommended that the guidelines include recommendations for tribal-state agreements under 25 U.S.C. 1919. A number of other commenters, however, criticized the one provision in the original guidelines addressing that subject as tending to impose on such agreements restrictions that Congress did not intend should be imposed. Because of the wide variation in the situations and attitudes of states and tribes, it is difficult to deal with that issue in the context of guidelines. The Department is currently developing materials to aid states and tribes with such agreements. The Department hopes to have those materials available later this year. For these reasons, the provision in the original guidelines concerning tribal-state agreements has been deleted from the guidelines.

The Department has also received many requests for assistance from tribal courts in carrying out the new responsibilities resulting from the passage of this Act. The Department intends to provide additional guidance and assistance in that area also in the future. Providing guidance to state courts was given a higher priority because the Act imposes many more procedures on state courts than it does on tribal courts.

Many commenters have urged the Department to discuss the effect of the Act on the financial responsibilities of states and tribes to provide services to Indian children. Many such services are funded in large part by the Department of Health, Education, and Welfare. The policies and regulations of that

Department will have a significant impact on the issue of financial responsibility. Officials of Interior and HEW will be discussing this issue with each other. It is anticipated that more detailed guidance on questions of financial responsibility will be provided as a result of those consultations.

One commenter recommended that the Department establish a monitoring procedure to exercise its right under 25 U.S.C. 1915(e) to review state court placement records. HEW currently reviews state placement records on a systematic basis as part of its responsibilities with respect to statutes it administers. Interior Department officials are discussing with HEW officials the establishment of a procedure for collecting data to review compliance with the Indian Child Welfare Act.

Inquiries concerning these recommended guidelines may be directed to the nearest of the following regional and field offices of the Solicitor for the Interior Department:

- Office of the Regional Solicitor, Department of the Interior, 510 L Street, Suite 408, Anchorage, Alaska 99501, (907) 265-5301.
- Office of the Regional Solicitor, Department of the Interior, Richard B. Russell Federal Building, 75 Spring St., SW., Suite 1328, Atlanta, Georgia 30303, (404) 221-4447.
- Office of the Regional Solicitor, Department of the Interior, c/o U.S. Fish & Wildlife Service, Suite 306, 1 Gateway Center, Newton Corner, Massachusetts 02158, (617) 829-9258.
- Office of the Field Solicitor, Department of the Interior, 686 Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612) 725-3540.
- Office of the Regional Solicitor, Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, Colorado 80225, (303) 234-3175.
- Office of the Field Solicitor, Department of the Interior, P.O. Box 549, Aberdeen, South Dakota 57401, (605) 225-7254.
- Office of the Field Solicitor, Department of the Interior, P.O. Box 1538, Billings, Montana 59103, (406) 245-6711.
- Office of the Regional Solicitor, Department of the Interior, Room E-2753, 2800 Cottage Way, Sacramento, California 95825, (916) 484-4331.
- Office of the Field Solicitor, Department of the Interior, Valley Bank Center, Suite 280, 201 North Central Avenue, Phoenix, Arizona 85073, (602) 261-4756.
- Office of the Field Solicitor, Department of the Interior, 3610 Central Avenue, Suite 104, Riverside, California 92506, (714) 787-1560.
- Office of the Field Solicitor, Department of the Interior, Window Rock, Arizona 86515, (602) 871-5151.
- Office of the Regional Solicitor, Department of the Interior, Room 3068, Page Belcher Federal Building, Tulsa, Oklahoma 74103, (918) 581-7501.

Office of the Field Solicitor, Department of the Interior, Room 7102, Federal Building & Courthouse, 500 Gold Avenue, S.W., Albuquerque, New Mexico 87101, (505) 766-2547.

Office of the Field Solicitor, Department of the Interior, P.O. Box 397, W.C.D. Office Building, Route 1, Anadarko, Oklahoma 73005, (405) 247-6673.

Office of the Field Solicitor, Department of the Interior, P.O. Box 1508, Room 319, Federal Building, 5th and Broadway, Muskogee, Oklahoma 74401, (918) 683-3111.

Office of the Field Solicitor, Department of the Interior, c/o Osage Agency, Grandview Avenue, Pawhuska, Oklahoma 74056, (918) 287-2431.

Office of the Regional Solicitor, Department of the Interior, Suite 6201, Federal Building, 125 South State Street, Salt Lake City, Utah 84138, (801) 524-5677.

Office of the Regional Solicitor, Department of the Interior, Lloyd 500 Building, Suite 607, 500 N.E. Multnomah Street, Portland, Oregon 97232, (503) 231-2125.

Guidelines for State Courts

A. Policy

B. Pre-trial requirements

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2. Determination of Indian child's tribe
3. Determination that placement is covered by the Act
4. Determination of jurisdiction
5. Notice requirements
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7. Emergency removal of an Indian child
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C. Requests for transfer to tribal court

1. Petitions under 25 U.S.C. § 1911(b) for transfer of proceeding
2. Criteria and procedures for ruling on 25 U.S.C. § 1911(b) transfer petitions
3. Determination of good cause to the contrary
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D. Adjudication of involuntary placements, adoptions or terminations of parental rights

1. Access to reports
2. Efforts to alleviate need to remove child from parents or Indian custodians
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E. Voluntary proceedings

1. Execution of consent
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2. Adult adoptee rights
3. Notice of change in child's status
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A. Policy

(1) Congress through the Indian Child Welfare Act has expressed its clear preference for keeping Indian children with their families, deferring to tribal judgment on matters concerning the custody of tribal children, and placing Indian children who must be removed from their homes within their own

families or Indian tribes. Proceedings in state courts involving the custody of Indian children shall follow strict procedures and meet stringent requirements to justify any result in an individual case contrary to these preferences. The Indian Child Welfare Act, the federal regulations implementing the Act, the recommended guidelines and any state statutes, regulations or rules promulgated to implement the Act shall be liberally construed in favor of a result that is consistent with these preferences. Any ambiguities in any of such statutes, regulations, rules or guidelines shall be resolved in favor of the result that is most consistent with these preferences.

(2) In any child custody proceeding where applicable state or other federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Indian Child Welfare Act, the state court shall apply the state or other federal law, provided that application of that law does not infringe any right accorded by the Indian Child Welfare Act to an Indian tribe or child.

A. Commentary

The purpose of this section is to apply to the Indian Child Welfare Act the canon of construction that remedial statutes are to be liberally construed to achieve their purpose. The three major purposes are derived from a reading to the Act itself. In order to fully implement the Congressional intent the rule shall be applied to all implementing rules and state legislation as well.

Subsection A.(2) applies to canon of statutory construction that specific language shall be given precedence over general language. Congress has given certain specific rights to tribes and Indian children. For example, the tribe has a right to intervene in involuntary custody proceedings. The child has a right to learn of tribal affiliation upon becoming 18 years old. Congress did not intend 25 U.S.C. 1921 to have the effect of eliminating those rights where a court concludes they are in derogation of a parental right provided under a state statute. Congress intended for this section to apply primarily in those instances where a state provides greater protection for a right accorded to parents under the Act. Examples of this include State laws which: impose a higher burden of proof than the Act for removing a child from a home, give the parents more time to prepare after receiving notice, require more effective notice, impose stricter emergency removal procedure requirements on those removing a child, give parents

greater access to documents, or contain additional safeguard to assure the voluntariness of consent.

B. Pretrial requirements

B.1. Determination That Child Is an Indian

(a) When a state court has reason to believe a child involved in a child custody proceeding is an Indian, the court shall seek verification of the child's status from either the Bureau of Indian Affairs or the child's tribe. In a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the court shall make its inquiry in a manner that will not cause the parent's identity to become publicly known.

(b)(i) The determination by a tribe that a child is or is not a member of that tribe, is or is not eligible for membership in that tribe, or that the biological parent is or is not a member of that tribe is conclusive.

(ii) Absent a contrary determination by the tribe that is alleged to be the Indian child's tribe, a determination by the Bureau of Indian Affairs that a child is or is not an Indian child is conclusive.

(c) Circumstances under which a state court has reason to believe a child involved in a child custody proceeding is an Indian include but are not limited to the following:

(i) Any party to the case, Indian tribe, Indian organization or public or private agency informs the court that the child is an Indian child.

(ii) Any public or state-licensed agency involved in child protection services or family support has discovered information which suggests that the child is an Indian child.

(iii) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.

(iv) The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.

(v) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

B.1. Commentary

This guideline makes clear that the best source of information on whether a particular child is Indian is the tribe itself. It is the tribe's prerogative to determine membership criteria and to decide who meets those criteria. *Cohen, Handbook of Federal Indian Law* 133 (1942). Because of the Bureau of Indian Affairs' long experience in determining who is an Indian for a variety of purposes, its determinations are also

entitled to great deference. See, e.g., *United States v. Sandoval*, 231, U.S. 28, 27 (1913).

Although tribal verification is preferred, a court may want to seek verification from the BIA in those voluntary placement cases where the parent has requested anonymity and the tribe does not have a system for keeping child custody matters confidential.

Under the Act confidentiality is given a much higher priority in voluntary proceedings than in involuntary ones. The Act mandates a tribal right of notice and intervention in involuntary proceedings but not in voluntary ones. Cf. 25 U.S.C. § 1912 with 25 U.S.C. § 1913. For voluntary placements, however, the Act specifically directs state courts to respect parental requests for confidentiality. 25 U.S.C. § 1915(c). The most common voluntary placement involves a newborn infant.

Confidentiality has traditionally been a high priority in such placements. The Act reflects that traditional approach by requiring deference to requests for anonymity in voluntary placements but not in involuntary ones. This guideline specifically provides that anonymity not be compromised in seeking verification of Indian status. If anonymity were compromised at that point, the statutory requirement that requests for anonymity be respected in applying the preferences would be meaningless.

Enrollment is not always required in order to be a member of a tribe. Some tribes do not have written rolls. Others have rolls that list only persons that were members as of a certain date. Enrollment is the common evidentiary means of establishing Indian status, but it is not the only means nor is it necessarily determinative. *United States v. Broncheau*, 597 F.2d 1260, 1263 (9th Cir. 1979).

The guidelines also list several circumstances which shall trigger an inquiry by the court and petitioners to determine whether a child is an Indian for purposes of this Act. This listing is not intended to be complete, but it does list the most common circumstances giving rise to a reasonable belief that a child may be an Indian.

B.2. Determination of Indian Child's Tribe

(a) Where an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe but is not a member of any of them, the court is called upon to determine with which tribe the child has more significant contacts.

(b) The court shall send the notice specified in recommended guideline B.4. to each such tribe. The notice shall

specify the other tribe or tribes that are being considered as the child's tribe and invite each tribe's views on which tribe shall be so designated.

(c) In determining which tribe shall be designated the Indian child's tribe, the court shall consider, among other things, the following factors:

(i) length of residence on or near the reservation of each tribe and frequency of contacts with each tribe;

(ii) child's participation in activities of each tribe;

(iii) child's fluency in the language of each tribe;

(iv) whether there has been a previous adjudication with respect to the child by a court of one of the tribes;

(v) residence on or near one of the tribes' reservation by the child's relatives;

(vi) tribal membership of custodial parent or Indian custodian;

(vii) interest asserted by each tribe in response to the notice specified in subsection B.2.(b) of these guidelines; and

(viii) the child's self identification.

(d) The court's determination together with the reasons for it shall be set out in a written document and made a part of the record of the proceeding. A copy of that document shall be sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

(e) If the child is a member of only one tribe, that tribe shall be designated the Indian child's tribe even though the child is eligible for membership in another tribe. If a child becomes a member of one tribe during or after the proceeding, that tribe shall be designated as the Indian child's tribe with respect to all subsequent actions related to the proceeding. If the child becomes a member of a tribe other than the one designated by the court as the Indian child's tribe, actions taken based on the court's determination prior to the child's becoming a tribal member continue to be valid.

B.2. Commentary

This guideline requires the court to notify all tribes that are potentially the Indian child's tribe so that each tribe may assert its claim to that status and the court may have the benefit of the views of each tribe. Notification of all the tribes is also necessary so the court can consider the comparative interest of each tribe in the child's welfare in making its decision. That factor has long been regarded an important consideration in making child custody decisions.

The significant factors listed in this section are based on recommendations

by tribal officials involved in child welfare matters. The Act itself and the legislative history make it clear that tribal rights are to be based on the existence of a political relationship between the family and the tribe. For that reason, the guidelines make actual tribal membership of the child conclusive on this issue.

The guidelines do provide, however, that previous decisions of a court made on its own determination of the Indian child's tribe are not invalidated simply because the child becomes a member of a different tribe. This provision is included because of the importance of stability and continuity to a child who has been placed outside the home by a court. If a child becomes a member before a placement is made or before a change of placement becomes necessary for other reasons, however, then that membership decision can be taken into account without harm to the child's need for stable relationships.

We have received several recommendations that "Indian child's tribe" status be accorded to all tribes in which a child is eligible for membership. The fact that Congress, in the definition of "Indian child's tribe," provided a criterion for determining which is the Indian child's tribe, is a clear indication of legislative intent that there be only one such tribe for each child. For purposes of transfer of jurisdiction, there obviously can be only one tribe to adjudicate the case. To give more than one tribe "Indian child's tribe" status for purposes of the placement preferences would dilute the preference accorded by Congress to the tribe with which the child has the more significant contacts.

A right of intervention could be accorded a tribe with which a child has less significant contacts without undermining the right of the other tribe. A state court can, if it wishes and state law permits, permit intervention by more than one tribe. It could also give a second tribe preference in placement after attempts to place a child with a member of the first tribe or in a home or institution designated by the first tribe had proved unsuccessful. So long as the special rights of the Indian child's tribe are respected, giving special status to the tribe with the less significant contacts is not prohibited by the Act and may, in many instances, be a good way to comply with the spirit of the Act.

Determinations of the Indian child's tribe for purposes of this Act shall not serve as any precedent for other situations. The standards in this statute and these guidelines are designed with child custody matters in mind. A different determination may be entirely appropriate in other legal contexts.

B.3. Determination That Placement Is Covered by the Act

(a) Although most juvenile delinquency proceedings are not covered by the Act, the Act does apply to status offenses, such as truancy and incorrigibility, which can only be committed by children, and to any juvenile delinquency proceeding that results in the termination of a parental relationship.

(b) Child custody disputes arising in the context of divorce or separation proceedings or similar domestic relations proceedings are not covered by the Act so long as custody is awarded to one of the parents.

(c) Voluntary placements which do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child at any time are not covered by the Act. Where such placements are made pursuant to a written agreement, that agreement shall state explicitly the right of the parent or custodian to regain custody of the child upon demand.

B.3. Commentary

The purpose of this section is to deal with some of the questions the Department has been receiving concerning the coverage of the Act.

The entire legislative history makes it clear that the Act is directed primarily at attempts to place someone other than the parent or Indian custodian in charge of raising an Indian child—whether on a permanent or temporary basis. Although there is some overlap, juvenile delinquency proceedings are primarily designed for other purposes. Where the child is taken out of the home for committing a crime it is usually to protect society from further offenses by the child and to punish the child in order to persuade that child and others not to commit other offenses.

Placements based on status offenses (actions that are not a crime when committed by an adult), however, are usually premised on the conclusion that the present custodian of the child is not providing adequate care or supervision. To the extent that a status offense poses any immediate danger to society, it is usually also punishable as an offense which would be a crime if committed by an adult. For that reason status offenses are treated the same as dependency proceedings and are covered by the Act and these guidelines, while other juvenile delinquency placements are excluded.

While the Act excludes placements based on an act which would be a crime if committed by an adult, it does cover terminations of parental rights even

where they are based on an act which would be a crime if committed by an adult. Such terminations are not intended as punishment and do not prevent the child from committing further offenses. They are based on the conclusion that someone other than the present custodian of the child should be raising the child. Congress has concluded that courts shall make such judgments only on the basis of evidence that serious physical or emotional harm to the child is likely to result unless the child is removed.

The Act excludes from coverage an award of custody to one of the parents "in a divorce proceeding." If construed narrowly, this provision would leave custody awards resulting from proceedings between husband and wife for separate maintenance, but not for dissolution of the marriage bond within the coverage of the Act. Such a narrow interpretation would not be in accord with the intent of Congress. The legislative history indicates that the exemption for divorce proceedings, in part, was included in response to the views of this Department that the protections provided by this Act are not needed in proceedings between parents. In terms of the purposes of this Act, there is no reason to treat separate maintenance or similar domestic relations proceedings differently from divorce proceedings. For that reason the statutory term "divorce proceeding" is construed to include other domestic relations proceedings between spouses.

The Act also excludes from its coverage any placements that do not deprive the parents or Indian custodians of the right to regain custody of the child upon demand. Without this exception a court appearance would be required every time an Indian child left home to go to school. Court appearances would also be required for many informal caretaking arrangements that Indian parents and custodians sometimes make for their children. This statutory exemption is restated here in the hope that it will reduce the instances in which Indian parents are unnecessarily inconvenienced by being required to give consent in court to such informal arrangements.

Some private groups and some states enter into formal written agreements with parents for temporary custody (See e.g. Alaska Statutes § 47.10.230). The guidelines recommend that the parties to such agreements explicitly provide for return of the child upon demand if they do not wish the Act to apply to such placements. Inclusion of such a provision is advisable because courts frequently assume that when an

agreement is reduced to writing, the parties have only those rights specifically written into the agreement.

B.4. Determination of Jurisdiction

(a) In any Indian child custody proceeding in state court, the court shall determine the residence and domicile of the child. Except as provided in Section B.7. of these guidelines, if either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the proceedings in state court shall be dismissed.

(b) If the Indian child has previously resided or been domiciled on the reservation, the state court shall contact the tribal court to determine whether the child is a ward of the tribal court. Except as provided in Section B.7. of these guidelines, if the child is a ward of a tribal court, the state court proceedings shall be dismissed.

B.4. Commentary

The purpose of this section is to remind the state court of the need to determine whether it has jurisdiction under the Act. The action is dismissed as soon as it is determined that the court lacks jurisdiction except in emergency situations. The procedures for emergency situations are set out in Section B.7.

B.5. Notice Requirements

(a) In any involuntary child custody proceeding, the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.

(b) In any involuntary Indian child custody proceeding, notice of the proceeding shall be sent to the parents and Indian custodians, if any, and to any tribes that may be the Indian child's tribe by registered mail with return receipt requested. The notice shall be written in clear and understandable language and include the following information:

- (i) The name of the Indian child.
- (ii) His or her tribal affiliation.
- (iii) A copy of the petition, complaint or other document by which the proceeding was initiated.
- (iv) The name of the petitioner and the name and address of the petitioner's attorney.
- (v) A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceeding.
- (vi) A statement that if the parents or Indian custodians are unable to afford

counsel, counsel will be appointed to represent them.

(vii) A statement of the right of the natural parents or Indian custodians and the Indian child's tribe to have, on request, twenty days (or such additional time as may be permitted under state law) to prepare for the proceedings.

(viii) The location, mailing address and telephone number of the court.

(ix) A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court.

(x) The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.

(xi) A statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act.

(c) The tribe, parents or Indian custodians receiving notice from the petitioner of the pendency of a child custody proceeding has the right, upon request, to be granted twenty days (or such additional time as may be permitted under state law) from the date upon which the notice was received to prepare for the proceeding.

(d) The original or a copy of each notice sent pursuant to this section shall be filed with the court together with any return receipts or other proof of service.

9e) Notice may be personally served on any person entitled to receive notice in lieu of mail service.

(f) If a parent or Indian custodian appears in court without an attorney, the court shall inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court or to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian is not already a party) to intervene in the proceedings.

(g) If the court or a petitioning party has reason to believe that a parent or Indian custodian is not likely to understand the contents of the notice because of lack of adequate comprehension of written English, a copy of the notice shall be sent to the Bureau of Indian Affairs agency nearest to the residence of that person requesting that Bureau of Indian Affairs personnel arrange to have the notice explained to that person in the language that he or she best understands.

B.5. Commentary

This section recommends that state courts routinely inquire of participants in child custody proceedings whether the child is an Indian. If anyone asserts that the child is an Indian or that there is reason to believe the child may be an Indian, then the court shall contact the tribe or the Bureau of Indian Affairs for verification. Refer to sections B.1 and B.2 of these guidelines.

This section specifies the information to be contained in the notice. This information is necessary so the persons who receive notice will be able to exercise their rights in a timely manner. Subparagraph (xi) provides that tribes shall be requested to assist in maintaining the confidentiality of the proceeding. Confidentiality may be difficult to maintain—especially where small tribes are involved and the likelihood that the family involved is well known by tribal officials is great. Although Congress was concerned with confidentiality, it concluded that the interest of tribes in the welfare of their children justified taking some risks with confidentiality—especially in involuntary proceedings. It is reasonable, however, to ask tribal officials to maintain as much confidentiality as possible consistent with the exercise of tribal rights under the Act.

The time limits are minimum ones required by the Act. In many instances, more time may be available under state court procedures or because of the circumstances of the particular case.

In such instances, the notice shall state that additional time is available.

The Act requires notice to the parent or Indian custodian. At a minimum, parents must be notified if termination of parental rights is a potential outcome since it is their relationship to the child that is at stake. Similarly, the Indian custodians must be notified of any action that could lead to the custodians' losing custody of the child. Even where only custody is an issue, noncustodial parents clearly have a legitimate interest in the matter. Although notice to both parents and Indian custodians may not be required in all instances by the Act or the Fourteenth Amendment to the U.S. Constitution, providing notice to both is in keeping with the spirit of the Act. For that reason, these guidelines recommend notice be sent to both.

Subsection (d) requires filing the notice with the court so there will be a complete record of efforts to comply with the Act.

Subsection (e) authorizes personal services since it is superior to mail services and provides greater protection

or rights as authorized by 25 U.S.C. 1921. Since serving the notice does not involve any assertion of jurisdiction over the person served, personal notice may be served without regard to state or reservation boundaries.

Subsections (f) and (g) provide procedures to increase the likelihood that rights are understood by parents and Indian custodians.

B.6. Time Limits and Extensions

(a) A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional twenty days from the date upon which notice was received to prepare for participation in the proceeding.

(b) The proceeding may not begin until all of the following dates have passed:

(i) ten days after the parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice;

(ii) ten days after the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the petitioner) has received notice;

(iii) thirty days after the parent or Indian custodian has received notice if the parent or Indian custodian has requested an additional twenty days to prepare for the proceeding; and

(iv) Thirty days after the Indian child's tribe has received notice if the Indian child's tribe has requested an additional twenty days to prepare for the proceeding.

(c) The time limits listed in this section are the minimum time periods required by the Act. The court may grant more more time to prepare where state law permits.

B.6. Commentary

This section attempts to clarify the waiting periods required by the Act after notice has been received of an involuntary Indian child custody proceeding. Two independent rights are involved—the right of the parents or Indian custodians and the right of the Indian child's tribe. The proceeding may not begin until the waiting periods to which both are entitled have passed.

This section also makes clear that additional extensions of time may be granted beyond the minimum required by the Act.

B.7. Emergency Removal of an Indian Child

(a) Whenever an Indian child is removed from the physical custody of the child's parents or Indian custodians pursuant to the emergency removal or

custody provisions of state law, the agency responsible for the removal action shall immediately cause an inquiry to be made as to the residence and domicile of the child.

(b) When a court order authorizing continued emergency physical custody is sought, the petition for that order shall be accompanied by an affidavit containing the following information:

(i) The name, age and last known address of the Indian child.

(ii) The name and address of the child's parents and Indian custodians, if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included.

(iii) Facts necessary to determine the residence and the domicile of the Indian child and whether either the residence or domicile is on an Indian reservation. If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation shall be stated.

(iv) The tribal affiliation of the child and of the parents and/or Indian custodians.

(v) A specific and detailed account of the circumstances that lead the agency responsible for the emergency removal of the child to take that action.

(vi) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction.

(vii) A statement of the specific actions that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody.

(c) If the Indian child is not restored to the parents or Indian custodians or jurisdiction is not transferred to the tribe, the agency responsible for the child's removal must promptly commence a state court proceeding for foster care placement. If the child resides or is domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, such placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal no longer exists or as soon as the tribe exercises jurisdiction over the case—whichever is earlier.

(d) Absent extraordinary circumstances, temporary emergency custody shall not be continued for more than 90 days without a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness,

that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

B.7. Commentary

Since jurisdiction under the Act is based on domicile and residence rather than simple physical presence, there may be instances in which action must be taken with respect to a child who is physically located off a reservation but is subject to exclusive tribal jurisdiction. In such instances the tribe will usually not be able to take swift action to exercise its jurisdiction. For that reason Congress authorized states to take temporary emergency action.

Since emergency action must be taken without the careful advance deliberation normally required, procedures must be established to assure that the emergency actions are quickly subjected to review. This section provides procedures for prompt review of such emergency actions. It presumes the state already has such review procedures and only prescribes additional procedures that shall be followed in cases involving Indian children.

The legislative history clearly states that placements under such emergency procedures are to be as short as possible. If the emergency ends, the placement shall end. State action shall also end as soon as the tribe is ready to take over the case.

Subsection (d) refers primarily to the period between when the petition is filed and when the trial court renders its decision. The Act requires that, except for emergencies, Indian children are not to be removed from their parents unless a court finds clear and convincing evidence that the child would be in serious danger unless removed from the home. Unless there is some kind of time limit on the length of an "emergency removal" (that is, any removal not made pursuant to a finding by the court that there is clear and convincing evidence that continued parental custody would make serious physical or emotional harm likely), the safeguards of the Act could be evaded by use of long-term emergency removals.

Subsection (d) recommends what is, in effect, a speedy trial requirement. The court shall be required to comply with the requirements of the Act and reach a decision within 90 days unless there are "extraordinary circumstances" that make additional delay unavoidable.

B.8. Improper Removal From Custody

(a) If, in the course of any Indian child custody proceeding, the court has reason to believe that the child who is the subject of the proceeding may have

been improperly removed from the custody of his or her parent or Indian custodian or that the child has been improperly retained after a visit or other temporary relinquishment of custody, and that the petitioner is responsible for such removal or retention, the court shall immediately stay the proceedings until a determination can be made on the question of improper removal or retention.

(b) If the court finds that the petitioner is responsible for an improper removal or retention, the child shall be immediately returned to his or her parents or Indian custodian.

B.8. Commentary

This section is designed to implement 25 U.S.C. § 1920. Since a finding of improper removal goes to the jurisdiction of the court to hear the case at all, this section provides that the court will decide the issue as soon as it arises before proceeding further on the merits.

C. Requests for Transfer to Tribal Court

C.1. Petitions under 25 U.S.C. § 1911(b) for transfer of proceeding

Either parent, the Indian custodian or the Indian child's tribe may, orally or in writing, request the court to transfer the Indian child custody proceeding to the tribal court of the child's tribe. The request shall be made promptly after receiving notice of the proceeding. If the request is made orally it shall be reduced to writing by the court and made a part of the record.

C.1. Commentary

Reference is made to 25 U.S.C. 1911(b) in the title of this section in order to clarify that this section deals only with transfers where the child is not domiciled or residing on an Indian reservation.

So that transfers can occur as quickly and simply as possible, requests can be made orally.

This section specifies that requests are to be made promptly after receiving notice of the proceeding. This is a modification of the timeliness requirement that appears in the earlier version of the guidelines. Although the statute permits proceedings to be commenced even before actual notice is received by parties entitled to notice, those parties do not lose their right to request a transfer simply because neither the petitioner nor the Secretary was able to locate them earlier.

Permitting late transfer requests by persons and tribes who were notified late may cause some disruption. It will also, however, provide an incentive to

the petitioners to make a diligent effort to give notice promptly in order to avoid such disruptions.

The Department received a number of comments objecting to any timeliness requirement at all. Commenters pointed out that the statute does not explicitly require transfer requests to be timely. Some commenters argued that imposing such a requirement violated tribal and parental rights to intervene at any point in the proceedings under 25 U.S.C. § 1911(c) of the Act.

While the Act permits intervention at any point in the proceeding, it does not explicitly authorize transfer requests at any time. Late interventions do not have nearly the disruptive effect on the proceeding that last minute transfers do. A case that is almost completed does not need to be retried when intervention is permitted. The problems resulting from late intervention are primarily those of the intervenor, who has lost the opportunity to influence the portion of the proceedings that was completed prior to intervention.

Although the Act does not explicitly require transfer petitions to be timely, it does authorize the court to refuse to transfer a case for good cause. When a party who could have petitioned earlier waits until the case is almost complete to ask that it be transferred to another court and retried, good cause exists to deny the request.

Timeliness is a proven weapon of the courts against disruption caused by negligence or obstructionist tactics on the part of counsel. If a transfer petition must be honored at any point before judgment, a party could wait to see how the trial is going in state court and then obtain another trial if it appears the other side will win. Delaying a transfer request could be used as a tactic to wear down the other side by requiring the case to be tried twice. The Act was not intended to authorize such tactics and the "good cause" provision is ample authority for the court to prevent them.

C.2. Criteria and Procedures for Ruling on 25 U.S.C. § 1911(b) Transfer Petitions

(a) Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the court must transfer unless either parent objects to such transfer, the tribal court declines jurisdiction, or the court determines that good cause to the contrary exists for denying the transfer.

(b) If the court believes or any party asserts that good cause to the contrary exists, the reasons for such belief or assertion shall be stated in writing and made available to the parties who are petitioning for transfer. The petitioners shall have the opportunity to provide the

court with their views on whether or not good cause to deny transfer exists. C.2. Commentary

Subsection (a) simply states the rule provided in 25 U.S.C. § 1911(b).

Since the Act gives the parents and the tribal court of the Indian child's tribe an absolute veto over transfers, there is no need for any adversary proceedings if the parents or the tribal court opposes transfer. Where it is proposed to deny transfer on the grounds of "good cause," however, all parties need an opportunity to present their views to the court.

C.3. Determination of Good Cause to the Contrary

(a) Good cause not to transfer the proceeding exists if the Indian child's tribe does not have a tribal court as defined by the Act to which the case can be transferred.

(b) Good cause not to transfer the proceeding may exist if any of the following circumstances exists:

(i) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing.

(ii) The Indian child is over twelve years of age and objects to the transfer.

(iii) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.

(iv) The parents of a child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

(c) Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists.

(d) The burden of establishing good cause to the contrary shall be on the party opposing the transfer.

C.3. Commentary

All five criteria that were listed in the earlier version of the guidelines were highly controversial. Comments on the first two criteria were almost unanimously negative. The first criterion was whether the parents were still living. The second was whether an Indian custodian or guardian for the child had been appointed. These criteria were criticized as irrelevant and arbitrary. It was argued that children who are orphans or have no appointed Indian custodian or guardian are no more nor less in need of the Act's protections than other children. It was also pointed out that these criteria are

contrary to the decision in *Wisconsin Potawatomes of the Hannahville Indian Community v. Houston*, 397 F. Supp. 719 (W.D. Mich 1973), which was explicitly endorsed by the committee that drafted that Act. The court in that case found that tribal jurisdiction existed even through the children involved were orphans for whom no guardian had been appointed.

Although there was some support for the third and fourth criteria, the preponderance of the comment concerning them was critical. The third criteria was whether the child had little or no contact with his or her Indian tribe for a significant period of time. The fourth was whether the child had ever resided on the reservation for a significant period of time. These criteria were criticized, in part, because they would virtually exclude from transfers infants who were born off the reservation. Many argued that the tribe has a legitimate interest in the welfare of members who have not had significant previous contact with the tribe or the reservation. Some also argued that these criteria invited the state courts to be making the kind of cultural decisions that the Act contemplated should be made by tribes. Some argued that the use of vague words in these criteria accorded state courts too much discretion.

The fifth criteria was whether a child over the age of twelve objected to the transfer. Comment on this criteria was much more evenly divided and many of the critics were ambivalent. They worried that young teenagers could be too easily influenced by the judge or by social workers. They also argued that fear of the unknown would cause many teenagers to make an ill-considered decision against transfer.

The first four criteria in the earlier version were all directed toward the question of whether the child's connections with the reservation were so tenuous that transfer back to the tribe is not advised. The circumstances under which it may be proper for the state court to take such considerations into account are set out in the revised subsection (iv).

It is recommended that in most cases state court judges not be called upon to determine whether or not a child's contacts with a reservation are so limited that a case should not be transferred. This may be a valid consideration since the shock of changing cultures may, in some cases, be harmful to the child. This determination, however, can be made by the parent, who has a veto over transfer to tribal court.

This reasoning does not apply, however, where there is no parent available to make that decision. The guidelines recommend that state courts be authorized to make such determinations only in those cases where there is no parent available to make it.

State court authority to make such decisions is limited to those cases where the child is over five years of age. Most children younger than five years can be expected to adjust more readily to a change in cultural environment.

The fifth criterion has been retained. It is true that teenagers may make some unwise decisions, but it is also true that their judgment has developed to the extent that their views ought to be taken into account in making decisions about their lives.

The existence of a tribal court is made an absolute requirement for transfer of a case. Clearly, the absence of a tribal court is good cause not to ask the tribe to try the case.

Consideration of whether or not the case can be properly tried in tribal court without hardship to the parties or witnesses was included on the strength of the section-by-section analysis in the House Report on the Act, which stated with respect to the § 1911(b), "The subsection is intended to permit a State court to apply to apply a modified doctrine of *forum non conveniens*, in appropriate cases, to insure that the rights of the child as an Indian, the Indian parents or custodian, and the tribe are fully protected." Where a child is in fact living in a dangerous situation, he or she should not be forced to remain there simply because the witnesses cannot afford to travel long distances to court.

Application of this criterion will tend to limit transfers to cases involving Indian children who do not live very far from the reservation. This problem may be alleviated in some instances by having the court come to the witnesses. The Department is aware of one case under that Act where transfer was conditioned on having the tribal court meet in the city where the family lived. Some cities have substantial populations of members of tribes from distant reservations. In such situations some tribes may wish to appoint members who live in those cities as tribal judges.

The timeliness of the petition for transfer, discussed at length in the commentary to section C.1, is listed as a factor to be considered. Inclusion of this criterion is designed to encourage the prompt exercise of the right to petition for transfer in order to avoid unnecessary delays. Long periods of uncertainty concerning the future are

generally regarded as harmful to the well-being of children. For that reason, it is especially important to avoid unnecessary delays in child custody proceedings.

Almost all commenters favored retention of the paragraph stating that reservation socio-economic conditions and the perceived adequacy of tribal institutions are not to be taken into account in making good cause determinations. Some commenters did suggest, however, that a case not be transferred if it is clear that a particular disposition of the case that could only be made by the state court held especially great promise of benefiting the child.

Such considerations are important but they have not been listed because the Department believes such judgments are best made by tribal courts. Parties who believe that state court adjudication would be better for such reasons can present their reasons to the tribal court and urge it to decline jurisdiction. The Department is aware of one case under the Act where this approach is being used and believes it is more in keeping with the confidence Congress has expressed in tribal courts.

Since Congress has established a policy of preferring tribal control over custody decisions affecting tribal members, the burden of proving that an exception to that policy ought to be made in a particular case rests on the party urging that an exception be made. This rule is reflected in subsection (d).

C.4. Tribal Court Declination of Transfer

(a) A tribal court to which transfer is requested may decline to accept such transfer.

(b) Upon receipt of a transfer petition the state court shall notify the tribal court in writing of the proposed transfer. The notice shall state how long the tribal court has to make its decision. The tribal court shall have at least twenty days from the receipt of notice of a proposed transfer to decide whether to decline the transfer. The tribal court may inform the state court of its decision to decline either orally or in writing.

(c) Parties shall file with the tribal court any arguments they wish to make either for or against tribal declination of transfer. Such arguments shall be made orally in open court or in written pleadings that are served on all other parties.

(d) If the case is transferred the state court shall provide the tribal court with all available information on the case.

C.4. Commentary

The previous version of this section provided that the state court should presume the tribal court has declined to accept jurisdiction unless it hears otherwise. The comments on this issue were divided. This section has been revised to require the tribal court to decline the transfer affirmatively if it does not wish to take the case. This approach is in keeping with the apparent intent of Congress. The language in the Act providing that transfers are "subject to declination by the tribal court" indicates that affirmative action by the tribal court is required to decline a transfer.

The recommended time limit for a decision has been extended from ten to twenty days. The additional time is needed for the court to become apprised of factors it may want to consider in determining whether or not to decline the transfer.

A new paragraph has been added recommending that the parties assist the tribal court in making its decision on declination by giving the tribal court their views on the matter.

Transfers ought to be arranged as simply as possible consistent with due process. Transfer procedures are a good subject for tribal-state agreements under 25 U.S.C. § 1919.

D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

D.1. Access to Reports

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child has the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based. No decision of the court shall be based on any report or other document not filed with the court.

D.1. Commentary

The first sentence merely restates the statutory language verbatim. The second sentence makes explicit the implicit assumption of Congress—that the court will limit its considerations to those documents and reports that have been filed with the court.

D.2. Efforts To Alleviate Need To Remove Child From Parents or Indian Custodians

Any party petitioning a state court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to the commencement of the proceeding active efforts have been made to alleviate the

need to remove the Indian child from his or her parents or Indian custodians. These efforts shall take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. They shall also involve and use the available resources of the extended family, the tribe, Indian social service agencies and individual Indian care givers.

D.2. Commentary

This section elaborates on the meaning of "breakup of the Indian family" as used in the Act. "Family breakup" is sometimes used as a synonym for divorce. In the context of this statute, however, it is clear that Congress meant a situation in which the family is unable or unwilling to raise the child in a manner that is not likely to endanger the child's emotional or physical health.

This section also recommends that the petitioner take into account the culture of the Indian child's tribe and use the resources of the child's extended family and tribe in attempting to help the family function successfully as a home for the child. The term "individual Indian care givers" refers to medicine men and other individual tribal members who may have developed special skills that can be used to help the child's family succeed.

One commenter recommended that detailed procedures and criteria be established in order to determine whether family support efforts had been adequate. Establishing such procedures and requirements would involve the court in second-guessing the professional judgment of social service agencies. The Act does not contemplate such a role for the courts and they generally lack the expertise to make such judgments.

D.3. Standards of Evidence

(a) The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one of more qualified expert witnesses, demonstrating that the child's continued custody with the child's parents of Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The court may not order a termination of parental rights unless the court's order is supported by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse, or non-conforming social behavior does not constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child. To be clear and convincing, the evidence must show the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. The evidence must show the causal relationship between the conditions that exist and the damage that is likely to result.

D.3. Commentary

The first two paragraphs are essentially restatement of the statutory language. By imposing these standards, Congress has changed the rules of law of many states with respect to the placement of Indian children. A child may not be removed simply because there is someone else willing to raise the child who is likely to do a better job or that it would be "in the best interests of the child" for him or her to live with someone else. Neither can a placement or termination of parental rights be ordered simply based on a determination that the parents or custodians are "unfit parents." It must be shown that it is shown that it is dangerous for the child to remain with his or her present custodians. Evidence of that must be "clear and convincing" for placements and "beyond a reasonable doubt" for terminations.

The legislative history of the Act makes it pervasively clear that Congress attributes many unwarranted removals of Indian children to cultural bias on the part of the courts and social workers making the decisions. In many cases children were removed merely because the family did not conform to the decision-maker's stereotype of what a proper family should be—without any testing of the implicit assumption that only a family that conformed to that stereotype could successfully raise children. Subsection (c) makes it clear that mere non-conformance with such stereotypes or the existence of other behavior or conditions that are considered bad does not justify a placement or termination under the standards imposed by Congress. The focus must be on whether the particular conditions are likely to cause serious damage.

D.4. Qualified Expert Witnesses

(a) Removal of an Indian child from his or her family must be based on

competent testimony from one or more experts qualified to speak specifically to the issue of whether continued custody by the parents or Indian custodians is likely to result in serious physical or emotional damage to the child.

(b) Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

(i) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

(ii) A lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(iii) A professional person having substantial education and experience in the area of his or her specialty.

(c) The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

D.4 Commentary

The first subsection is intended to point out that the issue on which qualified expert testimony is required is the question of whether or not serious damage to the child is likely to occur if the child is not removed. Basically two questions are involved. First, is it likely that the conduct of the parents will result in serious physical or emotional harm to the child? Second, if such conduct will likely cause such harm, can the parents be persuaded to modify their conduct?

The party presenting an expert witness must demonstrate that the witness is qualified by reason of educational background and prior experience to make judgments on those questions that are substantially more reliable than judgments that would be made by nonexperts.

The second subsection makes clear that knowledge of tribal culture and childrearing practices will frequently be very valuable to the court. Determining the likelihood of future harm frequently involves predicting future behavior—which is influenced to a large degree by culture. Specific behavior patterns will often need to be placed in the context of the total culture to determine whether they are likely to cause serious emotional harm.

Indian tribes and Bureau of Indian Affairs personnel frequently know persons who are knowledgeable

concerning the customs and cultures of the tribes they serve. Their assistance is available in helping to locate such witnesses.

E. Voluntary Proceedings

E.1. Execution of Consent

To be valid, consent to a voluntary termination of parental rights or adoption must be executed in writing and recorded before a judge or magistrate of a court of competent jurisdiction. A certificate of the court must accompany any consent and must certify that the terms and consequences of the consent were explained in detail and in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian. Execution of consent need not be in open court where confidentiality is requested or indicated.

E.1. Commentary

This section provides that consent may be executed before either a judge or magistrate. The addition of magistrates was made in response to a suggestion from Alaska where magistrates are found in most small communities but "judges" are more widely scattered. The term "judge" as used in the statute is not a term of art and can certainly be construed to include judicial officers who are called magistrates in some states. The statement that consent need not be in open court where confidentiality is desired or indicated was taken directly from the House Report on the Act. A recommendation that the guideline list the consequences of consent that must be described to the parent or custodian has not been adopted because the consequences can vary widely depending on the nature of the proceeding, state law and the particular facts of individual cases.

E.2. Content of Consent Document

(a) The consent document shall contain the name and birthdate of the Indian child, the name of the Indian child's tribe, any identifying number or other indication of the child's membership in the tribe, if any, and the name and address of the consenting parent or Indian custodian.

(b) A consent to foster care placement shall contain, in addition to the information specified in (a), the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

(c) A consent to termination of parental rights or adoption shall contain,

in addition to the information specified in (a), the name and address of the person or entity by or through whom any preadoptive or adoptive placement has been or is to be arranged.

E.2. Commentary

This section specifies the basic information about the placement or termination to which the parent or Indian custodian is consenting to assure that consent is knowing and also to document what took place.

E.3. Withdrawal of Consent to Placement

Where a parent or Indian custodian has consented to a foster care placement under state law, such consent may be withdrawn at any time by filing, in the court where consent was executed and filed, an instrument executed by the parent or Indian custodian. When a parent or Indian custodian withdraws consent to foster care placement, the child shall as soon as is practicable be returned to that parent or Indian custodian.

E.3. Commentary

This section specifies that withdrawal of consent shall be filed in the same court where the consent document itself was executed.

E.4. Withdrawal of Consent to Adoption

A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption by filing in the court where the consent is filed an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The clerk of the court where the withdrawal of consent is filed shall promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing and that party shall insure the return of the child to the parent as soon as practicable.

E.4. Commentary

This provision recommends that the clerk of the court be responsible for notifying the family with whom the child has been placed that consent has been withdrawn. The court's involvement frequently may be necessary since the biological parents are often not told who the adoptive parents are.

F. Dispositions

F.1. Adoptive Placements

(a) In any adoptive placement of an Indian child under state law preference must be given (in the order listed below)

absent good cause to the contrary, to placement of the child with:

(i) A member of the child's extended family;

(ii) Other members of the Indian child's tribe; or

(iii) Other Indian families, including families of single parents.

(b) The Indian child's tribe may establish a different order of preference by resolution. That order of preference must be followed so long as placement is the least restrictive setting appropriate to the child's needs.

(c) Unless a consenting parent evidences a desire for anonymity, the court or agency shall notify the child's extended family and the Indian child's tribe that their members will be given preference in the adoption decision.

F.1. Commentary

This section makes clear that preference shall be given in the order listed in the Act. The Act clearly recognizes the role of the child's extended family in helping to raise children. The extended family should be looked to first when it becomes necessary to remove the child from the custody of his or her parents. Because of differences in cultures among tribes, placement within the same tribe is preferable.

This section also provides that single parent families shall be considered for placements. The legislative history of the Act makes it clear that Congress intended custody decisions to be made based on a consideration of the present or potential custodian's ability to provide the necessary care, supervision and support for the child rather than on preconceived notions of proper family composition.

The third subsection recommends that the court or agent make an active effort to find out if there are families entitled to preference who would be willing to adopt the child. This provision recognizes, however, that the consenting parent's request for anonymity takes precedence over efforts to find a home consistent with the Act's priorities.

F.2. Foster Care or Preadoptive Placements

In any foster care or preadoptive placement of an Indian child:

(a) The child must be placed in the least restrictive setting which

(i) most approximates a family;

(ii) in which his or her special needs may be met; and

(iii) which is in reasonable proximity to his or her home.

(b) Preference must be given in the following order, absent good cause to the contrary, to placement with:

(i) A member of the Indian child's extended family;

(ii) A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;

(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(c) The Indian child's tribe may establish a different order of preference by resolution, and that order of preference shall be followed so long as the criteria enumerated in subsection (a) are met.

F.2. Commentary

This guideline simply restates the provisions of the Act.

F.3. Good Cause To Modify Preferences

(a) For purposes of foster care, preadoptive or adoptive placement, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:

(i) The request of the biological parents or the child when the child is of sufficient age.

(ii) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness.

(iii) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

(b) The burden of establishing the existence of good cause not to follow the order of preferences established in subsection (b) shall be on the party urging that the preferences not be followed.

F.3. Commentary

The Act indicates that the court is to give preference to confidentiality requests by parents in making placements. Paragraph (i) is intended to permit parents to ask that the order of preference not be followed because it would prejudice confidentiality or for other reasons. The wishes of an older child are important in making an effective placement.

In a few cases a child may need highly specialized treatment services that are unavailable in the community where the families who meet the preference criteria live. Paragraph (ii) recommends that such considerations be considered as good cause to the contrary.

Paragraph (iii) recommends that a diligent attempt to find a suitable family meeting the preference criteria be made before consideration of a non-preference placement be considered. A diligent attempt to find a suitable family includes at a minimum, contact with the child's tribal social service program, a search of all county or state listings of available Indian homes and contact with nationally known Indian programs with available placement resources.

Since Congress has established a clear preference for placements within the tribal culture, it is recommended in subsection (b) that the party urging an exception be made be required to bear the burden of proving and exception is necessary.

G. Post-Trial Rights

G.1. Petition To Vacate Adoption

(a) Within two years after a final decree of adoption of any Indian child by a state court, or within any longer period of time permitted by the law of the state, a parent who executed a consent to termination of paternal rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that such consent was obtained by fraud or duress.

(b) Upon the filing of such petition, the court shall give notice to all parties to the adoption proceedings and shall proceed to hold a hearing on the petition. Where the court finds that the parent's consent was obtained through fraud or duress, it must vacate the decree of adoption and order the consent revoked and order the child returned to the parent.

G.1. Commentary

This section recommends that the petition to vacate an adoption be brought in the same court in which the decree was entered, since that court clearly has jurisdiction, and witnesses on the issue of fraud or duress are most likely to be within its jurisdiction.

G.2. Adult Adoptee Rights

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court which entered the final decree must inform such individual of the tribal affiliations, if any of the individual's biological parents and provide such other information necessary to protect any rights flowing from the individual's tribal relationship.

(b) The section applies regardless of whether or not the original adoption was subject to the provisions of the Act.

(c) Where state law prohibits revelation of the identity of the biological parent, assistance of the Bureau of Indian Affairs shall be sought where necessary to help an adoptee who is eligible for membership in a tribe establish that right without breaching the confidentiality of the record.

G.2. Commentary

Subsection (b) makes clear that adoptions completed prior to May 7, 1979, are covered by this provision. The Act states that most portions of Title I do not "affect a proceeding under State law" initiated or completed prior to May 7, 1979. Providing information to an adult adoptee, however, cannot be said to affect the proceeding by which the adoption was ordered.

The legislative history of the Act makes it clear that this Act was not intended to supersede the decision of state legislatures on whether adult adoptees may be told the names of their biological parents. The intent is simply to assure the protection of rights deriving from tribal membership. Where a state law prohibits disclosure of the identity of the biological parents, tribal rights can be protected by asking the BIA to check confidentially whether the adult adoptee meets the requirements for membership in an Indian tribe. If the adoptee does meet those requirements, the BIA can certify that fact to the appropriate tribe.

G.3. Notice of Change in Child's Status

(a) Whenever a final decree of adoption of an Indian child has been vacated or set aside, or the adoptive parent has voluntarily consented to the termination of his or her parental rights to the child, or whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive placement, or adoptive placement, notice by the court or an agency authorized by the court shall be given to the child's biological parents or prior Indian custodians. Such notice shall inform the recipient of his or her right to petition for return of custody of the child.

(b) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. Such waiver may be revoked at any time by filing with the court a written notice of revocation, but such revocation would not affect any proceeding which occurred before the filing of the notice of revocation.

G.3. Commentary

This section provides guidelines to aid courts in applying the provisions of Section 106 of the Act. Section 106 gives

legal standing to a biological parent or prior Indian custodian to petition for return of a child in cases of failed adoptions or changes in placement in situations where there has been a termination of parental rights. Section 106(b) provides the whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive placement, or adoptive placement, such placement is to be in accordance with the provisions of the Act—which requires notice to the biological parents.

The Act is silent on the question of whether a parent or Indian custodian can waive the right to further notice. Obviously, there will be cases in which the biological parents will prefer not to receive notice once their parental rights have been relinquished or terminated. This section provides for such waivers but, because the Act establishes an absolute right to participate in any future proceedings and to petition the court for return of the child, the waiver is revocable.

G.4. Maintenance of Records

The state shall establish a single location where all records of every foster care, preadoptive placement and adoptive placement of Indian children by courts of that state will be available within seven days of a request by an Indian child's tribe or the Secretary. The records shall contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.

G.4. Commentary

This section of the guidelines provides a procedure for implementing the provisions of 25 U.S.C. § 1915(e). This section has been modified from the previous version which required that all records be maintained in a single location within the state. As revised this section provides only that the records be retrievable by a single office that would make them available to the requester within seven days of a request. For some states (especially Alaska) centralization of the records themselves would create major administrative burdens. So long as the records can be promptly made available at a single location, the intent of this section that the records be readily available will be satisfied.

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

November 16, 1979.

[FR Doc. 79-26231 Filed 11-23-79; 8:45 am]

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Register

Monday
November 26, 1979

Part IV

Department of the Interior

Bureau of Land Management

Noncompetitive Geothermal Leases

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3210, 3211

Proposed Rulemaking Regarding Noncompetitive Geothermal Leases

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking is being issued pursuant to the provisions of the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025) which authorizes the issuance of leases for the development and utilization of geothermal resources. To encourage geothermal exploration and development it is proposed to eliminate the "competitive interest" criteria for applications filed during a simultaneous filing period for leases which have expired or terminated, or been cancelled or relinquished. This would expedite leasing of these lands and development of potential geothermal resources. It is also proposed to reclassify certain lands which have been designated as Known Geothermal Resource Areas (KGRA's) because of overlapping noncompetitive applications, after competitive lease sale offerings have attracted no bids.

DATE: Written comments are due by January 25, 1980.

ADDRESS: Send comments to: Director (650), Bureau of Land Management, Department of the Interior, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public inspection in Room 5555 at the above address during regular business hours (7:45 a.m.-4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: The current regulations in 43 CFR 3200.0-5(k)(3) provide that lands included in two or more noncompetitive lease applications which overlap by at least 50 percent are automatically classified as a KGRA requiring competitive leasing. However, competitive lease sales for a number of tracts in such "competitive interest" KGRA's have attracted no bids. The result is that the geothermal potential of the lands will not be explored and developed. The Department of Interior (DOI) has consulted with the Department of Energy (DOE) in the preparation of these proposed regulations in view of the joint responsibility for geothermal leasing created by the Department of Energy Organization Act (DOE Act) which

authorizes DOE to issue regulations under the Geothermal Steam Act of 1970 which relate, in part, to the "fostering of competition" and "the implementation of alternative bidding systems." In light of these responsibilities, DOE is presently reviewing that portion of the definition of KGRA which relates to "competitive interest" to determine if any regulatory changes are appropriate.

Proposed Regulation

This proposed rulemaking amends 43 CFR 3211 by eliminating the requirement in § 3211.2(f) for a KGRA classification and competitive leasing when two or more applications are filed for the same leasing unit during the simultaneous filing period for (1) lands on which leases have been cancelled or relinquished; (2) lands on which leases expired at the end of their primary or extended terms; or (3) lands on which leases have been terminated for nonpayment of rent. In addition, the proposed regulations provide for issuance of leases for lands applied for noncompetitively and classified as KGRA's on the basis of competitive interest, but for which competitive lease sale offerings have attracted no bids. To encourage development of geothermal resources and free these areas for development, it is proposed that these competitive interest KGRA's be reclassified and made available without competitive bidding.

Non-KGRA lands covered by noncompetitive applications filed prior to the effective date of this regulation which are classified as KGRA's solely because of the "competitive interest" standard shall be offered for lease under the simultaneous filing procedures in accordance with the provisions of 43 CFR 3211.2.

Applications filed on a noncompetitive basis after the effective date of this regulation for lands which receive a KGRA classification as a result of competitive interest, shall be leased in accordance with the proposed revision to § 3210.2-2. That is, they will be leased without competitive bidding to the original first applicant if they receive no bids when offered for competitive sale. If the original first applicant no longer wants the lease, it shall be offered to succeeding applicants in chronological order from the filing date of their applications. If none of the original applicants wants the lease, the lands would then become available for noncompetitive leasing under Subpart 3211. In order to implement this proposal, it is also proposed to amend 43 CFR 3210.2-2 to provide that all applications for land determined to be a KGRA because of competitive interest

will retain their priority of filing as shown by the date stamped on the envelope. This provision is incorporated in the proposed rulemaking and is the position advocated by the Department of Energy.

An alternative to this procedure advocated by the Department of the Interior is that all competitive interest KGRA's created after the effective date of this regulation be leased only through the simultaneous drawing procedure rather than first offering the lease to the original applicants who created the KGRA and then eventually offering such unleased lands under the simultaneous drawing procedure. Comments are specifically requested on these two proposed methods of awarding leases for these competitive interest KGRA lands and particularly how each of the methods would affect the timely availability of lands for leasing and development and the utilization of the geothermal resources.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Order 11821 and OMB Circular A-107.

It is hereby determined that publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 is required.

The principal author of this proposed rulemaking is Doris Koivula, Division of Onshore Energy Resources, Bureau of Land Management.

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025), it is proposed to amend Title 43, Chapter II, Subchapter C, Group 3200, Part 3200, by revising section 3210.2-2 of Subpart 3210 and Subpart 3211 of the Code of Federal Regulations as follows:

1. Section 3210.2-2 is revised to read as follows:

§ 3210.2-2 Filing and processing.

(a) *Filing period.* Applications for leases pursuant to this subpart shall be submitted only during application filing periods. An application filing period shall begin on the first working day of each calendar month and shall end at the close of business on the last working day of that month. During the same application filing period no applicant shall file a second application which overlaps any of the land covered by his first application.

(b) *Date of filing.* When an application is filed with the authorized officer, the

date of filing shall be stamped on the envelope.

(c) *Processing applications.* The envelope containing the application shall remain sealed until the end of the application filing period during which the application is filed. On the first working day following the end of the application filing period all applications shall be opened, and it will be determined which applications are for lands included in a KGRA. In determining whether land included in an application is a KGRA because of competitive interest, no application submitted during any subsequent application filing period will be considered. Applications for land determined to be a KGRA will be rejected, except those applications for land determined to be a KGRA because of competitive interest pursuant to § 3200.0-5(k)(3). Applications for land determined to be a KGRA because of competitive interest will retain their priority according to the date of filing. If any application covers both land within a KGRA and land outside a KGRA, the applicant will be granted the opportunity to amend his application to exclude the portion included in a KGRA, and his amended application will retain its priority according to the date of filing of his original application, but must comply with all other requirements of these regulations.

(d) *Competitive interest KGRA's.* Lands in competitive interest KGRA's will be offered for sale by competitive bidding in accordance with § 3220. These lands may be offered for sale more than once at the discretion of the authorized officer:

(1) Where a competitive interest KGRA was created by competitive applications filed *prior* to the effective date of these regulations and the competitive lease sale(s) did not result in the issuance of a lease, the lands will become available for leasing under the simultaneous procedure as provided in § 3211.

(2) Where the competitive interest KGRA was created by noncompetitive applications filed *after* the effective date of these regulations and the competitive lease sale(s) did not result in the issuance of a lease, the lands will be leased to the original applicant having the first priority. If the original applicant no longer wants the lease, it shall be offered to succeeding applicants in chronological order according to the date of filing of their applications. If none of the original applicants wants the lease, the lands will then become available for noncompetitive leasing in accordance with the provisions of Subpart 3211.

2. Subpart 3211 is revised to read as follows:

Subpart 3211—Bureau Motion—Simultaneous Applications

§ 3211.1 Lands available for noncompetitive leasing.

(a) Lands in noncompetitive leases which have been cancelled or relinquished or which expired at the end of their primary or extended terms or which terminated by operation of law for nonpayment of rental pursuant to 30 U.S.C. 1004 shall be subject to further leasing only in accordance with provisions of this subpart. Lands subject to applications filed prior to the effective date of this section and classified as "competitive interest" KGRA's under 43 CFR 3200.0-5(k)(3) which have received no bids after a competitive lease offering may be reclassified and made subject to further leasing in accordance with the provisions of this section. Such competitive interest KGRA tracts may be offered for competitive leasing more than once at the discretion of the authorized officer.

(b) From time to time the authorized officer of the appropriate Bureau of Land Management office will post and provide news coverage of:

- (1) a list of leasing units which are available for noncompetitive leasing under the provisions of this subpart;
- (2) a notice that applications for leases on such lands will be accepted during the filing period specified in the notice, which will begin at 10 a.m. on a Monday and end at 10 a.m. on the fourth Monday thereafter, or on the next working day if the fourth Monday falls on a non-working day. All applications received during such filing period will be treated as simultaneously filed; and

(3) the address of the proper Bureau of Land Management office where applications must be filed and from which information as to the terms and conditions under which the leases will be issued can be obtained.

§ 3211.2 Applications.

(a) An application shall be submitted, in duplicate, on the form approved by the Director for noncompetitive leases.

(b) Only one complete leasing unit, identified by unit number, may be included in an application. Lands not on the posted list may not be included in the application.

(c) An applicant is permitted to file only one application for each numbered unit on the posted list. Submission of more than one application by or on behalf of the applicant for the same unit will result in the disqualification of all

applications submitted by that applicant for that particular unit.

(d) Each application filed during the simultaneous filing period must be submitted in a sealed envelope marked "Simultaneous Geothermal Application (43 CFR Part 3211)." The envelope will remain sealed until the end of the simultaneous filing period, at which time the application will be time-stamped and serialized.

(e) Each application must be accompanied by a nonrefundable service fee of \$50.

§ 3211.3 Drawing of applications for units on posted list.

(a) If more than one application is received during the simultaneous filing period for the same unit on the posted list, the priority of filing for such unit will be determined by a public drawing. All applications for each unit will be drawn, and the order in which they are drawn will determine their respective priorities and order of processing.

(b) A lease may be issued to the drawee having the highest priority for a particular unit. Payment of the first year's rental must be received in the proper Bureau of Land Management office within fifteen days from the date of receipt of notice that such rental is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease. Consideration will then be given to the application having the next highest priority in the drawing for that particular unit.

(c) Prior to the issuance of any lease, a determination shall be made as to whether or not the lands are within a KGRA. Applications determined to be within a KGRA will be rejected.

(d) If no application is filed for a particular unit on the posted list, the lands in that unit will be available for leasing by the first qualified applicant filing an application for a lease as provided in subpart 3210.

(e) If no applicant filing for a particular unit is qualified to receive a lease therefor, the lands in that unit will also become available for leasing in accordance with the provisions of subpart 3210.

James W. Curlin,
Deputy Assistant Secretary of the Interior
November 20, 1979.

[FR Doc. 79-36337 Filed 11-23-79; 8:45 am]

BILLING CODE 4310-84-M

Test Report Federal Reserve

Monday
November 26, 1979

Part V

Department of Energy

Economic Regulatory Administration

Activation of Standby Mandatory Crude
Oil Allocation Program

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 211 and 212

(Docket No. ERA-R-79-52)

Activation of Standby Mandatory Crude Oil Allocation Program

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this notice in order to prepare for the possibility that the President's recent action to prohibit the importation of Iranian oil into the United States may cause significant losses of crude oil supplies to certain refiners and regions of the country. Since any such significant impacts as might occur would not likely become apparent before the latter part of December 1979, refiners dependent on Iranian supplies will have at least several weeks to find alternative supply sources. However, as prudent planning for the possibility of significant adverse impacts, we are proposing for public comment various alternative amendments which would provide for the partial or complete implementation of the Standby Mandatory Crude Oil Allocation Program in its present or amended form. The proposed amendments would permit the additional flexibility in allocating crude oil under the Buy/Sell Program which in view of the President's action may be necessary to insure the continued distribution of crude oil supplies among domestic refiners in an equitable manner.

We are also requesting comments on proposed changes to the current Buy/Sell and entitlements programs under which sales to small refiners would be at the weighted average price of all sellers' imported crude oil, with sellers selling below their own average costs being offset by entitlements program transfers from sellers selling above their own average costs. In addition, small refiners not currently eligible as buyers under the grandfather provisions of the present program would be allowed to receive allocations for capacity additions that provide for more sophisticated processing than simple crude distillation.

DATES: Proposed effective date: January 1, 1980; Comments by thirty days from publication of this notice; Requests to speak at hearing by December 10, 1979,

4:30 p.m.; Hearing date: December 13, 1979, 9:30 a.m.

ADDRESSES: Comments and requests to speak to Office of Public Hearings Management, Room 2313, Docket No. ERA-R-79-52, 2000 M Street, N.W., Washington, D.C. 20461. Hearing location: Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearings Management), Economic Regulatory Administration, Room 2222-A, 2000 M Street, N.W., Washington, D.C. 20461, 202-254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, 202-634-2170.

Mary B. Jones (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 8208, 2000 M Street, N.W., Washington, D.C. 20461, 202-632-5133.

Sue D. Sheridan (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-252-6754.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Proposals
- III. Procedural Requirements
- IV. Other Matters
- V. Comment Procedures

I. Introduction

In response to the holding of American citizens in Iran as hostages for political purposes, the President has banned the importation into the United States of (1) any crude oil produced in Iran and loaded aboard vessels after November 12, 1979, or (2) any petroleum products refined in territorial possessions or free trade zones of the United States from such crude oil. The President has indicated that he is prepared to keep these import restrictions in effect indefinitely as a means of demonstrating that we will not allow any considerations regarding petroleum supplies to weaken our resolve to safeguard fundamental principles of international law, particularly those concerning the protection of American citizens serving our country abroad. In addition, the Iranian government has indicated that, independent of the President's action, it is imposing a unilateral embargo of its crude oil against all U.S. firms.

In recent months, the U.S. has imported approximately 700,000 barrels of Iranian crude oil per day, which represented about 8-10 percent of our total crude oil imports and 4-5 percent of total U.S. crude oil supplies. Since the President's decision to prohibit the

importation of Iranian crude oil does not apply to crude oil carried by tankers already loaded and on the high seas on November 12, 1979 and since steaming time between the Persian Gulf and the East Coast of the United States is about 45-50 days, the level of Iranian crude oil imports should not decline significantly before the latter part of December 1979. About that time it is possible that the United States will incur at least a temporary shortfall in crude oil supplies. This would be true even if the import restrictions on Iranian crude oil are lifted by both sides in the next few days, since we would not receive Iranian crude oil until 45 to 50 days after loading of tankers resumed.

While we cannot predict at this time the volume of the crude oil shortfall which may result from the President's proclamation, it is possible that no shortfall will occur at all if U.S. firms are successful in their efforts to replace Iranian crude oil with purchases from other markets. We expect those firms that have been dependent on Iranian oil to make every reasonable effort to replace those supplies with oil from other sources. However, as a matter of prudent planning, we must assume the possibility that by the end of December we will incur a reduction in crude oil supplies up to our level of imports of Iranian crude oil prior to November 12.

If such a shortfall does occur, it is likely that the impact on various refiners and different regions will be uneven. Over the past few months the bulk of our Iranian oil was lifted by about half a dozen refiners. Several of these refiners distribute products widely across the nation, and, therefore, the effects of reduced crude oil supplies to these firms should not be felt more severely by one region of the country than another. However, some of the largest domestic purchasers of Iranian crude oil concentrate their marketing activities in the East Coast or in the upper Midwest.

During the prolonged interruption of Iranian crude oil production in the first half of this year, domestic refiners heavily dependent upon Iranian crude oil ultimately managed to obtain replacement supplies without assistance from the DOE. We believe refiners which currently rely on Iranian crude oil supplies will again be able to obtain replacement supplies independently or through cooperation with other domestic refiners. However, we are issuing this notice to prepare for the possibility that such an orderly adjustment will not occur. Upon receipt and review of public comments, we intend to take any action appropriate and necessary to promote the continued distribution of crude oil

supplies among all domestic refiners in an equitable manner as a means of insuring that no region of the country will bear an unfair share of any burden which may result from a crude oil shortage.

The various actions we might take in the event of a significant crude oil shortage resulting from the President's proclamation are described in the proposals below. Our objective in proposing these alternative actions at this time, rather than waiting until late December when the full impact of Iranian supply curtailments will be more fully known, is to give the public a full opportunity to comment as to whether implementation of any of the proposals or any action on our part will be necessary and appropriate in the immediate future. We emphasize, however, that our decision to propose these alternative actions should not be viewed as an indication that we believe any of the proposed measures will be necessary. In making that determination, we intend to monitor the progress of various firms in obtaining supplies to replace their Iranian crude oil. In addition to comments on each of the proposals, we welcome general comments and information on whether and the extent to which the nation as a whole, particular regions and particular firms are likely to suffer significant shortfalls in crude oil or refined product supplies.

II. Proposals

A. Standby Crude Oil Allocation Program. The current Buy/Sell Program in 10 CFR section 211.65 can provide some assistance to small refiners which may experience difficulties in obtaining supplies as a result of events in Iran. Effective October 1, 1977, the Federal Energy Administration revised the Buy/Sell Program to limit purchases under the program to those small refiners ("refiner-buyers") with refineries which had a demonstrated need for allocations based on lack of access to adequate supplies of domestic and foreign crude oil. Small refiners that were initially determined to have access to sufficient supplies of crude oil, and that were therefore ineligible to participate in the program, were permitted to reenter the program in the event that they later experienced a significant reduction in crude oil supplies. In addition, provision was made for emergency allocations of crude oil to eligible refiners that experienced at least a 25 percent reduction in their supplies of crude oil. The 15 major refiners ("refiner-sellers") are required to supply, on a pro rata basis according to refining capacity, the volumes of oil sold under the program.

Only 5 of the 19 refiners importing Iranian crude oil immediately prior to November 12, 1979, however, qualify as small refiners and could therefore potentially be recipients of crude oil under the current Buy/Sell Program. Moreover, imports by these 5 small refiners accounted for only 10 percent of the total amount of Iranian crude oil imported into the United States in recent months.

In recognition of the limitations of the current Buy/Sell Program to deal with a generalized crude oil supply shortage, we developed and adopted a Standby Mandatory Crude Oil Allocation Program (44 FR 3418, January 16, 1979). That standby program consists of three separate options. In the event of a crude oil supply disruption, the ERA Administrator may activate that option which in his discretion is most appropriate in view of the extent to which the nation's crude oil supplies may be interrupted. The notice adopting the standby program contains a full discussion of how each of the various aspects of the program would work if implemented.

We are hereby proposing to implement whichever aspects of the standby program, if any we find necessary and appropriate to mitigate the effects of any crude oil supply shortage that may result from the President's decision to prohibit the importation of Iranian crude oil. We are also proposing several amendments to the standby program which are intended to make it a more effective mechanism for dealing with any crude oil supply shortage that may result from the Iranian supply curtailment. The following sections discuss each of the three options of the standby allocation program and the pricing provisions and modifications to each option we believe might be appropriate in the event we activate that portion of the standby program. Commenters are requested to state their views as to which of the three options and possible amendments thereto would constitute the most appropriate response to the Iranian supply curtailment and their reasons for those views.

1. Option I. Option I would activate the standby program by continuing the current emergency allocation Buy/Sell Program, but modifying it to permit inclusion of the twenty-two large independent and major refiners as possible refiner-buyers of crude oil and relax the current criterion providing that crude oil will be allocated to a refinery only if the firm experiences a 25 percent reduction in crude oil supplies. Commenters supporting this option or a

variation of it should indicate the extent to which the current 25 percent reduction criterion should be relaxed.

a. Limitation of eligibility for emergency allocations. Adoption of this option would have the potential for qualifying many additional refiners, besides those which formerly imported from Iran, as refiner-buyers under the present emergency Buy/Sell Program. The potential increase in the number of applications for emergency allocations could create an administrative burden which would cripple the program's ability to meet its objectives. More importantly, since many of these additional refiners which did not import from Iran operate less efficient refineries, the operation of an expanded emergency allocation Buy/Sell Program could result in the utilization of crude oil supplies in a manner which would not best serve our national interests since crude oil supplies might be transferred from efficient to inefficient refineries.

In order to prevent this unintended expansion of the emergency allocation Buy/Sell Program, we are proposing that unless a refiner has significant downstream refining capability beyond simple crude distillation—as demonstrated by the capability, for example, to refine a significant amount of unleaded gasoline or to desulphurize crude oil—it would not be eligible for an emergency allocation unless it met the reduction criterion in effect on November 12, 1979 for emergency allocations. Accordingly, a refiner lacking the requisite refining capabilities would be eligible for an emergency allocation only if it could demonstrate a 25 percent reduction in supplies, even though we may determine after considering the comments in this proceeding that some lesser percentage would constitute a "significant reduction" in cases involving refiners possessing significant downstream refining capacity.

b. Inclusion of large independent refiners as refiner-sellers. While Option I of the standby regulations provides for the inclusion in the current emergency allocation Buy/Sell Program of both major and large independent refiners as refiner-buyers, the provisions of the standby regulations as originally adopted do not provide under this option for the expansion of the class of refiner-sellers (currently limited to the so-called "major" refiners) to include large independent refiners. Since revision of the current emergency allocation Buy/Sell Program to permit emergency allocations to all large refiners would likely increase greatly the amount of crude oil sold under the

program, we believe implementation of Option I might necessitate enlarging the universe of refiner-sellers to include all refiners with refining capacities in excess of 175,000 barrels per day. Therefore, we are proposing, for purposes of emergency allocations only, an amendment to add the seven large independent refiners to the current list of refiner-sellers in the event we activate Option I.

Under the current provisions of the emergency allocation Buy/Sell Program, a refiner-seller's sales obligation is determined by reference to its proportionate share of the total refining capacity of all refiner-sellers on January 1, 1973. Since large independent refiners' relative share of total refining capacity has greatly increased since January 1973, we believe it would be appropriate, in the event we add large independent refiners to the list of refiner sellers, to update the reference period for determining a refiner seller's percentage share of emergency allocation sales obligations under the program currently in effect. Specifically, we are proposing that a major refiner's or a large independent refiner's percentage share of the total sales obligations arising from emergency allocations in any allocation period be based on the refiner's proportionate share, expressed as a percentage, of the total volume of crude oil runs to stills of all sellers during the period September 1978 through February 1979.

Since we recognize that large independent refiners generally do not possess the same ability as major refiners to locate and arrange for crude oil supplies, we are also proposing that a large independent refiner's sales obligation in any month not exceed that number of barrels which would result in such a refiner operating its refinery at a rate lower than the average refinery utilization rate of all sellers. In this regard, we are proposing that the average utilization rate of all sellers for any allocation period will be a percentage, the numerator of which would be the total of the estimated crude oil runs to stills (as currently defined in the standby regulations) of all sellers (i.e., all major and large independent refiners) and the denominator of which would be the average monthly crude oil runs to stills of all such sellers during the period September 1978 through February 1979.

2. *Option II.* Option II would activate the standby regulations to continue the existing Buy/Sell Program for the benefit of small refiners and establish a Special Buy/Sell Program for large independent and major refiners. Under the Special

Buy/Sell Program of Option II (and, as discussed below, under Option III) a refiner would be permitted to purchase sufficient crude oil to run its refinery at the national utilization rate (as defined in paragraph 4 of Special Rule No. 10). If a refiner had more than enough crude oil to run its refinery at this rate, it would be required to sell the amount of crude oil greater than the amount necessary to run its refinery at the national utilization rate to a refiner lacking access to volumes of crude oil sufficient to permit it to attain the permissible level.

As presently written, this option would limit the Special Buy/Sell Program to the 22 major and large independent refiners. As noted previously, this group of refiners imported ninety percent of the crude oil from Iran. Thus, this option appears to focus most directly on the possible effects of the President's decision to ban the importation of Iranian crude oil. However, there were also five small refiners which imported Iranian crude oil. Based on the amounts these firms were importing from Iran, only one would experience a 25 percent reduction in crude oil supply. The other four would not qualify for assistance under the emergency allocation Buy/Sell Program even if Option II were adopted. In the event we decide to implement Option II, we believe the appropriate course for those small refiners that were importing from Iran but would not be eligible under the current emergency allocation Buy/Sell Program for status as refiner-buyers would be to seek exception relief. However, we request comments on whether we should amend the present program to allow firms that were importing from Iran to be eligible for allocations notwithstanding their failure to meet the criteria applicable to other small refiners.

a. *Adjustments to amounts to be purchased and sold under the Special Buy/Sell Program.* Requiring a refiner to sell all crude oil in excess of the amount necessary to run its refinery at the national utilization rate could destroy any incentive on the part of refiners generally to seek additional crude oil on the world market or to seek secure sources of supply. Therefore, we believe it would be desirable to permit a refiner which makes an effort to obtain additional crude oil to retain some of the benefits resulting from such efforts, while insuring that all refiners would receive adequate crude oil supplies. This objective can be realized by structuring the program to allocate refiner-buyers volumes of oil sufficient to insure efficient operation of their refineries, but not enough to fully equalize their levels

of utilization with those of refiner-sellers. Therefore, we are proposing two alternative amendments, as discussed below.

First, we are proposing an amendment that only those refiners with projected utilization rates which are at least two (or three) percentage points lower than the national utilization rate would be eligible as refiner-buyers. Furthermore, since a refiner which has been successful in securing crude oil supplies sufficient to allow it to operate only slightly above the national utilization rate would be more likely to lose its incremental barrels if sales obligations were determined purely on a pro rata basis, this amendment would provide in effect that a refiner-seller will incur no sales obligation until all other refiner-sellers with projected utilization rates higher than that refiner's have incurred obligations sufficient to lower their utilization rates to the same level as that refiner's.

Second, in the alternative, we are proposing an amendment that, in the event we adopt Option II, a refiner-seller would only be required to sell three-fourths of the amount necessary to bring its supplies down to levels consistent with the national utilization rate. Concurrently, a refiner-buyer would only be allocated crude oil volumes equal to three-fourths of the amount which it would need to run its refinery at the national utilization rate.

We are proposing these alternative amendments with respect to both this Option II and Option III below. We request that comments regarding these alternatives suggest the percentages which you believe might be appropriate and necessary to provide an incentive to refiners to seek crude oil supplies.

b. *Proposed amendment to method of calculating national utilization rate.* As discussed above, in the event Option II of the standby program is activated, refiners' sales obligations are to be determined with reference to the national refinery utilization rate, defined in paragraph 4 of Special Rule No. 10. The national utilization rate is, in general terms, a percentage, the numerator of which is the estimated total crude oil runs to stills of all U.S. refiners for a particular allocation period, and the denominator of which is the average monthly crude oil runs to stills of all U.S. refiners during the base period, as defined in paragraph 4 of Special Rule No. 10.

The refinery utilization rates of large refiners are generally higher than those of small refiners. Therefore, the use of data reflecting the utilization rates of small refiners in calculating the national utilization rate for purposes of a Special

Buy/Sell Program including only major and large independent refiners would apparently result in the derivation of a utilization rate which would actually be lower than the average utilization rate of the large refiners. Consequently, in some instances the effect might be to require large refiners with relatively more efficient operations, as indicated by higher utilization rates, to sell more oil than they might be required to sell if only large refiner data were utilized in calculating the national utilization rate.

In view of the above considerations, we are proposing to amend Special Rule No. 10 to provide that the national utilization rate will be based entirely on data concerning the 22 major and large independent refiners in the event we decide during this proceeding to establish a separate Special Buy/Sell Program including only these firms pursuant to Option II of the standby program. We believe this proposal would be especially appropriate in light of our decision, as discussed in Section III of this Preamble, to propose that any Option of the standby program we activate in this proceeding should initially be made effective for only 90 days.

Specifically, we have tentatively concluded that in view of the limited time during which we believe the standby program will need to be in effect, if at all, the administrative burden on ourselves and small refiners in collecting the data necessary to base the national utilization rate on all U.S. refiners would be unjustified.

c. *Proposal to add large independent refiners to list of refiner-sellers for existing emergency allocation Buy/Sell Program.* The proposed implementation of Option II of the standby program could greatly increase the sales obligations of major refiners, because in addition to their existing obligations under the current Buy/Sell Program they would have additional obligations under the Special Buy/Sell Program. Therefore, we believe it might be appropriate to provide for the addition of large independent refiners to the list of refiner-sellers under the existing emergency allocation Buy/Sell Program. Accordingly, the amendments, discussed under Option I, relating to the designation of large independent refiners as refiners-sellers for purposes of emergency allocations under the currently existing Buy/Sell Program are also being proposed in conjunction with the proposed activation of Option II. Of course, if a large independent refiner were a buyer under the Special Buy/Sell Program it would not have any sales

obligations under the existing Buy/Sell Program.

3. *Option III.* Option III would activate the standby regulations to eliminate the current Buy/Sell Program and establish a Special Buy/Sell Program for all refiners (except those refiners with less than 50,000 B/D of refining capacity would be exempt from any obligation to sell under the Program). As such, Option III expands on Option II by providing that any refiner, whether categorized as large or small under the regulations, would be permitted to purchase sufficient crude oil to run its refinery at the national utilization rate. A desirable feature of this option would be its coverage of all refiners which imported Iranian crude oil, as well as all refiners that might be indirectly affected by being outbid for their present non-Iranian supplies by firms that previously purchased from Iran. However, it also would permit allocations of crude oil with respect to inefficient refining operations. Since inefficient refiners tend to operate at lower utilization rates than efficient refineries, this option could have the undesired effect of transferring crude oil from efficient refineries to inefficient refineries.

The refinery utilization rates of large refiners are generally higher than those of small refiners. Therefore, as discussed under Option II, the use of data reflecting the utilization rates of small refiners in calculating the national utilization rate would result in a lower average rate than would result if only large refiners data were used in calculating the national utilization rate. However, since the national utilization rate calculated in reliance on data concerning both large and small refiners will not vary greatly from that which would be obtained if only large refiner data were used in the calculation, we believe that relying solely on data on the 22 large refiners would provide an appropriate means of promoting the efficient operation of small refineries, while insuring the availability of adequate supplies to permit maintenance of their operations in any event.

4. *Pricing Provisions.* At the time we established the standby crude oil allocation program, we also adopted standby crude oil pricing rules to govern prices in crude oil sales in the event we activated one of the alternative allocation schemes set forth in the standby program. Briefly, the standby pricing rules provide for the establishment of prices in sales of allocated crude oil to major, large independent, and small refiners as follows.

Sales of Allocated Crude Oil to Major Refiners and large Independent Refiners. Under each of the optional standby programs proposed to be activated, the price in any sale of allocated crude oil to a major refiner or a large independent refiner would under the current standby regulations be required to be established pursuant to paragraph 3(b)(2)(i) of Special Rule No. 1 set forth in the Appendix to Subpart L of 10 CFR Part 212. In general, paragraph 3(b)(2)(i) provides that the seller may charge a price based on its purchase cost, which is defined as the seller's actual acquisition cost.

Small refiners with 50,000-175,000 barrels per day refining capacity. If either Option I and II were adopted, under the current standby regulations prices in sales of crude oil to refiners with refining capacities between 50,000 and 175,000 barrels per day may be required, at the discretion of the Administrator of the ERA, to be established either on the basis of actual acquisition cost, in accordance with the provisions of paragraph 3(b)(2)(i) of Special Rule No. 1, or on the basis of weighted average acquisition cost of imported crude oil, in accordance with the provisions of section 212.94, which sets forth the pricing provisions for the current Buy/Sell Program. If Option III were adopted, under the current standby regulations sales to members of this group of small refiners would be required to be priced in the same manner as major and large independent refiners, i.e., on the basis of actual acquisition cost in accordance with paragraph 3(b)(2)(i) of Special Rule No. 1.

Small refiners with less than 50,000 barrels per day refining capacity. If either Option I and II were adopted, under the current standby regulations sales of allocated crude oil to refiners with less than 50,000 barrels per day refining capacity would be required to be made at the sellers' weighted average costs for imported crude oil, in accordance with section 212.94. If Option III were adopted, under the current standby regulations prices in sales of allocated crude oil would be required to be priced in accordance with paragraph 3(b)(2)(i) of Special Rule No. 1 which, similar to section 212.94, generally provides that the price in sales to refiners with less than 50,000 barrels per day capacity shall be the weighted average landed costs (as defined in section 212.82) of the sellers' imported crude oil of the same sulphur content.

a. *Alternative to Actual Acquisition Cost.* Basing the price for crude oil sold pursuant to the standby program on

actual acquisition cost of the same crude oil provides the maximum incentive for a refiner-seller to acquire incremental volumes of crude oil on the world market. However, it does not create any incentive for a refiner-seller to seek to pay the lowest possible price for that incremental supply of crude oil. This lack of incentive could be a source of upward pressure on spot market prices and could destroy the value of the standby program to refiner-buyers. Moreover, basing the selling price solely on the acquisition cost may create the opportunity for refiner-sellers to frustrate the program by arranging special purchases, for purposes of fulfilling their sales obligations, at prices in excess of what refiner-buyers will be willing to pay. Accordingly, while we may determine after reviewing the comments to adopt any pricing provision provided under Special Rule No. 1, we are proposing five alternatives to the use of actual acquisition costs for determining applicable prices in sales of allocated crude oil.

Under the first pricing alternative, a refiner-seller would in calculating its prices utilize the weighted average acquisition cost of that volume of crude oil for which the refiner-seller paid the highest prices and which is equal to three times the volume of allocated crude oil sold subject to this pricing provision. Under the second alternative, a refiner-seller would determine its prices by using the weighted average acquisition cost of all crude imported that month, excluding that 10 percent of crude oil imported that month for which the refiner-seller paid the highest prices relative to other purchases that month. Under the third alternative, a refiner-seller would determine its prices by utilizing the weighted average acquisition cost of crude oil imported that month. Under the fourth alternative, the DOE would establish a uniform sales price for all sellers based upon the weighted average acquisition cost of all crude oil imported by all refiners-sellers in that month, excluding that 5 percent of crude oil imported that month for which refiner-sellers paid the highest prices relative to other purchases that month. Finally, under the fifth alternative, prices for sales under the Buy/Sell Program would be uncontrolled except that the seller would be required to negotiate in good faith with the buyer to establish a sales price.

b. *Alternative Pricing Provisions for Sales to Small Refiners if Option III is Adopted.* As discussed below in a following section, we are proposing to amend the § 212.94 price rule applicable to sales under the current Buy/Sell

Program to establish uniform prices to small refiners. If Option I or II is implemented, sales to small refiners with 50,000 barrels per day or less refining capacity would be subject to such an amended pricing provision, while the Administrator of ERA would have the discretion to order sales to small refiners with refining capacity between 50,000 and 175,000 barrels per day to be priced subject to that provision. However, if Option III is implemented, under the current standby pricing provisions in Special Rule No. 1 to Subpart L, the price for allocated crude oil would be the actual cost of the particular crude oil sold; if the small refiner's capacity is between 50,000 and 175,000 barrels per day, and would be the seller's weighted average cost of imported crude oil, if the small refiner's capacity is 50,000 barrels per day or less. We are proposing that, if Option III is implemented, the Administrator be given the discretion to order that sales to either group of small refiners be priced subject to our proposal to establish uniform prices under § 212.94.

B. *Proposed Revisions to the Existing Buy/Sell Program.* Even before the President's action to prohibit imports of Iranian oil, many small refiners had raised questions regarding the effectiveness and fairness of the current Buy/Sell Program in light of today's highly unsettled crude oil market.

At the time the present form of the Buy/Sell Program was adopted in October 1977, there was a surplus of foreign crude oil available for importation into the United States, and the program was thus premised upon the belief that supplies of crude oil for most small refiners were and would continue to be adequate. The current international crude oil market, even without consideration of the present Iranian situation, exhibits market conditions vastly different from those prevalent in October 1977. During the past year, we have received numerous reports from small refiners that they have at times been unable to purchase adequate foreign crude oil supplies at any price. Other small refiners have been unable to pay the high premiums commanded by certain of the light, sweet foreign crude oils in the spot market. For these crude oils, spot market transactions involving large premiums over normal contract prices have been reported. In view of these considerations, revisions to the current Buy/Sell Program might be necessary—irrespective of the President's decision to ban Iranian imports—in order to make the program more responsive to recent market conditions which may

only be exacerbated by the current Iranian situation. Accordingly, we are proposing various amendments to section 211.65, any or all of which we may adopt in conjunction with or independent of any further action we may take in this rulemaking proceeding to activate the standby crude oil allocation program.

1. *Proposed amendments to establish uniform prices to refiner-buyers under the Buy/Sell Program.* Because of the two-tier pricing structure existing in the world crude oil market, in recent months the disparity in the average acquisition costs of refiner-sellers has increased significantly. As a result, the price paid by a particular small refiner for crude oil allocated under the program may be substantially greater than that by another refiner-buyer under the program. Furthermore, in many instances during recent months the average acquisition cost of crude oil imported by some refiner-sellers has been higher than those spot market prices which we have deemed are so excessive as to effectively deny a small refiner that source of supply. The situation described above has thus strained the orderly operation of the program.

At this moment it is impossible to predict whether the enormous disparities in selling prices that currently exist in the world market will continue to prevail. On the one hand, events in Iran might cause some escalation of spot market prices. On the other hand, spot market prices appear to have stabilized in recent weeks notwithstanding the Iranian situation, and future events may cause an equilibrium pricing level to be reached soon for all world market crude oil.

However, for purposes of planning we believe it is prudent to prepare for the possibility that the current price disparities and strain on the Buy/Sell Program will continue. Therefore, we are proposing amendments to the pricing provisions of the current program under which all refiner-buyers purchasing crude oil under the program would pay the same price for allocated crude oil. Specifically, we propose to amend section 212.94 to provide that in any month a refiner-seller may only charge in any sale of crude oil under the program the national weighted average cost of all crude oil imported by all refiner-sellers in that month (which weighted average price would be determined by DOE from information supplied by refiner-sellers), plus five cents per barrel, plus any adjustments for transportation, gravity and sulphur content.

We recognize that data from which we could calculate the national weighted average cost of all crude oil imported by all refiner-sellers in any given month would not be available until after that month. Therefore, we believe prices charged by refiner-sellers could vary significantly, even as between sellers making good faith efforts to discern average market prices, and thereby create market distortion.

In view of this consideration, we are proposing an alternative proposal to amend section 212.94 to provide that in any month a refiner seller would be permitted in any sale of Buy/Sell crude oil only that price announced by the ERA prior to the beginning of the month as the price at which all sales of oil allocated under the program shall be transacted during that month. Under this alternative, we are proposing three subalternatives as to the basis upon which ERA would set the price. First, the price could be set at the estimated average acquisition cost. Second, the price could be set at the estimated average acquisition cost plus \$X per barrel. Third, the price could be set at that level which we project will be above the price at which 60 percent or some other percentage of all transactions to import crude oil will be made. The justification for the last two alternatives would be to provide an incentive to both refiner-sellers and refiner-buyers to seek additional crude oil supplies.

In order to permit those refiners-sellers with average acquisition costs higher than the national average to recover their average costs and to prevent any undeserved enrichment of those refiners-sellers with average acquisition costs less than the national average, we are also proposing to revise the Entitlements Program to provide that a refiner-seller whose average acquisition cost was above the national average for refiner-sellers would be issued a number of supplemental entitlements equal in value to an amount calculated by determining the difference between the refiner's average acquisition cost for imported oil and the national average for all refiner-sellers and multiplying the amount of such difference by the number of barrels which it sold under the program in that month. Conversely, a refiner-seller whose average acquisition cost was below the national average would incur an obligation to buy a supplemental number of entitlements equal in value to an amount calculated by determining the difference between the refiner's average acquisition cost for imported crude oil and the national average for all

refiner-sellers and multiplying the amount of such difference by the number of barrels it sold under the program in that month.

2. *New or expanded refineries.* The current provisions of the regular Buy/Sell Program provide for "starter" allocations of crude oil equal to 25 percent of new or expanded refining capacity. However, the regulations provide that such starter allocations will be available only to those small refiners which can demonstrate that both completion of the process design for the new facilities and irrevocable commitment of 20 percent of the total cost of the project occurred prior to August 24, 1977, the date on which the current program was promulgated. This restriction also is applicable to the current emergency allocation Buy/Sell Program.

In the period following August 24, 1977 many small refiners have proceeded to construct or expand refineries even though they were not eligible for starter allocations. They did so because crude oil has been relatively obtainable during much of this period. Some of these new or expanded refineries have played important roles in meeting our nation's demand for petroleum products since they possess the capabilities of producing significant volumes of unleaded gasoline, low sulfur fuel oil and other products for which there is generally inadequate refining capacity. In some instances, their contribution currently is being hampered by an inability to obtain adequate amounts of crude oil due to unfavorable market conditions.

Accordingly, we are proposing that those new or expanded refineries which do not qualify under the existing provisions for a starter allocation be permitted a starter allocation of 25 percent of the new or expanded capacity, if the small refiner can demonstrate that the new or expanded capacity is downstream of the crude distillation process (such as reforming capacity to make unleaded or low-lead gasoline, desulphurization equipment to make low-sulfur fuel oil, or coking or cracking equipment to increase light end product recovery).

We are also proposing to include these same new or expanded refineries as eligible recipients in the current emergency allocation Buy/Sell program on the same basis as all other small refineries. However, in order to prevent undue burden on refiner-sellers which might result if landlocked or otherwise inaccessible refiners were allocated crude oil supplies, we are proposing an alternative that would provide that a new or expanded refinery would qualify

for emergency allocations only if such refining facilities were located at a port or on a navigable inland waterway providing access to imported crude oil or have direct access to a pipeline that routinely carries imported crude oil.

We specifically request comments on whether inclusion of these new or expanded small refineries is necessary or appropriate under both the regular and emergency allocation current Buy/Sell Program, on whether their inclusion only in the emergency allocation program is necessary or appropriate.

3. *Proposal to add large independent refiners to list of refiner-sellers for existing emergency allocation Buy/Sell Program.* As discussed above, large independent refiners have greatly increased their relative share of refining capacity since the inception of the Buy/Sell Program in 1973. Therefore, we believe it might be appropriate to provide for the addition of these refiners to the list of refiner-sellers under the existing emergency allocation Buy/Sell Program. Accordingly, the above discussed proposed amendments relating to the designation of large independent refiners as refiner-sellers under certain of the standby regulations options are hereby proposed with respect to the currently existing emergency allocation Buy/Sell Program, regardless of other action we may take in this proceeding to activate any aspects of the standby crude oil allocation program.

III. Termination

In the event that any of the proposals relating to the activation of the standby crude oil allocation program are adopted as final, we propose that they be made effective from the date of issuance through March 31, 1980. By that time, we expect that any shortfall resulting from the recent curtailment of Iranian crude oil imports will have subsided as U.S. firms affected by the cut off secure replacement supplies from other markets. While we therefore do not anticipate any need to extend beyond March 31, 1980 the effectiveness of any order we may issue to implement the standby program, we will be closely monitoring market conditions during the next several months in order to determine at the earliest possible time any action which may be necessary to insure the continued distribution of crude oil supplies among refiners in an equitable manner so as to prevent any firm or region from bearing an unfair share of any burden which may result due to a shortage or dislocation of crude oil supplies.

We are not proposing a termination date with respect to those proposals

which would amend the current Buy/Sell Program. However, it is our conclusion that the operation of these amendments would not be necessary beyond such time as stabilization of the international crude oil market occurs. Accordingly, we will also periodically review the need for the continued operation of any of these proposals which we may adopt in this proceeding.

IV. Other Matters

The Environmental Protection Agency has expressed its concern that under the current situation, adoption of the foregoing proposals might encourage refiners to purchase higher sulfur crude oil. Specifically, the EPA is concerned that the existing sulfur content differential in Part 212.94(b)(4) might create an incentive for refiners to purchase higher sulfur crude oil. We therefore are adopting the EPA's suggestion that we include as part of this notice a proposal to increase the price adjustment from 3 cents to 9 cents. We request comments on whether such an amendment is necessary to assure that enactment of this proposal will not result in any greater incentive to purchase higher sulfur crude oils. We also request comments as to whether, in the event that we do adopt an amendment increasing the price adjustment, an adjustment from 3 cents to 9 cents is appropriate, or whether a different level of increase would be preferable.

V. Procedural Requirements

A. Section 404 of the DOE Act. Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act, we are referring this rule to the Federal Energy Regulatory Commission (FERC) for a determination whether the proposed rule would significantly affect any matter within the Commission's jurisdiction. The Commission has until the close of the public comment period to make that determination.

B. Section 7 of the FEA Act. Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. § 787 *et seq.*, Pub. L. 93-275 as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of

the environment. Such comments shall be published together with publication of notice of the proposed action.

A copy of this notice was sent to the EPA Administrator. The Administrator's comments regarding this notice are addressed in an earlier section of this preamble and are reflected in our proposal.

C. National Environmental Policy Act. ERA has determined and the Assistant Secretary for Environment has concurred that the proposed rule if adopted would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* This determination is based on the following reasons. First, the proposed rule is designed to even out disparate impacts on domestic refiners which may result from any loss of crude oil supplies due to the Iranian oil cutoff. Implementation of the proposed rule will neither increase nor decrease the available supply of crude oil. In addition, we are proposing to increase the price adjustment for sulfur content differentials to the extent necessary to avoid any change in the existing incentives to buy low-sulfur crude oil.

D. Executive Order 12044. Executive Order 12044 (43 FR 12661, March 23, 1978) requires the agencies subject to it to publish all proposed "significant" regulations for public comment for a minimum of 60 days. In section 2(c), the Order recognizes that there are some instances where an agency may appropriately determine that it is necessary to provide for a shorter time period. In accordance with paragraph 12 of the DOE's implementing procedures, DOE Order 2030.1 (44 FR 1032, January 3, 1979), the sixty day public comment period has been waived by the Deputy Secretary for the following reason, which is discussed more fully in earlier sections of this preamble. The curtailment of Iranian crude oil imports raises the possibility of a significant reduction in crude oil supplies to some refiners on or about January 1, 1980. Such an occurrence may necessitate the immediate adoption of one or more of the proposed rules, in order to even out any disparate impacts of such a shortage on various refiners. Under these circumstances, the Deputy Secretary has determined that adherence to the normal 60 day advance public comment period is not possible because the proposed rule would not be able to be made effective by the time the reduction in supply would occur. Such an eventuality could be of emergency proportions. We are, however, providing

for a 30-day period for public comment, which period is consistent with the minimum public comment period required by section 501(b) of the Department of Energy Organization Act.

The Executive Order also requires that a regulatory analysis be prepared for all significant regulations which are likely to have a significant impact. For the reasons supporting the waiver of the sixty-day comment period, the Deputy Secretary has waived the requirement for a regulatory analysis under Executive Order 12044 and DOE's implementing procedures in DOE Order 2030.

VI. Written Comment and Public Hearing Procedures

A. Written Comments. You are invited to participate in this proceeding by submitting data, views or arguments with respect to the matters contained in this notice. Comments should be submitted by thirty days from publication of this notice to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "Activation of Standby Crude Oil Allocation Program." Ten copies should be submitted.

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

B. Public Hearing. 1. Procedure for Requests to Make Oral Presentation.—If you have any interest in the matters discussed in the notice, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., e.s.t., on December 10, 1979. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., December 11, 1979. You will be required to submit one hundred copies of your statement to the Department of Energy, Room 3000A, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., before 4:30 p.m., e.s.t., on the day before the hearing.

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

on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. It will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m., local time, on the day before the hearing. If you wish to have a question asked at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase copies of the transcript of the hearing from the reporter.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-183, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C., § 6201 *et seq.*, Pub. L. 94-163 as amended, Pub. L. 94-385, and Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, we propose to amend Parts 211 and 212 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., November 23, 1979.

David J. Bardin,
Administrator, Economic Regulatory
Administration.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Subpart C Appendix [Amended]

1. The Appendix to Subpart C of Part 211 is amended immediately following Special Rule No. 10 by the addition of Standby Mandatory Crude Oil Allocation Program Activation Order No. 1 reading as follows:

Proposed Alternative To Implement Option I

Standby Mandatory Crude Oil Allocation Program Activation Order No. 1. This order activates, effective January 1, 1980, the Standby Mandatory Crude Oil Allocation Program set forth in Special Rule No. 10 to Subpart C of 10 CFR Part 211, for the period January 1, 1980 through March 31, 1980. Pursuant to paragraph 8 of Special Rule No. 10, paragraphs (c) and (i) of § 211.65 are ordered to be amended as provided in paragraph 8. Pursuant to paragraph (i) of § 211.65, as amended by this order, it is further ordered that the provisions of [Alternative 1: § 212.94] [Alternative 2: Special Rule No. 1 to Subpart L of Part 212] shall apply with respect to sales of crude oil pursuant to this section to refiners whose DOE certified crude oil refining capacity is greater than 50,000 barrels per day but less than 175,000 barrels per day.

Proposed Alternative To Implement Option II

Standby Mandatory Crude Oil Allocation Program Activation Order No. 1. This order activates, effective January 1, 1980, the Standby Mandatory Crude Oil Allocation Program set forth in Special Rule No. 10 to Subpart C of 10 CFR Part 211, for the period January 1, 1980 through March 31, 1980. Pursuant to paragraph 2(b) of Special Rule No. 1 to Subpart L of 10 CFR 212, it is ordered that the provisions of [Alternative 1: § 212.94] [Alternative 2: Special Rule No. 1] shall apply with respect to sales of crude oil pursuant to this section to refiners whose DOE certified crude oil refining capacity is not greater than 50,000 barrels per day.

Proposed Alternative To Implement Option III

Standby Mandatory Crude Oil Allocation Program Activation Order No. 1. This order activates, effective January 1, 1980, the Standby

Mandatory Crude Oil Allocation Program set forth in Special Rule No. 10 to Subpart C of 10 CFR Part 211 (the Special Rule), for the period January 1, 1980 through March 31, 1980. Pursuant to paragraph 3(a) of the Special Rule, it is ordered that the exemption for which that paragraph provides is not applicable. [Additional proposed provisions: Pursuant to paragraph 2(b) of Special Rule No. 1 to Subpart L of CFR 212, it is ordered that the provisions of [Alternative 1: § 212.94] [Alternative 2: Special Rule No. 1] shall apply with respect to sales of crude oil pursuant to this section to refiners whose DOE certified crude oil refining capacity is greater than 50,000 barrels per day but less than 175,000 barrels per day. [Additional proposed provisions: Pursuant to paragraph 2(b) of Special Rule No. 1 to Subpart L of 10 CFR 212, it is ordered that the provisions of [Alternative 1: § 212.94] [Alternative 2: Special Rule No. 1] shall apply with respect to sales of crude oil pursuant to this section to refiners whose DOE certified crude oil refining capacity is not greater than 50,000 barrels per day.

§ 211.62 [Amended]

2. Section 211.62 is amended by revising the definition of "National domestic crude oil supply ratio" to read as follows: "National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)) included in the aggregate adjusted crude oil receipts of all refiners, decreased by a number of barrels of deemed old oil equal to the number of entitlements issuable to small refiners under § 211.67(e) and the number of entitlements issuable under § 211.67(a)(4), § 211.67(a)(5), and § 211.67(a)(6), and increased or decreased by a number of barrels of deemed old oil equal to the increase or decrease in the number of entitlements issuable pursuant to the operation of § 211.67(a)(7), divided by the sum of the total volume of the crude oil run to stills for all refiners for the month and fifty percent (50%) of the total volume of imports of eligible products by eligible firms for that month. The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

§ 211.65 Method of allocation [Amended]

3. Section 211.65(a)(1) is amended to read as follows:

(a) *Eligibility for allocation.* (1) Any small refiner may apply to FEA for an

allocation for one or more of its refineries; *provided, that* the small refiner (i) purchased crude oil under the provisions of this section during the period September 1, 1976 through August 31, 1977 or (ii) was listed on the buy/sell notices during the period September 1, 1976 through August 31, 1977, with an allocation of zero (0) barrels in all four allocations quarters in that period, or (iii) as to any small refiner not shown on such buy/sell notices and any other small refiner with newly-constructed refining capacity or reactivated refineries or refining capacity, had completed the process design basis for the refining capacity concerned and had expended or was irrevocably committed to expend prior to August 24, 1977, an amount equal to at least twenty (20%) percent of the total cost of such refining capacity, or (iv) since August 24, 1977, had acquired capacity downstream of the crude distillation process through newly constructed refining capacity or reactivated refineries or refining capacity. In the case of a refiner described in (iii) or (iv), the ERA may assign such refining capacity a maximum allocation of twenty-five (25%) percent of the capacity. Such allocation will be in effect for a period not to exceed two allocation periods, following which the allocation for such refining capacity shall be calculated in accordance with the provisions of paragraph (b) of this section.

4. § 211.65(c)(2)(i) is revised to read as follows: (2)(i) Notwithstanding any provision of this section to the contrary, any small refiner (except a small refiner with newly-constructed refining capacity or reactivated refining capacity that does not satisfy the requirements of § 211.65(a)(1)(iii) of this Chapter) which is incurring, or will incur in the allocation period for which an allocation is sought, a reduction in its supply of crude oil equal to the lesser of twenty-five (25) of its DOE certified crude oil refining capacity, or twenty-five (25) percent of the volume of its crude oil runs to stills, as adjusted for increases or decreases in the refiner's crude oil refining capacity as certified by DOE, during the period January through October 1978, and which is not able or cannot reasonably be expected to replace such lost supplies through its own efforts, may apply at any time for ERA for an emergency allocation of crude oil. The ERA may determine that a small refiner cannot reasonably be expected to replace its lost supplies through its own efforts where the small refiner must pay a price for replacement supplies significantly in excess of the range of prices being paid for most

crude oil purchased on the world market, considering the quality of crude oil in question. [Alternative proposal: Any small refiner which has capacity downstream of the crude distillation process through newly-constructed refining capacity or reactivated refineries or refining capacity may apply to ERA for an emergency allocation of crude oil only if the refinery is located at a port or on a navigable inland waterway providing access to imported crude oil or has direct access to a pipeline that routinely carries imported crude oil].

5. § 211.65 is amended by adding a new paragraph (k) to read as follows:

(k) *Special Provisions for emergency allocations under paragraph (c)(2) of this section.*

[Additional proposed provision: This paragraph applies only when Special Rule No. 10 to Subpart C of Part 211 of this chapter is in effect.]

(1) *Definitions.* For purposes of allocations under subparagraph (2) of paragraph (c) of this section—

"Seller" means any refiner that is a refiner-seller as defined in § 211.62 of this chapter and any other refiner that is not a small refiner as defined in § 211.62 of this chapter.

[Additional proposed provision: "Sellers utilization rate" means the total of the "estimated crude oil runs to stills" (as defined in paragraph 4 of Special Rule No. 10 to Subpart C, Part 211 of this chapter) of all "sellers" (as defined in this paragraph (k)) divided by the average monthly crude oil runs to stills of all such sellers during the period September 1978 through February 1979, as reported to ERA pursuant to § 211.66(h) of this chapter.]

"Fixed percentage share" means a seller's proportionate share, expressed as a percentage, of the total volume of crude oil runs to stills of all sellers during the period September 1978 through February 1979, as reported to ERA pursuant to § 211.66(h) of this chapter.

(2) *Sales obligations.* (i) The sales obligation with respect to allocations assigned under paragraph (c)(2) of this section for a refiner-seller for an allocation period shall be in addition to any sales obligation for such refiner-seller under paragraph (f) of this section for such allocation period.

(ii) For each allocation period, sellers shall be required to offer for sale, directly or through exchange, to refiners assigned allocations under paragraph (c)(2) of this section a quantity of crude oil equal to the sum of the quantities of crude oil allocated. The sales obligation for each seller for an allocation period shall be equal to that seller's fixed

percentage share multiplied by the total of the allocations assigned under paragraph (c)(2), adjusted by any carryovers of unsold sales obligations in previous allocation periods. [Additional proposed provision: *provided, that*, any seller that is not a refiner-seller as defined in § 211.62 of this chapter shall be relieved of its sales obligation for the allocation period if the sales obligation would reduce such seller's estimated crude oil runs to stills below the sellers' utilization rate for the allocation period.]

§ 211.67 [Amended]

6. Section 211.67 is amended in paragraph (a) by adding a new subparagraph (7) to read as follows:

(7) For each month, commencing with the month of January 1980, (i) the number of entitlements issued under paragraph (a)(1) of this section to each refiner which sells crude oil pursuant to the provisions of § 211.65 of this subpart and has weighted average acquisition costs for imported high and low sulfur crude oil, respectively, in that month which is in excess of the national weighted average acquisition costs for imported high and low sulfur crude oil, respectively, (as defined in § 212.94 of this chapter), shall be increased by that number of entitlements equal in value to the difference between that refiner's weighted average acquisition costs for imported high and low sulfur crude oil, respectively, in that month and the national weighted average acquisition costs for imported high and low sulfur crude oil, respectively, times the number of barrels sold by that refiner and priced pursuant to the provisions of § 212.94 of this chapter; and (ii) the number of entitlements issued under paragraph (a)(1) of this section to each refiner which sells crude oil pursuant to the provisions of § 211.65 of this subpart and has weighted average acquisition costs for imported high and low sulfur crude oil, respectively, in that month which is less than the national weighted average acquisition costs for high and low sulfur imported crude oil (as defined in § 212.94 of this chapter) shall be reduced by that number of entitlements equal in value to the difference between that refiner's weighted average acquisition costs for high and low sulfur imported crude oil, respectively, in that month and the national weighted average acquisition costs for imported high and low sulfur crude oil, respectively, times the number of barrels sold by that refiner and priced pursuant to the provisions of § 212.94 of this chapter.

* * * *

Subpart C Appendix IX [Amended]

7. The Appendix to Subpart C of Part 211 is amended by the revision of paragraph 5 of Special Rule No. 10 to read as follows:

Alternative 1

5. *Method of Allocation.* For purposes of this special rule, § 211.65 shall read as follows:

§ 211.65 Mandatory Crude Oil Allocation Program.**(a) General rule.**

For each allocation period, a refiner shall be eligible to buy or be required to offer for sale an amount of crude oil calculated as follows:

(1) Each U.S. refiner shall submit to the ERA its estimate of crude oil runs to stills for the allocation period.

(2) For each allocation period, the ERA shall compute the national estimated crude oil runs to stills based on the total estimated crude oil runs to stills for all U.S. refiners for that allocation period.

(3) The ERA shall compute the average daily crude oil runs to stills during the base period for each domestic refiner by dividing the total volume of that refiner's crude oil runs to stills in the base period by the number of days in the base period (365 or 366).

(4) The ERA shall multiply this daily average volume of crude oil runs to stills for each refiner by the number of days in the allocation period, to determine the refiner's base period average monthly crude oil runs to stills for the allocation period.

(5) The ERA shall compute a national base period average monthly crude oil runs to stills by aggregating the base period average monthly crude oil runs to stills of all U.S. refiners for the allocation period.

(6) The ERA shall divide the national estimated crude oil runs to stills (clause (2)) for the allocation period by the national base period average monthly crude oil runs to stills (clause (5)) to determine the national utilization rate for the allocation period.

(7) The ERA shall multiply the national utilization rate by the refiner's base period average monthly crude oil runs to stills for the allocation period (clause (4)) to determine the refiner's allowable crude oil runs to stills during the allocation period.

(8) The ERA shall subtract the refiner's estimated crude oil runs to stills (clause (1)) from the refiner's allowable crude oil runs to stills during the allocation period (clause (7)) to determine the refiner's purchase or sale obligation, subject to any adjustments made pursuant to paragraph (d)(2) of this section or § 211.71(d) of this special rule.

(9) If the result of the calculation in clause (8) is positive, the refiner is entitled to purchase that quantity of crude oil which is equal to the difference between

(i) the national utilization rate minus [alternative a: two] [alternative b: three] percent multiplied by the refiner's base period average monthly crude oil runs to stills, and

(ii) the refiner's estimated crude oil runs to stills during the allocation period; provided that the amount in clause (i) is greater than the amount in clause (ii).

(10) If the result of the calculation in clause (8) is negative, the refiner is required to offer for sale that quantity of crude oil calculated pursuant to paragraph (c) of this section, unless the exemption provided for in section 3 of this special rule is applicable to that refiner.

(11) The first allocation period shall commence on the date ordered by the Administrator.

(b) Buyers. Each buyer shall:

(1) be entitled to purchase, either directly or through exchange, from a seller, a quantity of crude oil equal to the amount computed pursuant to paragraph (a) of this section; and,

(2) be required to refine or have processed any crude oil purchased or exchanged for crude oil purchased pursuant to this special rule within 60 days following the date of execution of the sale/purchase agreement.

(c) *Sellers.* Except as provided in paragraph 3 of this special rule, each seller shall be required to offer for sale, directly or through exchange, to buyers a quantity of crude oil equal to the amount which ERA shall compute to be necessary to bring each seller to the extent practicable to the same utilization rate for the allocation period; provided that the sales obligations with respect to buyers that have a DOE certified crude oil refining capacity of 50,000 barrels per day or less shall be distributed on a pro-rata basis among all sellers, and each seller's pro-rata share of such sales obligations shall be equal to its percentage share of the total sales obligations, as specified in the buy/sell notice issued pursuant to § 211.65(g) of this special rule.

Alternative 2

5. *Method of Allocation.* For purposes of this special rule, § 211.65 shall read as follows:

§ 211.65 Mandatory Crude Oil Allocation Program.**(a) General rule.** In each allocation period

(i) a buyer shall be entitled to purchase an amount of crude oil equal to seventy-five (75) percent the difference between

(A) the national utilization rate multiplied by the refiner's base period average monthly crude oil runs to stills, and

(B) the refiner's estimated crude oil runs to stills during the allocation period, and

(ii) a seller shall be required to offer for sale that amount of crude oil calculated pursuant to paragraph (c) of this section.

(2) Definitions.

X = quantity of crude oil a buyer is entitled to purchase (if X is a positive number) or required to offer for sale (if X is a negative number) during the allocation period

A = refiner's Estimated Crude Oil Runs to Stills during the allocation period.

B = refiner's Base period Average Monthly Crude Oil Runs to Stills

C = National Estimated Crude Oil Runs to Stills for all U.S. refiners for the allocation period

D = National Base Period Average Monthly Crude Oil Runs to Stills by all U.S. refiners

(3) Formula.

$$.75 \left(\left(\frac{C}{D} \times B \right) - A \right) = X$$

(4) *Calculation Procedure.* For each allocation period, the amount of crude oil a refiner is eligible to buy shall be calculated as follows:

(i) Each U.S. refiner shall submit to the ERA its estimate of crude oil runs to stills for the allocation period.

(ii) For each allocation period, the ERA shall compute the national estimated crude oil runs to stills based on the total estimated crude oil runs to stills for all U.S. refiners for that allocation period.

(iii) The ERA shall compute the average daily crude oil runs to stills during the base period for each domestic refiner by dividing the total volume of that refiner's crude oil runs to stills in the base period by the number of days in the base period (365 or 366).

(iv) The ERA shall multiply this daily average volume of crude oil runs to stills for each refiner by the number of days in the allocation period, to determine the refiner's base period average monthly crude oil runs to stills for the allocation period.

(v) The ERA shall compute a national base period average monthly crude oil runs to stills by aggregating the base period average monthly crude oil runs to stills of U.S. refiners for the allocation period.

(vi) The ERA shall divide the national estimated crude oil runs to stills (clause (ii)) for the allocation period by the national base period average monthly crude oil runs to stills (clause (v)) to determine the national utilization rate for the allocation period.

(vii) The ERA shall multiply the national utilization rate by the refiner's base period average monthly crude oil runs to stills for the allocation period (clause (iv)) to determine the refiner's allowable crude oil runs to stills during the allocation period.

(viii) The ERA shall subtract the refiner's estimated crude oil runs to stills (clause (i)) from the refiner's allowable crude oil runs to stills during the allocation period (clause (vii)).

(ix) If the result of the calculation in clause (viii) is positive, the refiner is entitled to purchase seventy-five percent of that quantity of crude oil.

(x) If the result of the calculation in clause (viii) is negative, the refiner is required to offer for sale that quantity of crude oil calculated pursuant to paragraph (c) of this section; unless the exemption provided for in section 3 of this special rule is applicable to that refiner.

(5) *First allocation period.* The first allocation period shall commence on the date ordered by the Administrator.

(b) Buyers. Each buyer shall:

(1) be entitled to purchase, either directly or through exchange, from a seller, a quantity of crude oil equal to the amount computed pursuant to paragraph (a) of this section; and,

(2) be required to refine or have processed any crude oil purchased or exchanged for crude oil purchased pursuant to this special rule within 60 days following the date of execution of the sale/purchase agreement.

(c) *Sellers.* Except as provided in paragraph 3 of this special rule, each seller shall be required to offer for sale, directly or through exchange, to buyers a quantity of

crude oil equal to the amount computed pursuant to paragraph (a) of this section; *provided that* if the total sales obligations of all sellers do not equal or exceed the total buyer allocations of all buyers, then ERA shall adjust the sale obligation of each seller on a pro-rata basis so that total sales obligations equal total buyer allocations; further *provided that* the sales obligations with respect to buyers that have a DOE certified crude oil refining capacity of 50,000 barrels per day or less shall be distributed on a pro-rata basis among all sellers, and each seller's pro-rata share of such sales obligations shall be equal to its percentage share of the total sales obligations, as specified in the buy/sell notice issued pursuant to § 211.65(g) of this special rule.

Subpart C Appendix [Amended]

8. The Appendix to Subpart C of Part 211 is amended by the revision of the definitions of "National base period average monthly crude oil runs to stills" and "National estimated crude oil runs to stills" to read as follows:

"National base period average monthly crude oil runs to stills" means the total base period average monthly crude oil runs to stills of all U.S. refiners the refining capacity of which exceeds 175,000 barrels per day.

"National estimated crude oil runs to stills" means, for any allocation period, the total of the estimated crude oil runs to stills for all U.S. refiners the refining capacity of which exceeds 175,000 barrels per day, minus the quantity of crude oil directed to such refiners pursuant to § 211.65(d)(2) or § 211.71(d) of this special rule.

The Appendix to Subpart C of Part 211 is amended by the revision of paragraph 8 to read as follows:

8. *Special Allocation Procedures.* When the provisions of this special rule are in effect, the Administrator may order the following amendments to paragraph (c) and (i) of § 211.65 and, in that event, paragraphs 3, 4 (except the definitions of "Administrator," "DOE" and "ERA"), 5, 6 and 7 of this special rule shall not be in effect:

(a) Paragraph (c) may be amended by revising the heading and subparagraph (2) to read as follows:

(c) *Review of eligibility for allocations, adjustments to purchase opportunities, and emergency allocations.*

(2)(i) Notwithstanding any provision of § 211.62 or any other provision of this section, upon application at any time by any refiner, the ERA may grant that refiner an emergency allocation for one or more allocation periods, or for part of an allocation period, the effect of which shall be to maintain that refiner's crude oil supplies at a level equivalent to that

refiner's supply level for the corresponding period of the previous year; *provided, that*, such refiner shall be required to demonstrate that it is incurring, or will incur in the allocation period for which the allocation is sought, a significant reduction, due to circumstances over which such refiner reasonably had no control, in its supply of crude oil due directly or indirectly to shortages of crude oil in the world markets; *further provided, that*, unless such refiner has significant refining capacity downstream of the crude distillation process, it must be able to meet the criteria for emergency allocations under this paragraph that were in effect on November 12, 1979.

§ 212.94 [Amended]

10. Paragraphs (a)(2) and (b)(1) of § 212.94 are revised to read as follows:

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

(a) * * *

(2) *Definitions.* For the purposes of this section—

"High sulfur crude oil" means crude oil the sulfur content of which is equal to or greater than 0.6% (six-tenths of one percent) by weight.

"Low sulfur crude oil" means crude oil the sulfur content of which is less than 0.6% (six-tenths of one percent) by weight.

"Lower forty-eight states" means the forty-eight contiguous states of the United States.

[Alternative 1: "National average acquisition cost" means for low sulfur and high sulfur crude oil, respectively, the weighted average per barrel landed cost (as defined in § 212.82, but utilizing the volumes of imported crude oil at the time of importation thereof into the United States) of low sulfur and high sulfur crude oil, respectively, calculated for all refiners which sell crude oil pursuant to section 211.65.]

[Alternative 2: "National average acquisition cost", for a particular month, means, for low sulfur and high sulfur crude oil, respectively, the price which ERA designates at the beginning of that month to represent [alternative a: the estimated average acquisition cost.] [alternative b: the estimated average acquisition cost plus a fixed dollar amount.] [alternative c: the price which ERA projects will be above 60 percent of all prices paid in transactions to import crude oil.]]

(b) *Rule.* (1) Notwithstanding the general rules described in this subpart, the price at which low sulfur and high sulfur crude oil, respectively, shall be

sold when required pursuant to § 211.65 of Part 211 of this chapter shall not exceed the national average acquisition cost, less the average cost of domestic transportation to the refiner-seller's refinery(s), of all low sulfur or high sulfur imported crude oil, respectively (other than crude oil imported from Canada), delivered to the refiner-seller in the month in which the sale is made, plus a handling fee of five cents per barrel, and any transportation, gravity and sulfur content adjustments as specified in subparagraphs (2) through (4), respectively, of this paragraph (b). Each refiner-seller making such a sale shall maintain records, which shall be made available to the FEA upon request, listing the volumes and costs of all imported low sulfur and high sulfur crude oil delivered to it.

* * * * *

Subpart L Appendix [Amended]

11. Special Rule No. 1 in the Appendix to Subpart L of Part 212 is amended in section 2(b) to read as follows:

(b) During the time period this special rule is in effect, it supersedes § 212.94, Title 10, Chapter II, Subpart F (Allocated Crude Pricing); *provided, that*, if the exemption in paragraph 3(a) of Special Rule No. 10 to Part 211 Subpart C is applicable, the provisions shall apply to sales of crude oil pursuant to § 211.65 of this chapter to small refiners whose DOE certified crude oil refining capacity is 50,000 barrels per day or less and with respect to sales of crude oil pursuant to § 211.65 of this chapter to refiners whose DOE certified refining capacity is greater than 50,000 barrels per day but less than 175,000 barrels per day, the Administrator may determine that either the provisions in § 212.94 or the provisions in this special rule shall apply. *further provided, that*, if the exemption in paragraph 3(a) of Special Rule No. 10 to Part 211 Subpart C is not applicable, then, with respect to sales of crude oil pursuant to § 211.65 of this chapter to small refiners whose DOE certified crude oil refining capacity is 50,000 barrels per day or less and with respect to sales of crude oil pursuant to § 211.65 of this chapter to refiners whose DOE certified refining capacity is greater than 50,000 barrels per day but less than 175,000 barrels per day, the Administrator may determine that either the provisions in § 212.94 or the provisions in this special rule shall apply.

12. Special Rule No. 1 in the Appendix to Subpart L of Part 212 is amended in section 3(b)(2)(i) to read as follows:

* * * * *

(b) Rule.

(2) The purchase cost to sellers of crude oil offered for sale pursuant to Special Rule No. 10, Part 211, Subpart C shall be:

(i) when the buyer has a DOE certified refining capacity of more than 50,000 barrels per day,

[Alternative 1: the weighted average acquisition cost of that volume of crude oil for which the refiner-seller paid the highest price and which is equal to three times the volume of crude oil sold subject to this pricing provision.]

[Alternative 2: the weighted average acquisition cost of all crude oil imported that month, excluding that 10 percent of crude oil imported that month for which the refiner-seller paid the highest prices relative to other purchases that month.]

[Alternative 3: the weighted average acquisition cost of crude oil imported that month by that refiner-seller.]

[Alternative 4: the weighted average acquisition cost of all crude oil imported by all refiner-sellers in that month, excluding that five percent of crude oil imported that month for which refiner-sellers paid the highest prices relative to other purchases that month.]

[Alternative 5: that price which the seller negotiated in good faith with the buyer.]

13. Section 212.94 is amended in subsection (4) of paragraph (b) to read as follows:

§ 212.94 Allocated crude pricing.

(b) Rule.

(4) A further price adjustment shall be made for sulfur content differential of crude oil offered for sale under § 211.65 of Part 211 of this chapter by adding to or subtracting from the weighted costs as calculated under paragraph (B)(1) of this section nine cents per barrel per one-tenth percent that the sulfur content by weight of the crude oil being offered for sale under § 211.65 of Part 211 of this chapter is either below or above, respectively, the percentage representing the weighted average sulfur content of imports of crude oil of the same sulfur content category (other than crude oil imported from Canada) for the applicable period specified in paragraph (b)(1) of this section for the refiner-seller.

oil offered for sale under Special Rule No. 10, Part 211, Subpart C, that is priced under paragraph (b)(2)(ii) of this special rule, by adding to or subtracting from the price nine cents per barrel (or as otherwise determined by the Administrator in light of prevailing market conditions) for each one tenth of one percent that the sulfur content by weight of the crude oil being offered for sale is either below or above, respectively, the percentage representing the weighted average sulfur content of the seller's imported crude oil of the same sulfur content category.

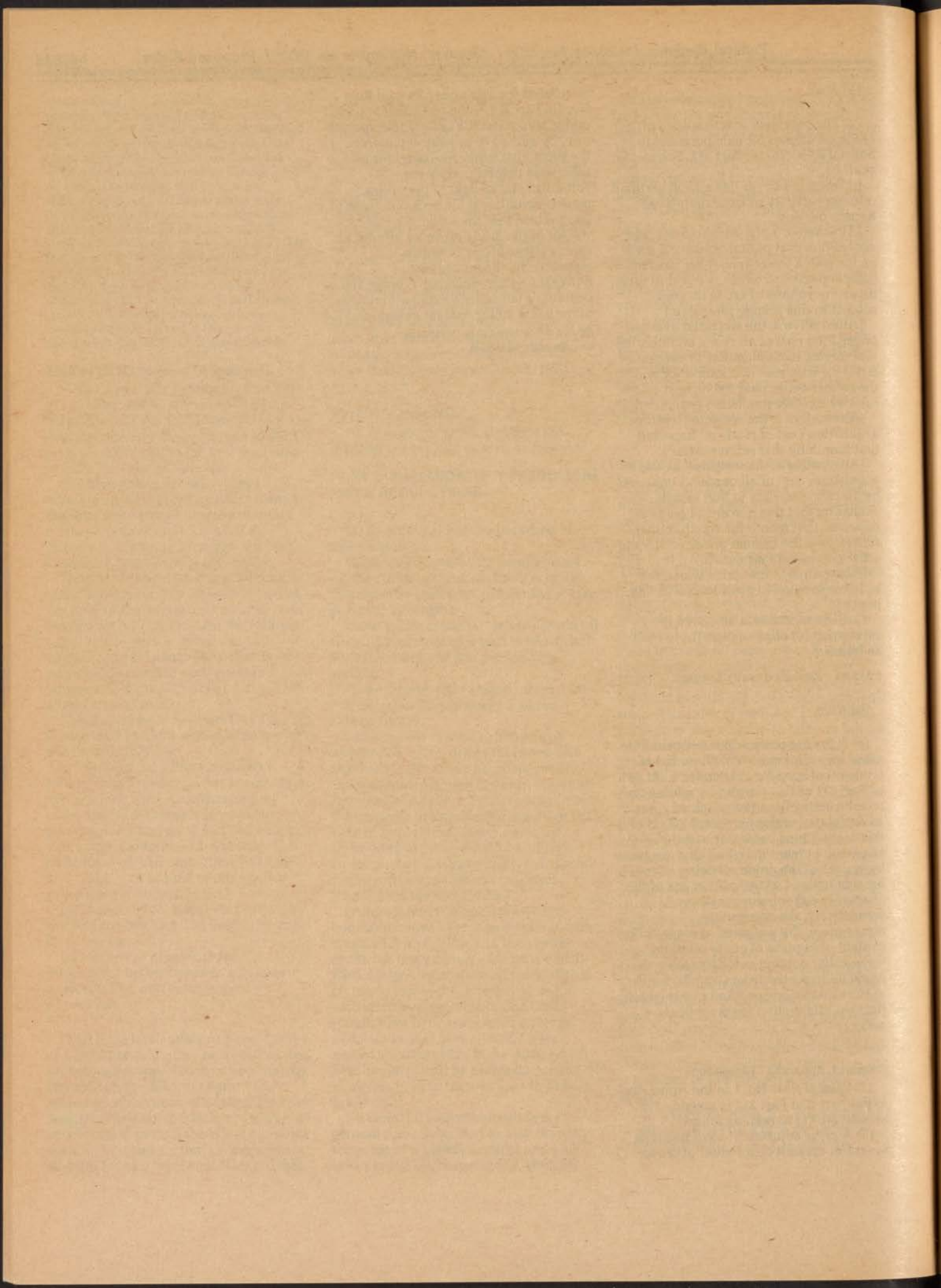
[FR Doc. 79-36593 Filed 11-23-79; 11:48 am]

BILLING CODE 6450-01-M

Subpart L Appendix [Amended]

14. Special Rule No. 1 in the Appendix to Subpart L of Part 212 is amended in section 3(b)(5) to read as follows:

(5) A price adjustment shall be made for sulfur content differential of crude



Federal Register

Monday
November 26, 1979

Part VI

Department of the Treasury

Office of Foreign Assets Control

Iranian Assets Control Regulations; Final
Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purpose of the first amendment is to add new § 535.414 interpreting § 535.508, which concerns payments into blocked accounts. The purpose of the second amendment is to add new § 535.504 authorizing certain judicial proceedings with respect to blocked accounts, up to but not including entry of judgment. The purpose of the third amendment is to add a new interpretation stating that payments received under § 535.508 may be distributed to others. The need for the first amendment is to make clear that § 535.508 only permits payments into blocked accounts held by U.S. domestic banks. The need for the second amendment is to authorize judicial proceedings to deal with a large volume of cases which are anticipated, and which will meet the terms of the new section. The need for the third amendment is to make clear that § 535.904 was originally intended to allow distribution of the payments authorized under that section. The effect of the amendments is that the limitations on the scope of the general authorization in § 535.508 will be clear, all cases falling within the conditions in § 535.504 will be licensed without individual license applications in each case and the meaning of § 535.904 will be clarified.

EFFECTIVE DATE: November 23, 1979.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Chief Council, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202-376-0236.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553 requiring notice of proposed rulemaking, the opportunity for public participation and a delay in effective date are inapplicable. 31 CFR, Part 535 is amended by the addition of §§ 535.414, 535.415 and 535.504 as follows:

§ 535.414 Payments to blocked accounts under § 535.508.

(a) Section 535.508 does not authorize any transfer from a blocked account

within the United States to an account held by any bank outside the United States or any other payment into a blocked account outside the United States.

(b) Section 535.508 only authorizes payment into a blocked account held by a domestic bank as defined by § 535.320.

§ 535.415 Payment by Iranian Entities of Obligations to Persons within the United States.

A person receiving payment under § 535.904 may distribute all or part of that payment to anyone: *Provided*, That any such payment to Iran or an Iranian entity must be to a blocked account in a domestic bank.

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, judicial proceedings are authorized with respect to property in which on or since the effective date there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize or license:

(1) The entry of any judgment or of any decree or order of similar or analogous effect upon any judgment book, minute book, journal or otherwise, or the docketing of any judgment in any docket book, or the filing of any judgment roll or the taking of any other similar or analogous action.

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, nor does it authorize the enforcement or carrying out of any judgment or decree or order of similar or analogous effect with regard to any property in which Iran or an Iranian entity has an interest.

(c) A judicial proceeding is not authorized by this section if it is based on transactions which violated the prohibitions of this part.

(Secs. 201-207, 91 Stat. 1626; (50 U.S.C. 1701-1706); E.O. No. 12170, 44 FR 65729)

Dated: November 23, 1979.

Stanley L. Sommerfield,

Director, Office of Foreign Assets Control.

Approved: Richard J. Davis, Assistant Secretary.

[FR Doc. 79-39603 Filed 11-23-79; 1:47 pm]

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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/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
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DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
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DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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

*NOTE: As of July 2, 1979, all agencies in the Department 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

List of Public Laws

Last Listing November 16, 1979

This is a continuing listing 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 202-275-3030).

H.J.Res. 440 / Pub. L. 96-123 Making further continuing appropriations for the fiscal year 1980, and for other purposes. (Nov. 20, 1979; 93 Stat. 923) Price \$.75.

H.R. 5811 / Pub. L. 96-124 To allow the Interest Rate Modification Act of 1979, passed by the Council of the District of Columbia, to take effect immediately. (Nov. 20, 1979; 93 Stat. 927) Price \$.75.

COMMUNITY SERVICES ADMINISTRATION

- 61348 10-25-79 / Changes in program account codes
61346 10-25-79 / Monitoring and reporting program performance provisions

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

- 61328 10-25-79 / Preliminary permit and licensing provisions

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- 61587 10-26-79 / Public disclosure of bank Trust Department annual Report of Assests

INTERIOR DEPARTMENT

Fish and Wildlife Service—

- 61554 10-25-79 / Determination that *Coryphantha sneedii* var. *leei* is a threatened species
61556 10-25-79 / Determination that *Echinocereus triglochidiatus* var. *arizonicus* is an endangered species
61784 10-26-79 / Determination that *Pediocactus bradyi* is an endangered species
61786 10-26-79 / Determination that *Pediocactus sileri* is an endangered species

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

- 61319 10-25-79 / Changes in fee schedule
61320 10-25-79 / Requirements for filing and processing of petitions for rulemaking

POSTAL SERVICE

- 61178 10-24-79 / Suspension of the private express statutes; extremely urgent letters



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